**Umesh Chand. Vs. State of Bihar.**

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**SooperKanoon Citation** : sooperkanoon.com/915461

**Court** : Patna

**Decided On :** Jul-20-2010

**Judge** : Rakesh Kumar, J.

**Acts** : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 409, 419, 420, 467, 468, 469

**Appeal No.** : CRIMINAL MISCELLANEOUS No.30022 OF 2000

**Appellant** : Umesh Chand.

**Respondent** : State of Bihar.

**Advocate for Def.** : Smt.Indu Bala Pandey, Adv.

**Advocate for Pet/Ap.** : M/S R.B. Mahto; Ajay; K. Ravish; Krishna Chandra, Advs.

**Judgement** :

1. The sole petitioner, who was at the relevant time Branch Manager of National Insurance Company Ltd., Nawadah Branch, Nawadah, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 11.6.2000 passed by the Chief Judicial Magistrate, Nawadah in Kawakole (Rupau) P.S. Case No.40 of 1999, G.R. No.641 of 1999. By the said order, the learned Chief Judicial Magistrate has taken cognizance of offence under Sections 409, 419, 420, 467, 468 and 469 of the Indian Penal Code.

2. Short fact of the case is that on the basis of written complaint of one Assistant Project Officer, Nawadah, an F.I.R. vide Kawakole (Rupau) P.S. Case No.40 of 1999 was registered against the Branch Manager, National Insurance Company Ltd., Rajendra Nagar, Nawadah for the offence under Sections 409, 419, 420, 467, 468 and 469 of the Indian Penal Code. It was disclosed in the first information report(hereinafter referred to as the F.I.R.) that in the year 1997-98 pigs and shegoats were purchased by Magadha Gramin Bank for its distribution among the persons belonging to below the poverty line. At the time of distribution, these cattles were insured for total sum of Rs.7,79,130/- on the basis of three policies of different amounts with the National Insurance Company for one year and tag were fixed and thereafter, cattles were distributed amongst the beneficiaries by the concerned authority. From the F.I.R., it is evident that period of insurance was from the month of March, 1997 to March 1998. As per F.I.R. in the month of May, 1997 itself due to epidemic, most of the cattles died. It was alleged that the Insurance Company got the tags collected in respect of cattles and on blank paper also signatures were obtained from the beneficiaries. Despite best effort by the authorities, the insurance amount was never paid to the beneficiaries and the Officer Incharge was requested by the informant to institute an F.I.R. as to why even after death of the cattle, the Insurance Company was not paying the claim amount. After registering the F.I.R., police investigated the case. After investigation, on 30.3.2000, police submitted charge sheet against the petitioner since he was Branch Manager of the Insurance Company. After submission of the charge sheet, the learned Magistrate, by the impugned order i.e. order dated 11.6.2000, took cognizance of the offences as mentioned hereinabove.

3. Aggrieved with the order of cognizance, the petitioner approached this Court by filing the present petition, which was admitted on 5.12.2001. While admitting the case, this Court directed that during the pendency of this application, further proceedings in the court below shall remain stayed and order of stay is still continuing.

4. Shri Ram Balak Mahto, learned Senior Counsel appearing on behalf of the petitioner, while pressing the present petition, submits that from the F.I.R. itself, no case is made out. It was submitted that hardly in worst case, it can be said that

payments in respect of insurance claim was not made for which there may be some reasons but in any event, it cannot be said that petitioner had committed any offence or the F.I.R. even discloses any offence. Learned counsel for the petitioner, while placing Annexure-1 as well as its annexures, submits that after the epidemic, the matter was got thoroughly investigated by the Investigator of the Insurance Company. The Investigator, during the course of its investigation, had found several irregularities rather illegalities which were committed after the period of the epidemic. Learned counsel for the petitioner has pointedly referred to the report of the petitioner, which is part of the F.I.R. It would be appropriate to quote the entire report of the Branch Manager, which is as follows:

With reference to above we went through the entire file and following descripencees were detected.

(1) No tagging was done at all in any of the cattles at the time of their purchase as evident from the statement (written) of different caliments. Our investigator has collected lots of unclaimed tags from the beneficiaries which corroborates the fact. Even the unused conditions of these tags itself tells the truth.

(2) The beneficiaries have also confirmed in writing that all the cattles supplied to them were disease proved as they started dying from the very first day of purchase.

(3) The health was not examined by the doctor as confirmed by beneficiaries.

(4) On perusal of health certificate it appears to have been written latter is not at the time of purchase as evident from the facts that a lots of certificate are in carbon print whereas the tag numbers have been written by ball pen. As the tags are the only identification mark of insured cattles and no tagging were done, so which cattles were infact examined by the doctor cannot be establish.

(5) The P.M. report neither bears any serial number nor tag number. Hence, the identity of insured cattle cannot be established.

(6) Almost all the claimants have confirmed in writing that no post-mortem were conducted at all. Hence, their contention appears to be true.

(7) On perusal of a few P.M. reports it was found that the doctor's conducting more than on P.M. at the same time which is highly improbable.

(8) It is also surprising that in one case the doctor has conducted P.M. before death of the cattle which is also improbable.

(9) In a few case you have claimed before the death of cattle.

(10) In lots of cases you have given late intimation i.e. you did not give opportunity to the company to examine the carcase which is blatant violation of policy condition no.7.

(11) In a few cases the tag numbers mentioned in health certificate does not tally with those of the numbers mentioned in claim form.

In addition to these descripencies there are lots of descripencies in other cases also. Hence, the claim appears to be concocted.

On the basis of above mentioned facts and also investigator report the company is not in a positin to pay your all claims under above policies."

5. On perusal of the aforesaid report of the petitioner, whereby he had shown inability to make payment, it appears that several irregularities and illegalities were committed by the concerned Medical Officers, who had conducted autopsy. In aforesaid paragraph-4, it has been found during the investigation by the Insurance Company that health certificate were written later on and not at the time of purchase. Paragraph-5 shows that post-mortem report neither bore any serial number nor tag number. Accordingly, the identity of insured cattle was difficult to be established. Paragraph-7 indicates that perusal of post-mortem report shows that the doctors had conducted post-mortem more than one at the same time, which was highly improbable. With aforesaid reasons, the petitioner, being Branch Manager, had shown his inability to make payment of the insurance amount. Perusal of the F.I.R. also makes it clear that it was not a case that by committing any fraud, the Insurance Company had obtained the insurance amount and mis-appropriated the same. The report of the Branch Manager makes it clear that whatever reason may be, but there were dispute in respect of non payment and for

such dispute in any event, there were no occasion to institute an F.I.R. Of course, after submission of charge in a case such fact has got no much significance, but during the investigation also, nothing more was collected by the Investigator save and except statement of few beneficiaries were recorded, who had stated that some of the officers of the Insurance Company had collected tag from them, but even none of the beneficiaries has pointed finger against this petitioner. It is true that while hearing a petition under Section 482 of the Code of Criminal Procedure, this court is not required to examine in detail the materials collected during investigation since those things are required to be examined by the concerned court where case is pending, but in the present case, long back in the year 2001 itself, this Court had stayed the criminal proceeding and as such after lapse of about 10 years, it would not be appropriate for this Court to restrain itself from examining those materials.

6. Keeping in view the pendency of the case for such a long time, this Court was persuaded to examine even the case diary and materials collected during the investigation.

7. I have perused the entire materials and thereafter, I am satisfied that for non payment of insurance amount, the petitioner was not required to be proceeded in a criminal proceeding and proceeding against the petitioner, who was a Branch Manager of an Institution amounts to abuse of the process of the court. With a view to prevent the abuse of the process of the court as well as for the ends of justice, this Court feels that it is a fit case for exercising inherent jurisdiction in favour of the petitioner and, accordingly, order of cognizance dated 11.6.2000 passed by Chief Judicial Magistrate, Nawadah in Kawakole (Rupau) P.S. Case No.40 of 1999 is hereby set aside and petition stands allowed.