

HIGH COURT OF JAMMU AND KASHMIR AND LADAKH

Bench: Justice Sanjay Dhar

Date of Decision: 24th May 2024

ORIGINAL WRIT PETITION (OWP) NO. 676 OF 2015

**BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD.
...PETITIONER**

VERSUS

**STATE THROUGH SHO POLICE STATION, GANDHI NAGAR, JAMMU
AND OTHERS ...RESPONDENTS**

Legislation:

Sections 304 (II), 420, 409, 467, 468 of the Ranbir Penal Code (RPC)

Section 156 (3) of the Code of Criminal Procedure (CrPC), 1973

Subject: Writ petition challenging the legality and jurisdiction of the FIR No. 79/2013 registered for alleged forgery and cheating by the insurance company regarding the death of an insured individual abroad.

Headnotes:

Criminal Law – Jurisdiction of CJM and Police Station – Writ petition challenging FIR for offenses under Sections 304(II), 420, 409, 467, 468 RPC – Complaint initiated by respondent No.3 before CJM Jammu, alleging insurance fraud and failure to process claim leading to the death of the insured in Switzerland – CJM directed SHO Police Station Gandhi Nagar, Jammu to register and investigate the case – Held that no part of the cause of action occurred within the territorial jurisdiction of CJM Jammu or the Police Station Gandhi Nagar, Jammu – Order directing registration of FIR and subsequent investigation deemed without jurisdiction – FIR and proceedings quashed. [Paras 1-13]

Criminal Law – Quashing of FIR – Insufficient Evidence of Criminal Offense – Analysis of contractual disputes between insurer and insured – Held that non-payment of insurance claim and cancellation of policy is a civil dispute – No criminal intent or act of forgery by the petitioner-company established – Allegations of forgery based on cancellation letter processed through travel agent – Supreme Court precedents discourage criminalizing civil disputes – FIR and investigation declared abuse of process of law – FIR quashed. [Paras 14-21]

Decision:

The Court quashes FIR No. 79/2013 and all proceedings emanating therefrom, holding that the dispute is purely civil in nature, with no criminal intent or act established by the petitioner-company. The proceedings are deemed an abuse of the process of law. [Para 22]

Referred Cases:

G. Sagar Suri and Anr vs State of UP and Ors (2000) 2 SCC 636

Indian Oil Corporation vs NEPC India Limited and others (2006) 6 SCC 736

A.M. Mohan vs The State Represented by SHO and another (Criminal Appeal arising out of SLP (Criminal) No. 9598 of 2022)

Representing Advocates:

Ravi Sharma for petitioner

Ajay Kumar for respondents

JUDGMENT

Sanjay Dhar, J. - The petitioner has challenged FIR No.79/2013 for offences under Sections 304 (II)/420/409/467/468 RPC registered with Police Station, Gandhi Nagar, Jammu.

2. The impugned FIR came to be lodged on the basis of a complaint filed by respondent No.3 before learned Chief Judicial Magistrate, Jammu ('hereinafter to be referred to as 'CJM') in which it was alleged that her son Sh. Inder Pal Singh had booked himself from Delhi to Frankfurt for 25.02.2013 and for onward journey from Frankfurt to Burn on 27.02.2013, but he died in Switzerland on 04.03.2013. It was alleged in the complaint that before leaving the country, Sh. Inder Pal Singh along with respondent No.3/complainant and her younger son Gagandeep Singh got themselves insured with the petitioner-company on 20.02.2013 and paid the necessary premium. An amount of Rs.1590 was paid as premium by Sh. Inder Pal Singh to the petitioner-company and he was insured for medical expenses,

evacuation and repatriation of remains as also for personal liability/personal accident etc.

3. It has been alleged that the condition of Inder Pal Singh deteriorated while he was in Switzerland and his brother Gagandeep Singh contacted the petitioner-company and informed it about the serious condition of Inder Pal Singh. This was done on 02.03.2013 and the petitioner-company was asked to make the arrangement of Rs.15000 Franks for deposition with Swiss airport in connection with evacuation of Inder Pal Singh from Switzerland to New Delhi. However, the petitioner-company did not process the case and no action was taken by it in the matter. On 02.03.2013 claim form was dispatched by Gagandeep Singh to the petitioner-company through e-mail, but still then, no action was taken by the petitioner-company within the time, as a result of which, Inder Pal Singh died on 04.03.2013. After his death, the petitioner-company was again contacted by respondent No.3/ complainant and her younger son for release of insurance amount so that mortal remains of Inder Pal Singh could be brought to India, but no action was taken by the petitioner-company and instead it informed respondent No.3/ complainant that Inder Pal Singh had cancelled his insurance on 20.02.2013 itself. It is alleged that there was no occasion for Inder Pal Singh to cancel his insurance on 20.02.2013 as on the said date, he was admitted in a Hospital at Jammu. According to respondent No.3/complainant, the petitioner-company has forged the signatures of Inder Pal Singh on the letter seeking withdrawal of insurance. It has been alleged that the petitioner-company has conspired to deny the benefits to Inder Pal Singh and it has forged the documents so as to wriggle out of its liability and this has led to untimely death of Inder Pal Singh. Thus, according to respondent No.3/complainant, the petitioner-company has committed offences under Sections 304 (II)/420/409/467/468 RPC.

4. The aforesaid complaint was forwarded by the CJM to SHO Police Station Gandhi Nagar, Jammu with a direction to investigate the matter as, according to CJM, the complaint disclosed commission of a cognizable offence. The police, on the basis of the directions passed by the CJM, registered the impugned FIR and started investigation of the case.

5. The petitioner-company, while challenging the impugned FIR, has averred that respondent No.2 who is also impleaded as an accused in the impugned FIR is an authorised agent of the petitioner-company. It has been pleaded that on 19.02.2013, respondent No.3/complainant and her son Gagandeep Singh hired the services of M/S Visae Ins. Travel Services (hereinafter referred to as 'the travel agent) for their intended travel abroad. The said travel agent, in turn, sent a request to respondent No.2- Thomas Cool (India) Ltd., which is an authorised corporate agent of the petitioner-company. Accordingly, on 19.02.2013, respondent No.2 submitted a proposal to the petitioner-company requesting insurance cover as travel passengers for the aforesaid two persons and the insurance policies were, accordingly, issued by the petitioner-company on 19.02.2013 itself. It has been pleaded that on 20.02.2013, another request came to be made by the travel agent of deceased Inder Pal Singh on his behalf to respondent No.2 for issuance of insurance cover. The said request was entertained by the petitioner-company after being processed by respondent No. 2 and an insurance policy was issued in favour of Inder Pal Singh on 20.02.2013. It has been further pleaded that on 24.02.2013, the travel agent sent a request to respondent No.2 for cancellation of insurance policy of Inder Pal Singh, which, in turn, was forwarded to the petitioner-company. Before accepting the said request of cancellation of policy, the petitioner-company asked for trip cancellation letter and for verification of passport. The requisite information was sent to the petitioner-company by respondent No.2 on 25.02.2013. in the evening hours, where-after, the petitioner-

company cancelled the policy on 25.02.2013 itself. All these correspondences have taken place through e-mail and the petitioner-company has placed on record print out of these correspondences along with the petition.

6. On the basis of the aforesaid pleadings, the petitioner-company has contended that no part of cause of action has arisen within the territorial jurisdiction of CJM and within the territorial jurisdiction of Police Station, Gandhi Nagar, Jammu, as such, neither the CJM could have entertained the complaint, nor the FIR could have been registered and investigated by the concerned Police Station. It has been further contended that there is no question of indemnifying the legal heirs of deceased Inder Pal Singh because he had cancelled the insurance policy regarding which the petitioner-company had received the request of cancellation. It has also been contended that all correspondence between the travel agent of late Inder Pal Singh and the authorised agent of the petitioner-company has taken place through e-mail and there is no question of commission of any forgery by the petitioner-company. According to the petitioner-company, the proposal for insurance was received by it from the travel agent of deceased Inder Pal Singh through its authorised agent-Thomas Cook and the cancellation letter was also received through the same channel, therefore, the petitioner-company cannot be held liable for any forgery. It has been further contended that non-payment of claim of insurance can never be a basis for launching criminal prosecution, particularly relating to the offences of culpable homicide not amount to murder and cheating. Thus, according to the petitioner-company, the contents of the impugned FIR do not disclose commission of any offence by the petitioner-company.

7. Respondent No.3/complainant has not contested the petition and despite service, nobody has appeared on her behalf. Respondent No.1/SHO Police Station, Gandhi Nagar, Jammu has filed its status report

in which the contents of the impugned FIR have been narrated and it has been stated that, on the basis of directions made by CJM, the impugned FIR came to be registered, but the same could not be investigated because of interim order of stay passed by this Court. Case diary has also been produced by respondent No.1. So far as respondent No.2-M/S Thomas Cook (India) Ltd. is concerned, it has supported the case of the petitioner-company.

8. I have heard learned counsel for the parties and perused record of the case including the case diary.

9. The first argument, that has been raised by learned Senior Counsel appearing for the petitioner-company is, with regard to the jurisdiction of CJM, Jammu, to entertain the complaint filed by respondent No.3 and the jurisdiction of Police Station, Gandhi Nagar, Jammu, to register and investigate the case. In this regard, it is to be noted that the CJM while directing SHO to register the impugned FIR has exercised its power under 156 (3) Cr.P.C. Section 156 of the Code reads as under:

"156. Police Officer's power to investigate cognizable case.

(1)Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2)No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3)Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.

10. From a perusal of sub-section (3) quoted above, it appears that a Magistrate, empowered under Section 190 Cr.P.C, is vested with power to order investigation into a cognizable case meaning thereby that a Magistrate, who is empowered to take cognizance of an offence, is vested with jurisdiction to direct investigation into the said offence in terms of Section 156 (3) of CrPC. However, a Magistrate can order investigation of only those cases which the Court has jurisdiction to enquire into and try under Chapter XV of J&K CrPC which is applicable to the present case. This is clear from the provisions contained in Section 156(1) of CrPC. Section 177 of CrPC which falls in Chapter XV provides that every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

11. Adverting to the facts of the present case, a proposal for insurance policy emanated from the travel agent of deceased Inder Pal Singh at Delhi, and it was forwarded to the authorised agent of petitioner/company M/S Thomas Cook (India) Ltd., which is stationed at Delhi. The authorised agent forwarded the said proposal to the office of petitioner/company at Delhi. The travel insurance was to take effect from Delhi as the deceased had booked himself from Delhi to Frankfurt. The death of the deceased is stated to have taken place in Switzerland. Thus, neither any event nor its consequence has taken place within the territorial limits of either CJM or within the territorial limits of Police Station, Gandhi Nagar, Jammu, so as to give jurisdiction to them to entertain and take action on the complaint filed by respondent No.3

12. It is true that Section 4 of RPC provides for extension of Code to any offence committed by any permanent resident of the State in any place beyond the Jammu and Kashmir State and it is also a fact that in terms of Section 188 of the J&K Cr.P.C, a State subject or State-servant can be dealt with in respect of an offence committed beyond the limits of the State

as if it had been committed at any place within the State. However, in the instant case, the alleged offences are stated to have been committed by the petitioner-company and respondent No.2- M/S Thomas Cook (India) Ltd. Neither the petitioner-company, nor respondent No.2 is a State subject. They are not even registered as companies within the jurisdiction of erstwhile State of Jammu and Kashmir. Therefore, the provisions contained in Section 4 of RPC and Section 188 of CrPC would not be attracted to the present case.

13. In view of the fact that no part of offence, or any consequence of any of the alleged offence has occurred within the territorial jurisdiction of CJM, Jammu, as such, it was open to the CJM to entertain the complaint of respondent No.3 and to pass directions thereon. The order whereby the learned CJM, Jammu, has directed the SHO to register the impugned FIR and investigate the same is, therefore, without jurisdiction and is liable to be set aside. Consequently, the investigation conducted by the Police Station Gandhi Nagar, Jammu on the basis of an illegal order passed by the CJM, is also non-est in the eyes of law. On this ground alone, the impugned FIR and the proceedings emanating therefrom are liable to be quashed.

14. Apart from the above, even on merits, no case is made out against the petitioner-company. The grievance of respondent No.3/complainant is that the insurance policy purchased by her deceased son Inder Pal Singh has not been honoured by the petitioner-company as it has failed to indemnify the insured or his legal heirs, though liability of the petitioner-company had arisen in terms of the policy of insurance. In this regard, it is to be noted that transaction between the insurer and the insured is purely contractual in nature. If any of the parties to this contract defaults in honouring its commitment, it cannot form a basis for launching a criminal prosecution.

15. The Supreme Court has time and again reiterated the legal position that the matter which is essentially of civil nature should not be given a colour of criminal offence. In this regard, the following observations of the Supreme Court in the case of **G. Sagar Suri And Anr vs State Of Up. And Ors (2000) 2 SCC 636** are relevant to the context and the same are reproduced as under:

8. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

16. From the above, it is clear that the Supreme Court has held that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In **Indian Oil Corporation vs NEPC India Limited and others, 2006 (6) SCC 736**, the Supreme Court, after considering its earlier precedents, observed as under:

12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few-**Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234]**, **State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 :1992 SCC (Cri) 426**, **Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059]**, **Central Bureau of Investigation v.**

Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283].

The principles, relevant to our purpose are:

(i). A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii). A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii). The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv). The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v). A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged

17. The aforesaid principles were reiterated and reaffirmed by the Supreme Court in a recent case of A.M. Mohan vs. The State Represented by SHO and another (Criminal Appeal arising out of SLP(Criminal) No. 9598 of 2022).

18. From the foregoing analysis of law on the subject, it is clear that the Supreme Court has time and again expressed its disapproval for imparting criminal colour to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil case.

19. Adverting to the facts of the present case, as already noted, the dispute between the complainant and the petitioner relating to entitlement or otherwise of compensation under the insurance policy purchased by deceased Inder Pal Singh is purely a civil matter in the realm of contract and has no criminal flavour to it. Merely because, on the basis of non-payment of compensation under the insurance policy to the complainant, her son breathed his last, it cannot be stated that the petitioner-company was, in any manner, responsible for his death and it cannot be prosecuted for a serious offence like culpable homicide not amounting to murder. Under a contract of insurance, at best, the complainant would be entitled to compensation in terms of the stipulations of the contract of insurance, but it cannot be stretched to such an extent so as to hold the insurance company liable for causing death of the deceased. That would be a far-fetched and remote proposition which is beyond the realms of law.

20. So far as the offence of forgery is concerned, there is no dispute to the fact that the insurance policy was purchased by late Inder Pal Singh through travel agent and all the documents and correspondences were made by him through the travel agent, who, in turn, forwarded the same to the authorised agent of the petitioner-company. These documents included the proposal form as well as the cancellation letter. Therefore, the

petitioner/company cannot be held responsible for forgery of the cancellation letter purported to have been issued by late Inder Pal Singh through his agent. Thus, neither any offence of cheating nor any offence of forgery is made out against the petitioner.

21. For the foregoing reasons, it is clear that the registration and consequent investigation of the impugned FIR against the petitioner is nothing, but an abuse of process of law. Therefore, it is a fit case where this Court should exercise its power under Article 226 of the Constitution read with Section 482 of the Criminal Procedure Code to quash the FIR and the proceedings emanating therefrom to secure the ends of justice.

22. Accordingly, the impugned FIR and the proceedings emanating therefrom are quashed.

CD file be returned to learned counsel for the official respondents.

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