

(2016) 09 PAT CK 0078

In the Patna High Court

Case No : Criminal Miscellaneous No. 22068 of 2013; (Arising Out of PS.Case No. -1072 Year - 2011 Thana -Patna Complaint Case District Patna)

Oriental Insurance Company

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2017) 1 BBCJ 99 : (2016) 4 PLJR 825

Hon'ble Judges : Mr. Rakesh Kumar, J.

Bench : Single Bench

Advocate : Mr. Madan Kumar, A.P.P. and Mr. Sunil Kumar, Advocate, for the Opposite Parties; Mr. Durgesh Kumar Singh and Mr. Rajesh Chandra Narayan, Advocates, for the Petitioners

Final Decision : Allowed

Judgement

Mr. Rakesh Kumar, J. - Heard Sri Durgesh Kumar Singh, learned counsel for the petitioners, Sri Madan Kumar, learned Addl. Public Prosecutor and Sri Sunil Kumar, learned counsel for the complainant/Opp.Party no.2.

2. The present petition has been filed under Section 482 of the Code of Criminal Procedure on behalf of the Oriental Insurance Company Ltd. as well as one Bhupendra Kumar Singh, who was Senior Branch Manager of the Oriental Insurance Company Ltd. C.B.O. VI, South Gandhi Maidan, Patna with a prayer to quash an order dated 06. 03.2013 passed by Mr. Md. Saleem, learned Judicial Magistrate, 1st Class, Patna in Complaint Case No.1072(c)/2011. By the said order, the learned Magistrate has taken cognizance of offence under Section 420 of the Indian Penal Code and directed for issuance of processes against the accused.

3. Short fact of the case is that the complainant/Opp.Party no.2 filed a complaint case vide Complaint Case No. 1072(c)/2011 in the court of learned Chief Judicial Magistrate, Patna alleging therein that he had purchased a motorcycle in the

name of his son, namely, Gautam Kumar, bearing Registration No.BR-1AA/1369, Chasis No.05E09C30975, Engine No.05E08M30384, Model No.2005. It was alleged that in the night of 18.07.2008 in between 8.00 to 10.00 P.M., the said motorcycle was stolen from the premises of Shalimar Cold Storage in front of Zonal Office of Whirlpool of India. It was disclosed that the complainant had initially lodged a written report before the Officer Incharge of Gardanibagh Police Station, but no case was instituted on the ground of lack of jurisdiction. Thereafter, the complainant had also intimated the petitioner no.2 regarding the occurrence. Since no F.I.R. was entertained by the police, finally the complainant filed a complaint case vide Complaint Case No.2229(c)/08 before the learned Chief Judicial Magistrate, Patna. After enquiry, the learned Chief Judicial Magistrate took cognizance of offence under Sections 323, 504, 379/34 of the Indian Penal Code on 10.09.2008 in Complaint case No.2229 (c)/2008. The complainant, thereafter, as stated in the present complaint petition, approached the Insurance Company i.e. office of petitioner no.2 with a prayer for issuance of claim form. The complainant had filed copy of order of cognizance before the Insurance Authority. Thereafter, claim form was issued. Despite the fact that the complainant submitted claim form completing all formalities, the claim amount was not paid to the complainant. It was alleged that the Insurance Company, particularly petitioner no.2 had committed fraud and committed offence under Sections 409, 420 of the Indian Penal Code. After enquiry, the learned Magistrate took cognizance of offence under Section 420 of the Indian Penal Code, which has been assailed in the present petition.

4. Sri Durgesh Kumar Singh, learned counsel for the petitioners, at the very outset, by way of referring to the averments made in the complaint petition, submits that the complaint petition was itself required to be rejected under Section 203 of the Code of Criminal Procedure, mainly on the ground that in a civil dispute, a colour of criminal offence was given by the complainant. He submits that for the time being if it is assumed that the complainant had submitted all documents regarding claim and claim was not entertained, the complainant was having civil remedy, not to initiate a criminal proceeding. He further submits, by way of referring to Annexure-2 to the present petition i.e. copy of complaint case no.2229(c)/08, that in the said complaint case, which was filed against M/s Millenium Services and officials of Whirlpool of India Ltd., it was stated that the said motorcycle was lying in the premises of one of the accused of complaint case No.2229(c)/08. It has been argued that once the complainant himself had accepted in the complaint petition that his motorcycle was lying with one of the accused, in a separate complaint, there can be no case for offence under Section 379 of the Indian Penal Code. The complainant should have taken appropriate recourse for recovery of the said vehicle. Learned counsel for the petitioners submits that in similar circumstance, a Division Bench of this Court in a case 2004(2) PLJR 458 (Oriental Insurance Company Ltd v. State of Bihar) has held that in case of non-payment of claim amount, the Insurance Company or its officials may not be held liable for any criminal offence. He

further submits relying on Division Bench Judgment, a Single Bench of this Court has allowed one another quashing application, which has been 2010(4) PLJR 186. (Rituraj, Branch Manager, National Insurance Company v. State of Bihar). On the aforesaid ground, a prayer has been made to quash order of cognizance as well as entire criminal proceeding.

5. Sri Sunil Kumar, learned counsel for the complainant/Opp.Party no.2 has vehemently opposed the prayer of the petitioners. He submits that once the claim application was entertained by Opp.Party no.2, it was duty on the part of the Insurance Company to pay the claim amount. Non-payment of claim amount attracts provision of Section 420 of the Indian Penal Code. However, he does not dispute the proposition, which has been laid down by the Division Bench of this Court, as referred to herein above.

6. Besides hearing learned counsel for the parties, I have also perused the materials on record. While admitting this case, lower court record was called for, which has been received. After examining the entire thing, the Court is of the considered opinion that in a civil dispute, a colour of criminal offence has been given by the complainant/Opp.Party no.2 and in a mechanical manner, the learned Magistrate has proceeded with the case and passed order of cognizance. In such a dispute, there was no question to attract any penal provision. In view of Division Bench Judgment, as referred to herein above, the Court has no option but to quash the order of cognizance.

7. Accordingly, the order dated 06.03.2013 passed by learned Judicial Magistrate, 1st Class, Patna in Complaint Case no.1072(c) /2011 as well as entire criminal proceeding, so far as petitioners are concerned, is hereby set aside.

8. The petition stands allowed.