(2015) 01 GAU CK 0035

In the Gauhati High Court

Case No : Criminal Pet. No. 634 of 2014

Reliance Life Insurance Company Ltd. and Others — APPELLANT

Vs

Bimla Devi Agarwal and Others — RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1, Order 3 Rule 2
Criminal Procedure Code, 1973 (CrPC) — Section 200, 204, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142, 142(a), 145
Penal Code, 1860 (IPC) — Section 120(B), 406, 468

Citation : (2015) 3 CCR 113 : (2015) 1 GLT 440

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : A.K. Bhattacharjee, Senior Counsel, B.K. Singh, K.K. Bhattacharjee, A. Kakoti and D.K. Bhattacharjee, for the Appellant; P.J. Saikia and K. Munir, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prasanta Kumar Saikia, J.—This proceeding u/s. 482 Cr.P.C. has been initiated seeking quashment of the criminal proceeding registered as C.R. Case No. 42(C) of 2014 (Smti Bimala Devi v. Oriental Insurance Company Ltd. and Ors), now, pending in the court of Judicial Magistrate 1st Class, Tinsukia and all the orders, rendered therein including the order dated 26.05.2014 taking cognizance of offences u/s. 120(B)/406/468 IPC. I have heard Mr. A.K. Bhattacharjee, learned senior counsel assisted by Mr. K.K. Bhattacharjee, Mr. A. Kakoti, Mr. A.K. Choudhury, Mr. B.K. Singh and Mr. D.K. Bhattacharjee for the petitioners. I have also heard Mr. K. Munir, learned Addl. Public Prosecutor appearing for the State as well as Mr. P.J. Saikia, learned counsel for the private respondents.

2. Before proceeding further, I find it necessary to look into the alleged facts which gave rise to C.R. Case No. 42 (C) of 2014. On such a perusal, it is found that Smti Bimala Devi, complainant in CR case No. 42c/14 is the holder of Insurance Policy No. 07946699, issued by the ICICI Bank Ltd. In the month of

August, 2013, the complainant received a call from one Sri Navin Mittal who identified himself as an Executive Officer of Reliance Life Insurance Company Ltd.

3. The said caller informed the complainant over phone that as per the instruction of the Insurance Regulatory and Development Authority (TRDA):

"the fund related to Life Insurance Policy of the complainant with the ICICI Life Prudential has been released through the Reliance Life Insurance and also informed that the Bonus amount of Rs. 19,245/-, Rs. 1,94,730 and Rs. 96,500/- against the said Life Insurance Policy is ready to be disbursed in favour of the complainant by the accused No. 1, namely, Reliance Life Insurance Company Ltd."

4. The caller had further requested the complainant to send a cheque for Rs. 50,000/- drawn in favour of Insurance Company Ltd. as well as Pan Card and identity cards of the family members of complainant for verification. The caller also informed her that after necessary verification, the amount in the said cheque together with bonus amount would be released in favor of the complainant.

5. Believing such statements to be true, the complainant sent a cheque of Rs. 50,000/- to the accused No. 1 along with copies of other documents, sought for. The said cheque of Rs. 50,000/- was received by the accused No. 1 in due course. Thereafter, in the month of November, 2013, the complainant received another call from Phone No. 09210657675. This time, the callers were Smti Meenakshi Rawat and Sri Deepak Kapoor.

6. Those callers introduced themselves to be the Executive Officers of Accused No. 1 (Oriental Insurance Company Ltd.). The Second callers also narrated the facts which were already narrated to the complainant by the 1st Caller. The second caller also requested the complainant to send one more cheque for Rs. 42,000/- drawn in favor of accused No. 1.

7. They also informed the complainant that if the said cheque for Rs. 42,000/- was not sent by the complainant, the bonus amount could not be released. They, however, assured the complainant that the amounts, so paid through cheques in favour of the accused No. 1 would be refunded to the complainant immediately after the verification of her identity. Being so influenced, the complainant through her attorney issued another cheque for Rs. 42,000/- in favor of the accused No. 1.

8. What has happened thereafter has been narrated by the complainant in the following manner-

"Para-11. That, after a few days of issuance of said two cheques, the complainant in the month of December, 2013, received two Life Insurance Policy issued by the accused No. 1, duly signed by the accused No. 2 and 3 through its branch office at Guwahati and in both the policy the policy holder has been shown as complainant herself but in one policy the life of complainant has been shown as assured but in another policy the life of complainant''s son Sri Samir

Bajaj has been shown as assured and the client ID of policy holder has been numbered as 86605617, Contract No. 51168554 dated 10.102013 and Client ID No. 8694841,Contract No. 51321645 dated 28.11.2013 and the amount of Rs. 49,999.68/- and Rs. 41,999.89/- has been shown as first premium receipt against the said two policies and the said amount has been collected from the bank account of complainant by using the aforesaid two cheques by accused No. 1.

Para- 12 That, in both the policies the accused No. 4 has been named as broker/ agent of the accused No. 1 through which the aforesaid two policies have been issued in the name of the complainant and in one policy bearing contract No. 51168554, the medical report of complainant has been shown to be enclosed therein which has been issued by the accused No. 11.

Para-13. That, on receipt of the said two policies on being surprised the complainant through her husband made contract with the office staff of accused No. 1 in Tinsukia Branch office and also called over the phone numbers from which the complainant received the call in the month of August, 2013 and November, 2013 and enquired about the matter but the caller misguided the complainant by saying that the said policy''s have been issued due to some mistake and also requested the complainant to bear with them for some time as they are working over the matter and assured the complainant that she will get her amount back within a very short span of time.

Para-14. That, finding no other alternative, the complainant waited for some time and made contract with these callers and asked them about her money but all the time the callers assured that the work is in progress and since the matter has been referred to their high officials for their sanction, so it will take some time. The complainant all the time with a hope that the company of such a reputation will definitely return her money, waited for the same.

Para 15. That, subsequently on careful perusal of the policies, the complainant surprisingly noticed that neither she nor her husband or son ever signed any proposal form or any other documents which require at the time of taking the Life Insurance Policy, as per the rules and regulation of IRDA, nor even appeared for any medical examination before any doctor or hospital authority, but the policy were issued in the name of the complainant, moreover the booklet of policy containing the First Premium Receipt, Policy schedule, proposal Form, Medical Report are all Xerox copy and all the documents even the First Premium Receipt and policy schedule does not bear any original signature of signatory accused No. 2 and 3.

Para 16. That, the proposal forms shown to be signed by the complainant, but the complainant never signed over said policy and it is abundantly clear that her signatures was forged for the wrongful gain of the accused persons. It has been further reveals that the accused persons in conspiracy with each other forged the signatures of the complainant, her husband and her son Sri Samir Bajaj with an intention to deceive them for the wrongful gain. The said policies were issued through accused No. 4 and all the accused persons are related to each other and interested persons who are getting monetary benefits from the issuance of these Life Insurance policies and all the accused persons are involved in committing the crime of cheating, forgery, criminal misappropriation of money and criminal conspiracy. It is crystal clear that at the very inception of conversation with the complainant through her husband, the accused persons have been in conspiracy with each other induced the complainant to deliver the cheques with an intention to deceive the complainant for the wrongful gain".

9. Thereafter, a complaint to that effect having been filed say the complainant through her duly constituted Attorney Sri Binod Kr. Agarwal (Bajaz), the court below took cognizance of the same and was pleased to issue process U/s. 120(B)/406/468 IPC against all the accused persons therein including the present petitioners herein who were arraigned as accused No. 1-3 in the aforesaid criminal proceeding.

10. Mr. A.K. Bhattacharjee, learned senior counsel appearing for the petitioners 1 to 3 herein submits that the said proceeding needs to be quashed on grounds more than one. In that connection, referring to the provision of Section 200 Cr.P.C., it has been contended that in C.R. Case No. 42 (C) of 2014, complainant is one Smt. Bimla Devi Agarwal but the said case was presented before the court of Judicial Magistrate 1st Class, Tinsukia, not by the complainant, but, by her Attorney, her husband, Mr. Benoy Kumar Agarwal (Bajaz).

11. According to Mr. A.K. Bhattacharjee, learned senior counsel, the filing of a complaint through her lawful Attorney is unheard in criminal jurisprudence although he can adduce evidence in his capacity as Attorney in respect of the matter which he is aware of. Situations being such, on this count alone, present proceeding needs to be allowed and criminal proceeding in question needs to be quashed as prayed for.

12. Learned Sr. counsel for the accused/petitioners further contends that allegations, made in the complaint, do not disclose any offence having been committed by the accused petitioners, much less their committing offences u/s. 120(B)/406/468 IPC. On this count too, according to Mr. A.K. Bhattacharjee, C.R. Case No. 42 (C) of 2014 is liable to be quashed and set aside.

13. Mr. A.K. Bhattacharjee, again submits that the complainant has suppressed some very material facts having enormous implications on the matter in dispute in the aforesaid criminal proceeding. Since the complainant had suppressed some material facts and since the complainant did not come before the court with clean hands, on this ground too, the criminal proceeding is required to be quashed and set aside.

14. The further case of the petitioners herein is that on receiving the legal notice dated 24.03.2014 and having come to know about the alleged illegal transaction between the respondent No. 1 (complainant in C.R. Case No. 42 (C) of 2014)

and accused No. 4 in such a criminal case, the petitioners had cancelled the insurance policy aforementioned and had already refunded the complainant Rs. 92,000/- (Rs. 50,000/- + 42,000/-) through her bank account.

15. What is more, the petitioners herein had also initiated enquiry against erring officials who had by their alleged illegal conduct had tarnished reputation of the accused company. These clearly show the accused petitioners are no way involved in the alleged illegal transaction which, in turn, requires this Court to quash the proceeding aforementioned.

16. In support of his contention that a complaint cannot be filed through the Attorney holder, the learned counsel for the petitioners relied on the decision of Hon''ble Apex Court in the case of Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others, AIR 2005 SC 439 : (2005) 123 CompCas 154 : (2005) 3 CTC 128 : (2004) 10 JT 264 : (2005) 140 PLR 1 : (2004) 10 SCALE 244 : (2005) 2 SCC 217 : (2004) AIRSCW 7064 : (2005) 3 Supreme 275 . Said case relates to Power of Attorney holder under the Code of Civil Procedure, 1908. Such a decision was rendered on the powers of Power of Attorney under the Code of Civil Procedure, 1908 to present a plaint.

17. Decision in Janaki Vasdeo Vajwani (supra) was relied on to contend that a power of Attorney holder can appear before the court and depose before it too, but, only in his personal capacity. But then, a power of Attorney holder cannot file a complaint on behalf of the complainant in view of arrangement made in Section 200 Cr. P.C. unless it is shown that Attorney holder has personal knowledge of the transaction in question.

18. The basic facts in Janaki Vasdeo Vajwani (supra) are that several cheques on different dates were issued by the appellant in Janaki Vasdeo Vajwani (supra) which were dishonored. The complainant executed a Special Power of Attorney on or about 28.11.1997 in favor of one Smt. Doreen Shaikh. She presented the complaint petitions in the court of Additional Chief Metropolitan Magistrate, Bandra, and Mumbai on behalf of the complainant

19. She also filed affidavits in support of the averments made in the said complaint petitions. Cognizance of offence under Section 138 of the N.I. Act was taken against the appellant Summons was issued. Questioning the order issuing summons by the learned Magistrate in exercise of his power under Section 204 of the Code of Criminal Procedure, appellant in Janaki Vasdeo Vajwani (supra) filed criminal application before the High Court of judicature at Bombay.

20. In her application, appellant inter alia contended that the complaint petitions, filed by the Power of Attorney Holder, were not maintainable and on reiving thereupon or on the basis thereof, the learned Magistrate could not have issued summons. The said contention has been negated by the High Court in the judgment, rendered by it.

21. The decision of the High Court was again questioned before the Apex Court

of the country. Allowing the appeal, the Hon''ble Apex Court inter alia held as follows:

"Order 3 Rules 1 and 2 CPC empowers the holder of power of Attorney to ''act'' on behalf of the principal. In our view the word ''acts'' employed in Order 3 Rules 1 and 2 CPC confines only to in respect of ''acts'' done by the power-of-attorney holder in exercise of power granted by the instrument The term ''acts'' would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some ''acts'' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal is entitled to be cross-examined."

22. In the same judgment, the Apex Court further held that a complaint by a Power of Attorney Holder on behalf of original plaintiff is maintainable provided that he must have personal knowledge of the transaction in question.

23. Relying on the decision in Janaki Vasdeo Vajwani (supra), the learned Senior counsel, appearing for petitioners, now, con-tends that since the complaint in question was filed, not by the complainant herself, but, by her Attorney instead and since mere is nothing on record to show that Attorney of the complainant was aware of the contents of the complainant, the present case is squarely covered by the decision, rendered in Janaki Vasdeo Vajwani (supra) and as such, the proceeding in hand is required to be quashed on applying the law laid down in Janaki Vasdeo Vajwani (supra).

24. Refuting such contention, Mr. P.J. Saikia, learned counsel appearing for the private respondent No. 1, however, contends that unless it is prohibited under the Code or under any special law which create any offence or offences, anyone can set the criminal law in motion by filing a complaint of facts constituting offence/offences before a Magistrate entitled to take cognizance on such complainant

25. In that connection, the reliance was placed on the decision of Hon''ble Apex Court in the case of AC. Nor ay an v. State of Maharashtra in Criminal Appeal No. 73 of 2007, decided on 13.09, 2013. In the aforesaid case, while delivering a judgment in connection with some complaint cases initiated under the Negotiable Instrument Act, 1981 (in short the N.I. Act), the Hon''ble Apex Court formulated the following questions-

"(i) Whether a Power of Attorney can sign and file a complaint petition on behalf of the complainant?/Whether the eligibility criteria prescribed by Section 142(a) of N.I. Act would stand satisfied if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque?

(ii) Whether a Power of Attorney holder can be verified on oath under Section 200 of the Code?

(iii) Whether specific averments as to the knowledge of the Power of Attorney holder in the impugned transaction must be explicitly asserted in the complaint?

(iv) If the Power of Attorney holder fails to assert explicitly his knowledge in the complaint then can the Power of Attorney holder verify the complaint on oath on such presumption of knowledge?

(v) Whether the proceedings contemplated under Section 200 of the Code can be dispensed with in the light of Section 145 of the N.I. Act which was introduced by an amendment in the year 2002?"

26. Discussing the various aspects of the matter and also surveying the various decisions, rendered by the Apex Court of the country on the point aforesaid including the judgment in Janaki Vashdeo Bhojwani (supra), Hon''ble Supreme Court of the country answered those queries in the following manner -

"(i) Filing of complaint petition under Section 138 of N.I. Act through power of attorney is perfectly legal and competent.

(ii) The power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.

(iii) It is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transaction cannot be examined as a witness in the case.

(iv) In the light of section 145 of N.I. Act it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the N.I. Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant of his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.

(v) The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person."

27. It may be noted here that the decision in A.C. Narayan (supra) had been rendered in connection with the N.I. Act. The N.I. Act allows only certain categories of persons, so specified in Section 142, to file complaint under the N.I. Act. In other words, even in a case, instituted under the N.I. Act which prescribes special qualifications to be a complainant, a power of attorney holder can present a complaint on behalf of the complainant, of course, on fulfillment of some conditions, specified in the decision, referred to above.

28. Since the power of attorney holder can prefer a complaint on behalf of the complainant even under the N.I. Act in spite of such an Act prescribing qualifications to be a complainant, it can easily be held that in a case, instituted for committing offence(s) under general law, like IPC, a power of attorney holder can very well present a complaint on behalf of complainant provided he is fully aware of facts stated in the complaint.

29. In our instant case, it is not in dispute that the complaint was filed against the accused petitioners allegedly for committing offences under Indian Penal Code. It is also not in dispute that such a complainant was presented to the court through the duly constituted Attorney of the complainant, he, being her husband.

30. I have also found that in the paragraphs 1, 6 and 7 of the complaint, the complainant has noticeably asserted that the Attorney of the complaint was aware of the facts stated in the complaint. Being so, I am of the considered opinion, the complainant can very well file a case in hand through her Attorney and as such, the present proceeding cannot be quashed and set aside as prayed for by the petitioners.

31. Coming to allegation, the complaint under consideration dose not disclose any offence having been committed by the accused petitioners, on perusal of the complaint I have found that prima facie, the complaint in C.R. Case No. 42 (C) of 2014 discloses the ingredients of offences u/s. 120(B)/406/468 IPC and as such, on this count too, the present proceeding cannot be quashed as prayed for.

32. I have also found that there is allegation that the complainant had suppressed some vital facts in filing the case before the court. The learned Senior counsel appearing for the private respondent No. 1, petitioners herein further contends that money, allegedly obtained from the complainant illegally, had already been refunded to her and a departmental proceeding had also been initiated against the accused No. 4 in C.R. Case No. 42(C) of 2014.

33. In my opinion, those contentions are also not enough for this Court to quash the proceeding in question. However, the court below may take note of such allegations/prayer at appropriate time.

34. In the face of above discussion, I am of the opinion that the present proceeding lacks merit and same is accordingly, dismissed.

35. Stay order if any stands vacated.

36. LCR, if it was called be returned forthwith. No cost.

