
(1949) 10 P&H CK 0002
In the Punjab And Haryana At Chandigarh

K.S. Javari and Others

APPELLANT

Vs

Bhagwat Parshad Mangla

RESPONDENT

Date of Decision : 28-10-1949

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 205(1)

Citation : AIR 1950 P&H 155 : (1950) CriLJ 736

Hon'ble Judges : Kapur, J

Bench : Single Bench

Judgement

Kapur, J.—This is a rule directed against the order of Mr. Harnarain Singh, Magistrate, First Class, Gurgaon, whereby he issued process against the petitioners. A petition for quashing of proceedings in the Court of the learned Magistrate has been filed in this Court u/s C61A, Criminal P.C.

2. The facts which have led to this petition are that on 18th May 1918, the respondent Bhagwat Pershad Mangla insured a truck with the Sentinel Assurance Company Ltd., for RSection 15,000. On 18th November 1948, this truck is alleged to have caught fire and was damaged. A claim waa made by the insured for the amount and on 13th December 1948, the Zonal Secretary of the company at New Delhi, H. P. Bhattacharjee, wrote a letter to the insured confirming a telegram which was in the following terms: "Arrange transportation accidented truck 450 Premnath Motors, Scindhiahouse New Delhi." The letter went on to say "we may add that we shall pay you reasonable expenses (within the provisions of the policy) towards your cost for this work." On 16th December 1918, K. S. Javeri, General Manager of this company wrote a letter in which inter alia it is stated that the Delhi office has been instructed to remove the truck to Messrs. Prem Nath Motors for repairs, and it ended up by Saying "we hope that you will have already removed the truck accordingly." On 16th January 1949, another letter was written by the General Manager, K. S. Javari, in which it was said "The same will be made over to you after repairs against issue of the necessary satisfaction note by you." On 16th February 1949, the company repudiated the

claim of the complainant for Rs. 245.5-0 which perhaps was for the salvage . and transportation cost of the truck. On 12th Maroh 1949, in terms of the policy there was some kind of reference to arbitration which fell through and on 21st July 1949, Bhagwat Per-shad Mangla filed a complaint in the Court of a Magistrate in Gurgaon in which he narrated most of these facts and also referred to the letter of 18th December 1918, in which the company had promised to pay reasonable expenses "within the provisions of the policy."

3. In para 6 of the complaint it is stated :

Accordingly on the representation contained in letter dated 13th December 1948, we transported the truck to Prem Nath Motors, New Delhi, and as required in the said letter submitted a bill for Rs. 245-5-0 for the work, made several demands but the accused always put off the matter. Accused 1 also admitted in his letter dated 15th January 1948 that according to policy conditions the truck in question had been handed to Prem Nath Motors Ltd., for repairs and the same would be returned to us after it had been repaired to our satisfaction.

In para. 7 the allegation is that the accused had dishonest intention from the very start and they had refused to pay the money, and in para. 8 it is alleged that had the accused not deceived the complainant by saying that they would incur the cost for transporting the truck, to Delhi, the complainant would never have taken the truck to Delhi for repairs.

4. The complainant was then examined on 22nd July 1949 and a process was issued to the three accused persons. On 10th August 1949, Mr. Ishwar Dass Khanna, Advocate, filed an application u/s 205, Sub-section (1), Criminal P.C. praying for exemption from personal attendance in Court of all the three accused. On that occasion, H. P. Bhattacharjee, accused 3 was present but apparently without going into the matter and without applying his mind to the subject-matter of the dispute, the learned Magistrate passed an order "To put up after all the accused appear in Court." I cannot understand why the learned Magistrate could not decide this matter without the appearance of the accused persons in Court. After all they were at least apparently respectable persons and the matter involved was a small one and the dispute was more between the company and the complainant than between individual officers of the company. This shows that the learned Magistrate was not prepared to apply his mind to the subject-matter of the dispute and passed an order without carefully considering the matter.

5. On 23rd August 1949, a petition was filed in this Court for quashing of proceedings u/s 5614, Criminal P.C. I have heard the learned advocate for the three petitioners, who are officers holding various offices in the Sentinel Assurance Company Ltd. After going through the complaint and the statement of the complainant and also having read the terms of the policy, I do not find that any offence under the Penal Code has been made out against the petitioners. All that they asked the complainant was that he should remove the damaged truck

to Delhi and that the company would pay for transportation charges but they seem to have been careful to add that the expenses will be "within the provisions of the policy." Now it may be that they may have interpreted the policy in this particular manner that they were not bound to pay the transportation charges if the claim itself was repudiated. Whether they were right or wrong is not a question which was for the criminal Court to decide. The fact remains that there was a refusal to pay because according to the way these gentlemen read the policy they thought that they were not bound to pay. I may here reproduce Clause 5 of Section 1 of the policy which says:

3. In the event of the Motor Vehicle being disabled by reason of loss or damage covered under this policy the company will bear the cost of protection and removal to the nearest repairs and of the re-delivery to the insured but not exceeding in all Rs. 150 in respect of any one accident.

Now words to be marked in this are "loss or damage covered under this policy." It is quite possible that they may have interpreted those words as qualifying their liability to pay for the transportation of the damaged vehicle and in any case, they were not bound to pay more than Rs. 150. Nothing has been shown either in the complaint or in the letters which would lead me to believe that any offence has been committed or the intention from the very beginning was not to pay the cost of transportation.

6. Although the company does not accept any liability either for the loss or damage to the vehicle or for transportation of the vehicle to Prem Nath Motors Ltd., the advocate for the company has given a cheque for Rs. 160 in the name of the insured not in acceptance of any liability but just to cover the cost of transportation which the respondent might have thought he was entitled to.

7. As I have said before, the complaint does not disclose the commission of any offence and I would like to add that in cases of this kind criminal Courts should act with the greatest amount of care and caution because unless they are very careful, process of criminal Courts is likely to be abused and many respectable persons may thus become the victims of harassment by complainants who imagine that it is easier to recover dues through criminal Courts than through civil Courts. I would also like to draw the attention of the learned Magistrate that various sections of the Criminal Procedure Code are meant to be used in favour of the citizen and for furtherance of justice and not as a means of pressure.

8. In the result, I allow this petition and quash the order of the learned Magistrate issuing process against the accused. The rule is made absolute,