

Srinivasan Iyengar vs Bimla Devi Agarwal . on 15 February, 2019

Equivalent citations: AIR 2019 SUPREME COURT 1533, AIR ONLINE 2019 SC 95, (2019) 108 ALLCRIC 429, (2019) 199 ALLINDCAS 108, (2019) 1 CRIMES 108, (2019) 2 ALLCRILR 673, (2019) 2 RECCRIR 82, 2019 (2) SCC (CRI) 295, (2019) 3 SCALE 522, 2019 (4) SCC 456, (2019) 5 MH LJ (CRI) 621, (2019) 74 OCR 184, 2019 CALCRILR 2 275

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Bench: M. R Shah, L. Nageswara Rao

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NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 277 of 2019
[Arising out of SLP (Crl.) No. 2986 of 2015]

Srinivasan Iyengar and Anr.

.. Appellants

Versus

Bimla Devi Agarwal & Ors.

.. Respondents

(WITH CRIMINAL APPEAL NO. 278 OF 2019 @ SLP (Crl.) No.
2990 of 2015)

JUDGMENT

M. R. SHAH, J.

Leave granted in both the appeals.

1. As common question of law and facts arise in both these appeals and, as such, these appeals arise out of the impugned common judgment and order passed by the High Court, both these appeals are being decided and disposed of together by this common judgment.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 28.01.2015

passed by the High Court of Gauhati in Criminal Petition No. 634 of 2014, by which the High Court has rejected the said application preferred by the Appellants herein to quash the criminal proceedings initiated against them by Respondent No. 1 herein – the original Complainant, the original Accused – original Applicants have preferred the present appeals.

3. That a private complaint came to be filed by the original Complainant (Respondent No. 1 herein) through her husband (Respondent No. 2 herein and power of attorney holder of Respondent No. 1) before the Court of learned CJM at Tinsukia, Assam against the Appellants herein and another for the offences punishable under Sections 406, 468, 120B IPC. At this stage, it is required to be noted that Respondent No. 4 – company can be said to be a broker agent of the Reliance Life Insurance Company and the relationship between them is governed by the Insurance Regulatory and Development Authority (Insurance Brokers) Regulations, 2002. That the original Complainant filed a complaint against in all 12 persons. That the said complaint was registered as C.R. Case No. 42C of 2014.

4. It was the case of the original Complainant that she was the holder of an insurance policy issued by the ICICI Life Prudential in the month of August, 2013.

4.1 It was alleged that the complainant received a call from one Sri Navin Mittal, who identified himself as an Executive Officer of Reliance Life Insurance Company Ltd.

4.2 It was further alleged that the said caller informed the complainant over phone that as per the instruction of the Insurance Regulatory and Development Authority (for short “IRDA”), “the fund related to Life Insurance Policy of the complainant with the ICICI Life Prudential has been released through the Reliance Life Insurance and also informed that bonus amount of Rs.19,245/□ Rs.1,94,730/□and Rs.96,500/□against the said life insurance policy is ready to be disbursed in favour of the complainant by the Reliance Life Insurance Company Ltd. (Accused no. 1 in C.R. Case No. 40C of 2014) 4.3 It was further alleged that the said caller had further requested the complainant to send a cheque for Rs.50,000/□drawn in favour of the Insurance Company Ltd. as well as Pan Card and identity cards of the family members of complainant for verification. The caller also informed the complainant that after necessary verification, the amount in the said cheque together with bonus amount would be released in favour of the complainant.

4.4 It was further alleged that believing such statements to be true, the complainant sent a cheque of Rs.50,000/□to Accused no. 1 along with copies of other documents, sought for. The said cheque of Rs.50,000/□was received by Accused No. 1 in due course. Thereafter, in the month of November 2013, the complainant received another call from phone No. 09210657675. This time, the callers were Smt. Meenakshi Rawat and Sri Deepak Kapoor.

4.5 It was further alleged that these callers introduced themselves to be the Executive Officers of Accused no. 1. The second caller also narrated the facts which were already narrated to the complainant by the first caller. The second caller also requested the complainant to send one more cheque of Rs.42,000/□drawn in favour of Accused no. 1. 4.6 It was further alleged that they also informed the complainant that if the said cheque for Rs.42,000/□was not sent by the complainant,

the bonus amount could not be released. They, however, assured the complainant that the amounts so paid through cheque in favour of Accused No. 1 would be refunded to the complainant immediately after the verification of her identity. Being so influenced, the complainant through her attorney issued another cheque of Rs.42,000/□ in favour of Accused No. 1.

4.7 It was further alleged that after a few days of issuance of the said two cheques, the complainant received two life insurance policies in the month of December 2013 issued by Accused no. 1, duly signed by the Accused nos. 2 and 3 through its branch office at Guwhati and, in both the policies, the policy holder has been shown as complainant herself, but in one policy, the life of complainant has been shown as assured, but in another policy the life of complainant's son Sri Samir Bajaj has been shown as assured and the client ID of policy holder has been numbered as 86605617, Contract No. 51168554 dated 10.10.2013 and Client ID No. 86948411, Contract No. 51321645 dated 28.11.2013 and the amount of Rs.49,999.68 and Rs.41,999.89 has been shown as first premium receipt against the said two policies and the said amount has been collected through the bank account of complainant by using the aforesaid two cheques by Accused no.

1. 4.8 It was then further alleged that in both the policies, Accused no. 4 has been named as broker/agent of Accused no. 1 through which the aforesaid two policies have been issued in the name of the complainant and in one policy bearing contract No. 51168554, the medical report of complainant has been shown to be enclosed therein which has been issued by the Accused no. 11 □ Sales Manager of the Reliance Life Insurance Company Ltd. 4.9 It was then further alleged that, on receipt of the said two policies, on being surprised, the complainant through her husband made contact with the office staff of Accused no. 1 in Tinsukia branch office and also called over the phone numbers from which the complainant received the calls in the month of August 2013 and November 2013 and enquired about the matter, but the caller misguided the complainant by saying that the said policies have been issued due to some mistake and also requested the complainant to bear with them for sometime as they are working over the matter and assured the complainant that she will get her amount back within a very short span of time.

4.10 It was further alleged that, finding no other alternative, the complainant waited for sometime and made contact with these callers and asked them about her money but all the time the callers assured that the work is in progress and since the matter has been referred to their high officials for their sanction, so it will take some time. The complainant all the time with a hope that the company of such a reputation will definitely return her money, waited for the same.

4.11 It was further alleged that, subsequently, on careful perusal of the policies, the complainant surprisingly noticed that neither she nor her husband nor her son ever signed any proposal form or any other documents which were required at the time of taking the life insurance policies, as per the rules and regulations of IRDA, nor even appeared for any medical examination before any doctor or hospital authority, but the policies were issued in the name of the complainant, moreover the booklet of policy containing the First Premium Receipt, policy schedule, proposal form, medical report are all Xerox copy and all the documents, even the First Premium Receipt and policy schedule do not bear any original signature of signatory i.e. Accused nos. 2 and 3 – Appellants herein.

4.12 It was further alleged that, the proposal forms were shown to be signed by the complainant, but the complainant never signed over the said policies and it is abundantly clear that her signatures are forged for the wrongful gain by the accused persons. It has been further revealed that the accused persons in conspiracy with each other forged the signatures of the complainant, her husband and her son Sri Samir Bajaj with an intention to deceive them for the wrongful gain. The said policies were issued through Accused no. 4 and all the accused persons are related to each other and interested persons who are getting monetary benefits for the issuance of these life insurance policies and all the accused persons are involved in committing the crime of cheating, forgery, criminal misappropriation of money and criminal conspiracy. It is crystal clear that at the very inception of conversation with the complainant through her husband, the accused persons have been in conspiracy with each other and induced the complainant to deliver the cheques with an intention to deceive the complainant for the wrongful gain.

5. That, thereafter, the Appellants herein – original Accused nos. 1 to 3 approached the High Court by way of Criminal Petition No. 634 of 2014 praying for quashing the criminal proceedings in exercise of its powers conferred under Section 482 CrPC. That by impugned judgment and order dated 28.01.2015, the High Court has dismissed the same and has refused to quash the criminal proceedings. Hence, the original Accused nos. 1 to 3 have preferred the present appeals.

6. At the time of issuance of notice on 17.04.2015, this Court directed the Appellants to deposit a sum of Rs.3,75,000/□to be utilized, if necessary, for awarding costs to the Respondents □ complainant. It is reported that the Appellants have deposited the same with the Registry.

7. Heard learned counsel appearing on behalf of both the parties at length.

8. During the hearing of these appeals, the learned counsel for the Appellants agreed to pay to the original Complainant a total sum of Rs.10,00,000 (Rupees Ten lakh only) towards the full and final settlement of the claim of the original Complainant and it is agreed that, on such payment, the claimant will not proceed with the complaint any further and that the parties may be permitted to compound the offences.

9. Learned counsel appearing on behalf of the original Complainant has stated that the original Complainant is agreeable to accept a total sum of Rs.10,00,000/□offered and that, on such payment, the complainant has no objection if the offences against the Appellants are compounded and the criminal proceedings initiated against them are quashed.

10. Learned counsel appearing on behalf of the original Complainant has submitted that the Appellants may deposit a total sum of Rs.10,00,000/□in the bank account of the original Complainant, the particulars of which are already on record, and on doing so, the Appellants may be permitted to withdraw the amount of Rs.3,75,000/□plus interest if any, already deposited by them.

11. Having heard the learned counsel appearing on behalf of the respective parties and that now the parties have settled the dispute amicably and that the dispute between the parties seems to be having predominant element of a civil dispute and the origin is predominantly or overwhelming a

civil dispute, we are of the opinion that this is a fit case to exercise the power under Article 142 of the Constitution of India to meet the ends of justice.

12. We are of the opinion that on payment of total sum of Rs.10,00,000/- by the Appellants to the original Complainant, as agreed between the parties, the criminal proceedings be quashed, considering the decisions of this Court in the case of Parbatbhai Aahir v. State of Gujarat (2017) 9 SCC 641 and Gian Singh v. State of Punjab (2012) 10 SCC 303.

13. In view of the above and for the reasons stated above, we allow the parties to compound the offences, even though the offences alleged are non-compoundable, as the dispute between the parties predominantly or overwhelming seems to be of a civil nature and that the dispute is a private one and between the two private parties. Accordingly, it is ordered that on payment of a sum of Rs.10,00,000/- by the Appellants to the original Complainant to be deposited in the bank account of the original Complainant within a period of two weeks, the criminal proceedings being C.R. Case No. 40C of 2014 pending in the Court of learned CJM, Tinsukia, stand quashed. On furnishing proof of deposit of Rs.10,00,000/- the Registry to return the amount of Rs.3,75,000/- along with interest, if any, to the Appellants herein, which the Appellants have deposited pursuant to the earlier order of this Court.

14. The present appeals stand disposed of accordingly in terms of the above.

.....J. (L. NAGESWARA RAO)J. (M. R SHAH) New
Delhi;

February 15, 2019.