
(2014) 07 BOM CK 0056

In the Bombay High Court

Case No : Criminal Writ Petition No. 478 of 2005

Sanjay Shivaji Dhapse

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Citation : (2014) ALLMR(Cri) 3617 : (2015) 4 BomCR(Cri) 347

Hon'ble Judges : S.S. Shinde, J;P.R. Bora, J

Bench : Division Bench

Advocate : R.K. Temkar, Advocate for the Appellant; K.M. Suryawanshi, APP and A.B. Gatne, Advocate for the Respondent

Judgement

S.S. Shinde, J.—When the matter was called out, none appeared for the petitioner. Learned A.P.P. for respondent State and learned Counsel appearing for respondent No. 3 are present. This Criminal Writ Petition is filed, seeking direction to respondent Nos. 4 and 5 to register an offense as per complaint dated 29th March, 2005 and 8th April, 2005, lodged by the petitioner. Copy of the complaint is placed on record by the petitioner at Exh. D (page No. 24 of the compilation of the writ petition). It appears that the grievance of the petitioner, as reflected in the said complaint, is that the Insurance Company did not affix adequate stamp, as is required, as per relevant Rules. As per the contents of the complaint, the Insurance Company was obliged to affix stamp of Rs. 10/- on the policy of Rs. 1,00,000/-, however, the Company did affix stamp of Re. 1/- and, according to the petitioner i.e. the complainant, thereby, the Insurance Company cheated the Government for its own benefit. The said act of the Company is very serious and has caused loss of revenue to the Government and, therefore, inquiry should be made about the said allegations and appropriate action may be taken against the Insurance Company.

2. In pursuance to notices issued in the petition, the respondents have filed replies. It is the contention of the learned Counsel appearing for the respondent company that the Company did affix stamp of appropriate amount as per the

Rules. It is submitted that even if allegations in the complaint are taken as it is, without admitting that the Company did not affix the stamp of sufficient amount as per the Rules, at the most, it would amount to an irregularity. It is submitted that respondent No. 1 has filed affidavit in reply stating therein that in case there is any lapse on the part of the Insurance Company, it is for the officers from the Government Department to verify and ask the Insurance Company to affix deficit stamp, if any.

Learned A.P.P. appearing for the State invited our attention to the affidavit in reply filed by the State and submits that the concerned Department did issue notice to the Insurance Company and, in response to the said notice, the Company did pay the deficit stamp duty. Therefore, learned A.P.P. submits that the complaint was not proceeded further.

3. The learned Counsel appearing for the petitioner, is not present. With the able assistance of learned A.P.P. and learned Counsel for respondent No. 3, we have perused the petition, annexures thereto and replies filed by the State as well as the Insurance Company. In the first place, as rightly contended by learned A.P.P., in pursuance to the notices issued to the Insurance Company, the Insurance Company did pay deficit stamp duty. Secondly, upon reading the contents of the complaint, in its entirety, not affixing stamp of adequate amount would attract irregularity and it is always subject to verification/check by the concerned Government Department.

In the facts of the present case, in response to the notices issued by the concerned Government Department, the deficit stamp duty is paid by the Insurance Company. Even if it is assumed for the moment that some amount is to be deposited by the Insurance Company, it is always open for the concerned Department to put forth a demand and in response to the same, the Insurance Company has to pay the same.

Therefore, in our considered view, in the peculiar facts and circumstances of this case, the grievance raised in the complaint would not survive further.

Counsel appearing for respondent No. 3 has tendered across the Bar copy of order passed by Division Bench of this Court on 2nd July, 2009 in Writ Petition No. 7613/2005 and submits that in the said writ petition also, the petitioner did raise similar contentions with identical prayers and said writ petition was disposed of.

In the light of the above, the petition stands dismissed. Rule stands discharged.