

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on January 10, 2008
Date of decision: 4th July, 2008

**CRL. M.C. No. 2804 of 2004 & CRL.M.A. 9497/04 (stay)
& CRL. M.A. 1525 of 2006**

FORD INDIA LTD. & ANR. ... Petitioners
Through: Ms. Geeta Luthra and Mr. Dhruv
Wahi, Advocates

versus

SUNBEAM ANCILLARY P. LTD. Respondent
Through : Mr. Vish Dev Tyagi, Advocate.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

DR. S.MURALIDHAR, J.

1. This petition under Section 482 seeks the quashing of Complaint No. 815/1 of 2003 titled *Sunbeam Ancillary (P) Ltd. v. David Friedman and Others* pending in the court of learned Metropolitan Magistrate ('MM'), Delhi and all proceedings consequent thereto.

2. The said complaint was filed by the Respondent Sunbeam Ancillary (P) Ltd. through its director Mr. Arun Gupta stating that on 20th March, 2002 they contacted Harpreet Motors Ltd. ('HML'), petitioner No.3 herein, for purchasing a Mondeo brand Ford car. It is stated that thereafter Mr. Ashok Sachdev, petitioner No.4 herein, contacted the complainant describing the features of the car and that among other things it contained 8 air bags and one world-class suspension. It is stated that the complainant then contacted the Ford office at Chennai and left the contact number of the complainant's office at Delhi. The next day i.e. on 21st March, 2002 Mr. David Friedman, petitioner No.2 herein, is stated to have contacted the complainant confirming the specifications as mentioned by Mr. Sachdev and further stated that the said model was currently being shipped from Belgium and that its assured price was around Rs.15 lakhs. On the following day i.e. 22nd March, 2002 one Mr. Randi G. Shockely is stated to have called the complainant's office and again confirmed that the car would have 8 air bags and world class suspension. The complainant placed an order for the Mondeo brand Ford car and made a payment of Rs.15,56,185/- availing a loan from the State Bank of India.

3. After purchasing the car, the complainant faced problems regarding "poor suspension and rusting of the rims of the car etc." and a letter to that effect was written to HML on 2nd August 2002. In the

last week of July 2003 while driving the car to Gurgaon one of the car tyres burst and could be changed only with great difficulty because of the rust that had gathered. It is claimed that despite telephoning HML nobody turned up to provide assistance. In August 2003 an independent automobile engineer was consulted. After inspecting the car he is supposed to have opined that the “suspension is very poor and suffers from manufacturing defects and rims appear to be very old i.e. at least 3 years, though the model was bought only in March 2002”. The car was found to have four air bags instead of 8. The engineer opined that “the car is old one and renovated to look like new one by covering with new paint, etc.” The complainant claims to have written many letters to petitioner No.1 Ford India (P) Limited and HML but “they did not sincerely try to satisfy the undersigned and kept making false promises one after another.” It is then stated that complainant tried to contact the petitioner No.1 at Chennai on 28th August 2003 as well as HML at Delhi but none of them agreed to attend to his complaint.

4. Alleging that the four petitioners acted in a criminal conspiracy to cheat the complainant and “caused loss by giving a old and defective car,” the aforementioned complaint was filed under Sections 417/418/420/120-B/34 IPC. On 9th January 2004 the learned MM passed an order summoning the petitioners to face trial for the

offences under Sections 417/420/34 IPC. The relevant portion of the order reads as under:

“...the complainant has filed the affidavit of Automobile Engineer in terms of the last order. The case of the complainant is that the complainant purchased a car from Harpreet Motors. Before purchasing the car, the complainant had inquired from Harpreet Motors regarding the quality of the car. Harpreet Motors, Najafgarh Road, Delhi referred the complainant to accused no.1 and 2 and accused no. 1 and 2 assured the complainant that the car is of very good quality. After the purchase of the car the accused came to know that the car purchased by the complainant is an old one and suffers from various defects. The complainant in this regard is stated to have written various letters to Harpreet Motors but no response was received. I have gone through the complaint and various testimonies of the witnesses. There are sufficient grounds for proceeding under Sections 417/420/34 IPC against accused no.1,2,3, 5 and 6. Let the accused no. 1,2,3,5 and 6 be summoned on PF/RC/UPC/Speed Post for 12-04-2004...”

5. The application filed by the petitioner for recalling the order was dismissed by the learned MM on 27th September, 2004 in view of the decision of the Supreme Court in *Adalat Prasad v. Roop Lal Jindal 113 (2004) DLT 256 (SC)*. Thereafter the present petition was filed. This Court, by an order dated 24th November 2004, while directing notice to issue to the Respondent, stayed the proceedings before the trial court.

6. Ms. Geeta Luthra, learned counsel appearing for the petitioner submits that the complaint when read as a whole does not even make out a prima facie for the offence of cheating. Except by saying that wheels of the car were rust covered, there is nothing to indicate the dishonest intention of the petitioners to cheat the Respondent right from the beginning. The automobile engineer who supposed to have opined about the condition of the car has not even named in the complaint. At the highest this was a complaint which should have been preferred under the Consumer Protection Act, 1986. This was essentially a civil dispute which was given the colour of a criminal case. She pointed out that the car was originally manufactured in Belgium in December 2001 as was evident from the Vehicle Identification Number. It reached India some time in January 2002 and thereafter Harpreet Motors in February 2002. A pre-delivery inspection was conducted in February 2002. After accepting delivery of the car the petitioner got a Teflon coating done on 27th March 2002. The first free check up took place on 26th June 2002 and the first free service on 10th October 2002. The second free quality care service was done on 19th January 2003 to the satisfaction of the complainant. There was no complaint of any defect at this stage. The complaint of a tyre burst made on 27th July 2003 was attended to by the tyre manufacturer who replaced it. The request made by the complainant for replacing all the tyres was rejected by the manufacturer Good Year. Four tyres were later renewed on 12th September 2003. The

defects pointed out within the warranty period were duly attended to. The complaint made now of alleged manufacturing defects was being made for the first time nearly 18 months after the vehicle was sold. It was not only belated but certainly did not make out any offence much less that of cheating. Accordingly it is submitted that the complaint ought to be quashed.

7. Appearing for the Respondent Mr. Vish Dev Tyagi learned Advocate submitted that the complaint when read as a whole does make out a prima facie case for the offence of cheating. Pre-summoning evidence was led and on that basis summons was issued. He submitted that the scope of interference by this Court under Section 482 CrPC was extremely limited as explained by the Supreme Court in *Uma Shankar Gopalika v. State of Bihar (2005) 10 SCC 336*. The defence of the accused ought to be examined only at the trial. The summoning order did not have to be a detailed one. He referred to the decision in *Nagawwa v. Veeranna (1976) 3 SCC 736*.

8. The scope of this Court's jurisdiction under Section 482 CrPC to quash a criminal complaint has been time and again explained by the Supreme Court in several decisions. It is sufficient to refer to *State of Haryana v. Bhajan Lal (1992) Supp 1 SCC 335* and *Pepsi Foods v. Special Judicial Magistrate AIR 1998 SC 128*. In the latter

case, the Supreme Court cautioned the trial court about mechanically summoning the accused on the basis of a complaint without examining whether a prima facie case was made out upon reading the complaint as a whole. In *Bhajan Lal* the Supreme Court indicated illustratively the possible situations where the power to quash a criminal complaint could be exercised. These are:

“(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. In *Pepsi Foods v. Special Judicial Magistrate AIR 1998 SC*

128 the Supreme Court observed:

“28. Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

10. Keeping in view the settled law as explained by the Supreme Court, this Court has perused the complaint filed in the instant case by the Respondent. It finds that even when read as a whole, the complaint does not make out even a prima facie case against any of the petitioners. Shorn of the standard type allegations of cheating, which are vague and general, it appears that the grievance was about supply of defective goods. This is plain from paragraphs 20 and 21 of the complaint which read as under:

“20. That it has come to the knowledge of the undersigned complainant that above company and its authorised center Harpreet Motors along with incharge of the service center Ashok Sachdeva and David Freid Man of the Ford India Ltd. and Randy G. Shockley acted in the criminal conspiracy to cheat the undersigned by promising above best of the product as discussed above and caused the loss by giving a old and defective car.

21. Further it has come to knowledge of the complainant that the above accused persons are in the habit of cheating the innocent people of the public. In the above narrated manner by selling the old car which keep lying with their stock for several years uncared as a surplus stock in open weather conditions.”

The affidavit of the automobile engineer which is referred to in the summoning order would at best support the allegations of a defect in the car. In the summoning order too, the learned MM has proceeded on the footing that “After the purchase of the car the accused came to know that the car purchased by the complainant is an old one and suffers from various defects.”

11. The criminal complaint therefore prima facie indicates that this was a case of supply of defective goods, the remedy for which lay under the Consumer Protection Act, 1986 ('CPA'). This Court was informed during the course of arguments that such a complaint under the CPA is pending adjudication. The essential ingredients of cheating as defined under Section 415 IPC and made punishable under Section 417 and 420 IPC cannot be said to have been made out in the instant case. This Court is satisfied that "the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused." The test laid down by the Supreme Court in ***Bhajan Lal*** can be said to be satisfied in the present case. The court is also satisfied that given the nature of the averments made in the complaint, it would not serve any purpose to make the accused go through the ordeal of a criminal trial which would be time consuming and not in the interests of justice. As explained in ***Uma Shankar Gopalika v. State of Bihar (2005) 10 SCC 336***, a criminal complaint in a matter of this nature is an abuse of the process of law. The decisions in ***Hotline Teletubes and Components v. State of Bihar (2005) 10 SCC 261***, and ***Anil Mahajan v. Bhor Industries Ltd. (2005) 10 SCC 228*** are also relevant in this context.

12. For the aforementioned reasons, this Court is satisfied that the complaint does not make out even a prima facie case for the offences

under Sections 417/420/34 IPC. Accordingly, the Complaint No. 815/1 of 2003 titled *Sunbeam Ancillary (P) Ltd. v. David Friedman and Others* pending in the court of learned MM, Delhi and all proceedings consequent thereto hereby stand quashed. The petition is allowed and the pending applications are disposed of.

13. A certified copy of this order be sent to the concerned trial court within a period of five days from today.

S. MURALIDHAR, J.

4th July, 2008

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