

CRIMINAL REVISION**C.R.R. No.4194 of 2009****With****CRAN No.826 of 2010**Present :The Hon'ble Mr. Justice **Prasenjit Mandal**

Judgement On: June 23, 2010.

Tata AIG Life Insurance Company

Versus

ABN Amro Bank N.V. & Anr.

POINTS

QUASHING –Allegation against Regional Sales Manager to commit offence under Section 34 or 120B of the I.P.C- Regional Sales Manager whether a post– Whether proceeding against a juristic person can be quashed- Code of Criminal Procedure 1973, S 401.

FACTS

Tata AIG Life Insurance Company Ltd., petitioner herein, the complainant / bank stated that the accused persons are dishonestly and fraudulently creating hurdles to prevent the bank from putting the fact before the proper authority for redress. The accused no.2 is the superior authority of the accused no.1 and the accused no.2 is providing full aid and assistance and abatement to the accused no.1 towards such dishonest, fraudulent concealment of property of the accused no.1 to prevent its distribution among the creditors, i.e., the complainant / bank. So such acts of the accused persons proved that the accused persons had committed such overt acts in connivance with and in pursuance of the conspiracy hatched between them. On the basis of such petition of complaint, the learned Chief Metropolitan Magistrate took cognizance of the offence on 22.07.2009

and transferred the same to the learned Metropolitan Magistrate, Ninth Court, Calcutta for disposal under Section 192(1) of the Cr.P.C., 1973. Then the learned Metropolitan Magistrate examined the complainant on S.A. On the basis of the petition of complaint and the evidence recorded thereon on S.A., the learned Metropolitan Magistrate issued summons upon the accused persons for offences under Sections 420/422/424 of the I.P.C. Being aggrieved, Tata AIG Life Insurance Company Ltd., petitioner herein, has preferred this revisional application for quashing the petition of complaint against the petitioner herein on the ground that it is not connected in any way with the loan sanctioned in favour of the accused no.1.

HELD

Regional Sales Manager is nothing but a post and so it can be manned by any person as per rules and regulations of the Insurance Company from time to time. So unless any specific name of any person is mentioned, no person could be held liable. Para 8

Any document supporting the defence cannot be looked into at the time of initial stage as a general law of the land. But if any such document was not brought to the notice of the complainant / bank at the time of filing of the complaint and if no specific allegation was made in the petition of complaint against the insurance company, such document may be considered to determine whether if the proceeding is allowed to continue, it would be an abuse of the process of the Court meaning thereby that in exceptional circumstances such document may be considered. Para 9

In fact, the accused no.2 is a vague juristic person and it cannot commit any offence under Section 34 or 120B of the I.P.C. So the learned Magistrate did not apply his judicial mind in issuing process on the basis of the enquiry report. This being the position, upon due consideration of the

entire matter, Court is of the view that if the proceedings against the petitioner herein is allowed to continue, it will be nothing but an abuse of the process of the Court. Para 10

CASES CITED

1. (2009) 4 SCC 439

For the petitioner: Mr. S. S. Banerjee,
Mr. Joyjit Dutta.

For the O. P. No.1: Mr. Sandipan Ganguly

Prasenjit Mandal, J: 1.This criminal revision has been filed under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 praying for quashing the entire proceeding in respect of the petitioner in case number C-39938 of 2009 and the order dated 14.08.2009 passed by the learned Metropolitan Magistrate, Calcutta in the said case no.C-39938 of 2009.

2.The facts leading to the filing of the revisional application are that the ABN Amro Bank N.V. filed a petition of complaint against Mr. Prosenjit Mukherjee and the Regional Sales Manager, Tata AIG Life Insurance Company and his men and agents at the said office at Shakespeare Sarani, A.C. Market, Calcutta – 700 071 stating, inter alia, that the complainant-bank carries on banking business including extending loan under different schemes to the intending customers. Accused no.1 / Prosenjit Mukherjee was allowed to avail a credit card facility under the category of “Platinum Credit Card” having a total credit limit of Rs.8,97,000/- on his prayer. Before granting such credit card facility, Sri Mukherjee furnished his PAN card number, application duly filled up for the purpose and documents showing that he was an employee of the Tata AIG Life Insurance Company Ltd., Shakespeare Sarani and he furnished his pay slip for the month of June, 2008, etc.

Sri Mukherjee availed himself of the said "Platinum Credit Card" facility after accepting terms of usage as set out by the complainant/bank. Sri Mukherjee also did retail transactions on the said "Platinum Credit Card" during the period from August, 2008 to October, 2008 as well as called for another finance facility under "Call a Draft", i.e., a cash loan facility for an amount of Rs.2,55,000/-. Sri Mukherjee never expressed any discontent about the transaction, but his liability under the category of "Platinum Credit Card" rose to the amount of Rs.11,01,199.24 paisa and in fact he repaid a nominal amount of Rs.40,000/- on 18.09.2008, Rs.22,500/- on 07.11.2008 and Rs.20,000/- on 08.11.2008 only. The complainant / bank requested Sri Mukherjee to regularise the credit card account and to pay the dues to the bank; but Sri Mukherjee did not co-operate at all. Even the complainant / bank could never get an access to the accused person. The members of his family and other relations did not also co-operate to trace the complainant. Thus, from the conduct of Sri Mukherjee, it is clear that he acted in a pre-connived manner and cheated the complainant/bank by misappropriating huge amount by withdrawal from the said bank. The total amount of such misappropriation was to the extent of Rs.11,01,199.24 paisa.

3.As regards the allegation against the Tata AIG Life Insurance Company Ltd., petitioner herein, the complainant / bank stated that the accused persons are dishonestly and fraudulently creating hurdles to prevent the bank from putting the fact before the proper authority for redress. The accused no.2 is the superior authority of the accused no.1 and the accused no.2 is providing full aid and assistance and abatement to the accused no.1 towards such dishonest, fraudulent concealment of property of the accused no.1 to prevent its distribution among the creditors, i.e., the complainant / bank. So such acts of the accused persons proved that the accused persons had committed such overt acts in connivance with and in pursuance of the conspiracy hatched between them. On the basis of such petition of complaint, the learned Chief Metropolitan Magistrate took

cognizance of the offence on 22.07.2009 and transferred the same to the learned Metropolitan Magistrate, Ninth Court, Calcutta for disposal under Section 192(1) of the Cr.P.C., 1973. Then the learned Metropolitan Magistrate examined the complainant on S.A. On the basis of the petition of complaint and the evidence recorded thereon on S.A., the learned Metropolitan Magistrate issued summons upon the accused persons for offences under Sections 420/422/424 of the I.P.C. Being aggrieved, Tata AIG Life Insurance Company Ltd., petitioner herein, has preferred this revisional application for quashing the petition of complaint against the petitioner herein on the ground that it is not connected in any way with the loan sanctioned in favour of the accused no.1, namely, Sri Prosenjit Mukherjee.

4.Mr. Banerjee, the learned Advocate for the petitioner, submitted before me that whatever the grievance of the complainant / bank might be, it must be against the accused no.1, Mr. Prosenjit Mukherjee and not against the accused no.2 which has been described as Regional Sales Manager, Tata AIG Life Insurance Company Ltd. at Shakespeare Sarani, Calcutta 700 071. In fact, the accused no.2 did not render any assistance in favour of granting loan to the accused no.1. Sri Mukherjee was an employee of the Tata AIG Life Insurance Company Ltd. for the period from 06.05.2008 to 30.08.2008. On 14.08.2008, Sri Mukherjee tendered resignation for immediate acceptance of the same and release him from his duties. That application was accepted releasing Sri Mukherjee with effect from 31st August, 2008. This will appear from annexure P-1 which is a handwritten document of Sri Mukherjee and the official note thereon. He submitted that actually the petition of complaint does not lay down any overt act on the part of the accused no.2. Moreover the Tata AIG Life Insurance Company neither acted as guarantor nor even gave any no objection certificate at the time of issuance of the credit card facility in favour of Sri Mukherjee. The complainant / bank also never took any permission from the petitioner herein to issue credit

card facility in favour of Sri Mukherjee. In fact, the petitioner herein had no connection with Sri Mukherjee in the matter of granting loan. Therefore, the continuation of the criminal proceedings against the petitioner should be quashed.

5. On the other hand, Mr. Ganguly appearing for the complainant / bank, submits that upon due consideration of the materials available, the learned Metropolitan Magistrate issued summons upon the accused persons. He also contended that documents filed by the petitioner herein may be considered as a document for defence subsequently but at this stage there is no scope to entertain the document filed by the petitioner herein. So the revisional application should be dismissed.

6. Now the point for consideration arises is whether the prayer for quashing the complaint case against the petitioner herein can be granted.

7. Having considered the submission of the learned Advocate of both the sides and on perusal of the materials placed before me, I find that the petitioner herein specifically contended that Sri Mukherjee was an employee of the petitioner for the period from 06.05.2008 to 30.08.2008 and he tendered resignation on 14th August, 2008 which was duly accepted (vide annexure P-1). At the time of granting loan as per materials available, Sri Mukherjee submitted his pay slip for the month of June, 2008 only and not for any other document with regard to his service. On plain perusal of the petition of complaint, I do not find any overt act on behalf of the petitioner herein in the matter of granting loan except the salary certificate for the month of June, 2008 when Sri Mukherjee was an employee of the petitioner herein. The complainant / bank could not show any materials that the petitioner herein connived with Sri Mukherjee or that the petitioner herein stood as guarantor on behalf of the accused no.1, Sri Mukherjee. Therefore, it cannot be held that the petitioner herein had any role in the matter of granting loan to the accused no.1.

8. Above all, the complainant / bank described the accused no.2 as Regional Sales Manager, Tata AIG Life Insurance Company Ltd. and his men and agents at the said office at Shakespeare Sarani, Calcutta – 700 071. This signifies that the accused no.2 does not bear the name of any specific person who is the Regional Sales Manager. Regional Sales Manager is nothing but a post and so it can be manned by any person as per rules and regulations of the Insurance Company from time to time. So unless any specific name of any person is mentioned, no person could be held liable. Moreover from the petition of complaint itself it does not appear at all that the Regional Sales Manager did any overt act for which it could be decided that he connived with Sri Mukherjee. Tata AIG Live Insurance Company is doing its own business and if the proceeding is allowed to continue, it will certainly place the said insurance company in awkward position to deal with its customers.

9. Mr. Ganguly submitted that the documents referred to by the petitioner herein should not be looked into except at the time of framing charge or at the time of trial. Yes, any document supporting the defence cannot be looked into at the time of initial stage as a general law of the land. But if any such document was not brought to the notice of the complainant / bank at the time of filing of the complaint and if no specific allegation was made in the petition of complaint against the insurance company, such document may be considered to determine whether if the proceeding is allowed to continue, it would be an abuse of the process of the Court meaning thereby that in exceptional circumstances such document may be considered. This is the verdict of the Hon'ble Apex Court in the case reported in (2009) 4 SCC 439 to the effect that in exceptional cases such document may be considered to determine if it was just and proper to initiate proceedings against the petitioner herein.

10.It is pertinent to mention here that the learned Metropolitan Magistrate took cognizance of the offence under Sections 420/422/424 of the I.P.C. and the learned Metropolitan Magistrate did not find any ingredient of the offence under Section 34 or 120B of the I.P.C. In fact, the accused no.2 is a vague juristic person and it cannot commit any offence under Section 34 or 120B of the I.P.C. So the learned Magistrate did not apply his judicial mind in issuing process on the basis of the enquiry report. This being the position, upon due consideration of the entire matter, I am of the view that if the proceedings against the petitioner herein is allowed to continue, it will be nothing but an abuse of the process of the Court.

11.In view of what has been stated, I am of the opinion that the revisional application succeeds. It is, therefore, allowed.

12.The case no.C-39938 of 2009 pending before the learned Metropolitan Magistrate, Ninth Court, Calcutta and the orders passed by the learned Metropolitan Magistrate, Ninth Court, Calcutta with regard to the accused no.2 of the said complaint case stand quashed.

13.In view of that fact, the CRAN No.826 of 2010 has become infructuous and it is also dismissed.

14.Considering the circumstances, there will be no order as to costs.

15.Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)