

ORISSA HIGH COURT : CUTTACK

CRLMC NO. 1468 OF 2007

In the matter of an application under section 482 of the Code of Criminal Procedure.

Nrusingha Nath Mishra	Petitioner
-Versus-		
Republic of India	Opp. Party

For Petitioner : Mr. A.K. Rath

For Opp. Party : M/s. Goutam Mishra &
S.K.Padhi.

Decided on 29 .01.2010.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. Das, J.

This application under section 482 Cr.P.C. has been filed by the petitioner seeking quashing of the order dated 7.8.2003 passed by the Special C.J.M.(CBI), Bhubaneswar in SPE No. 8 of 2003 arising out of R.C. Case No. 29 (A) of 2001. By the said order, the learned C.J.M. took cognizance of the offence under sections 420/120-B I.P.C. against the petitioner and the co-accused, namely, Shri Prabir Kumar Acharya. An F.I.R. was registered, being drawn up by one Arun Kumar Mohapatra, Inspector, C.B.I, Bhubaneswar, under sections 420/120-B IPC and section 13 (2) read with 13(1) (d) of the P.C. Act, 1988 against

the petitioner, Shri Prabir Kumar Acharya and one Beni Madhab Dwivedi, Senior Divisional Manager, New India Assurance Company Ltd., Cuttack. It was recorded in the F.I.R. that information has been received from a reliable source to the effect that Shri Beni Madhab Dwivedi, while functioning as the Divisional Manager, New India Assurance Company Ltd. entered into a criminal conspiracy with Shri Prabir Kumar Acharya, Advocate and in pursuance to which they prepared a mediclaim policy in favour of the petitioner and his wife on 4.12.1998 suppressing the disease and settled the claim to the tune of Rs.1,42,768/- causing undue pecuniary loss to the New India Assurance Company Ltd. and corresponding undue gain to themselves. After investigation, a charge sheet was filed on 31.7.2003 against the petitioner and Shri Prabir Kumar Acharya. On such charge sheet being filed, the learned C.J.M. by the impugned order took cognizance of the alleged offences under sections 420/120-B I.P.C.. The impugned order dated 7.8.2003 reads as follows:-

“Charge sheet is received under memo no. 5871 dated 31.7.2003. Perused the same. As prima facie case is made out, cognizance at the offence u/s 120-B/420 IPC is taken. Issue summon to accused Prabir Kumar Acharya and Nrushinganath Mishra and put up on the date fixed for their appearance.”

2. The prosecution case is that the petitioner obtained a mediclaim policy for Rs.1.50 lakhs in his name along with his spouse on 4.12.1998 from New India Assurance Company Ltd. on paying a premium of Rs. 3549/- on that date. Allegation has been made that the petitioner suppressed the fact of his hospitalization at S.C.B. Medical College and Hospital, Cuttack, in the proposal form along with the questionnaire enclosed thereto. Subsequently, the petitioner has lodged a claim for his treatment which he underwent in Apollo Hospital, Hyderabad and the claim was settled for an amount of Rs. 1, 42,768/-, which has been paid to the petitioner on 25.2.2008. It appears from the materials on record that on lodging the claim, an investigation was conducted by the insurance company through the co-accused Prabir Kumar Acharya, an advocate, who reported that he could not trace out any document from the S.C.B. Medical College and Hospital, Cuttack showing that the petitioner was hospitalized in the said hospital. Thus, the crux of the allegation of the prosecution is that the petitioner suppressed the fact of his hospitalization at S.C.B. Medical College and Hospital, Cuttack in the proposal form and the co-accused stated that he could not trace out any material regarding hospitalization of the petitioner at S.C.B. Medical College & Hospital, Cuttack. It is naïve to state that after lodging of the claim, the insurance company on duly

following all prescribed procedures and making a thorough enquiry, settled the claim and paid the amount after more than a year from the date of lodging of the claim by the petitioner even though in the proposal form, a declaration was given by the petitioner (proposer) that in the event after the insurance is affected, it is found that the statement/answer given in the same are incorrect or untrue, the insurance company will have no liability under the policy. More over, clause-3.0 of the mediclaim stipulates that occurrence of the same illness after lapse of 45 days will be considered as a fresh illness and in the instant case, admittedly, the petitioner was admitted in Apollo Hospital, Hyderabad on 13.2.1999 whereas, he was discharged from S.C.B. Medical College and Hospital, Cuttack on 20.11.1998, i.e., much prior to 45 days from the date of his admission in Apollo Hospital, Hyderabad.

3. To examine the question as to whether a case under sections 420/120-B IPC has been made out or not, it would be apt to examine as to whether by accepting the prosecution case in its entirety, the ingredients of sections 420/120-B IPC exit or not. Section 420 IPC relates to an offence of cheating and dishonestly inducing the person deceived to deliver any property to any person, or to make, alter or destroy the whole or part of a valuable security, or anything which is signed or sealed, and

which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

4, In the instant case, there is absolutely no allegation made by the prosecution with regard to the petitioner or the co-accused cheating the New India Assurance Company Ltd. and dishonestly inducing the said company to deliver any property. As a matter of fact, the prosecution has admitted that on lodging of the claim by the petitioner, the claim was settled and the prosecution never alleges that before settling the claim, due procedure was not followed. With regard to the offence under section 120-B IPC, there is absolutely no material or allegation made by the prosecution, prima facie, satisfying the ingredients of the said offence which relates to punishment of criminal conspiracy as defined in section 120-A IPC. No materials whatsoever have been brought out during the investigation to show any agreement or conspiracy between the two co-accused persons to commit any offence. At this juncture, it would be profitable to note that the other co-accused is an advocate, who was engaged by the New India Assurance Company Ltd. to investigate the case and while performing such professional work, he sent a report that he could not trace out any records regarding hospitalization of the petitioner at S.C.B. Medical

College, Hospital. There is no material whatsoever to show prima facie that the co-accused in order to cause an illegal gain to either himself or the petitioner or to cause illegal loss to the company gave such a report. A report or opinion rendered by an advocate, to his client, if found to be incorrect, cannot constitute an offence when nothing is shown that such report or opinion is purposefully given to commit any offence. The prosecution has also not come out with any material disclosing meeting of mind between the two accused persons to bring home the charge under section 120-B IPC. Rather, the allegation in the F.I.R. was made that the co-accused conspired with one Beni Madhan Dwivedi, who was functioning as a Divisional Manager and the said Beni Madhab Dwivedi is not an accused in the charge sheet filed.

5. The impugned order passed by the learned C.J.M. taking cognizance of the offence under sections 420/120-B IPC ex-facie shows non-application of judicial mind by the learned C.J.M. It is a settled position of law that when a charge sheet is filed after investigation against the accused persons alleging commission of offence, the court taking cognizance is to apply his judicial mind to find out as to whether there is any material showing that such offence has been committed.

6. The Court, while exercising jurisdiction under section 482 Cr.P.C. to quash a criminal proceeding, no doubt,

should exercise such power sparingly and with circumspection. If, however, it is found that on accepting the materials produced by the prosecution, which were collected during investigation along with the F.I.R. in its entirety, do not disclose commission of any offence, the court is to quash the criminal proceeding in order to prevent abuse of the process of the court and to secure the ends of justice. (See **State of West Bengal and others v. Swapan Kumar Guha and others**, AIR 1982 SC 949, **State of Haryana and others v. Ch. Bhajan Lal and others**, AIR 1992 SC 604, **Sanu Das and another v. State of Orissa and another**, 1999 (I) OLR 442, **G. Sagar Suri and another v. State of U.P. and others**, (2000)18 OCR (SC) 355, **Ajaya Mitra v. State of M.P. and others**, (2003) 25 OCR (SC) 226, **Uma Shankar Mishra v. State of Orissa**, (2003) 25 OCR 611 and **Hira Lal Hari Lal Bhagwati v. CBI. New Delhi**, (2003) 25 OCR (SC) 770).

7. In the instant case, accepting the entire materials produced by the prosecution along with the charge sheet in its entirety, no offence is made out against the petitioner as well as the co-accused. Allowing the case to continue would only amount to abuse of the process of the court as the chance of conviction is bleak. Hence, to secure the ends of justice, this Court finds that

this is a fit case where the entire proceeding is to be quashed to secure the ends of justice.

8. In the result, therefore, the impugned order dated 7.8.2003 taking cognizance of the offence is quashed and the criminal proceeding, being SPE No. 8 of 2003 arising out of R.C. Case No. 29(A) of 2008 also stands quashed.

9. The CRLMC is accordingly allowed.

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M.M. Das,J.

Orissa High Court, Cuttack.
January 29th ,2010/Biswal.