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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Criminal M.C. No.3636 of 2009 & C.M. Appl. No.12333 of 2009

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29.07.2010

M/S. REGENT AUTOMOBILES LTD. & ANR. Petitioners
Through: Mr. Subhash Sagar & Mr. Karnail Singh,
Advocates.

Versus

SACHIN BHASKAR & ANR. Respondents
Through: Mr. C. Harishankar, Mr. Pushkar Kr. Singh
and Mr. C.M. Jayakumar, Advocates.

Reserved on: 7th July, 2010
Pronounced on: July 29, 2010

JUSTICE SHIV NARAYAN DHINGRA

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 judgment should be reported in Digest? Yes.

J U D G M E N T

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioners assailing order dated 30th September, 2008 summoning the petitioners for offences under Sections 418/420/463/468 read with Section 120-B IPC. The learned Metropolitan Magistrate in its order observed that *prima facie* a case under above offences was made out against the accused persons.

2. The brief facts relevant for deciding this petition are that the complainant booked an OPEL CORSA 1.4 GLS CASSABLANCA car with petitioners and made a payment of Rs.6,45,478/- vide cheque dated 7th September, 2000 in favour of M/s. Regent Automobiles Limited (petitioner No.1 herein) for purchase of the car. Delivery of the car was to be made within fortnight. On 30th September, 2000, he was told on telephone to

take delivery of the car. On 1st October, 2000, he along with his friend went to showroom and found that the car was defective. There were scratches over the body of the car and there were other defects as mentioned in the complaint. It is alleged that these defects were brought to the notice of Colonel S.S. Malik and Sh. Neeraj Gupta and the complainant refused to take delivery of the car. He was assured that the matter would be taken up with higher authorities. He again visited showroom of M/s. Regent Automobiles Limited and learnt that the car has already been registered in his name and Colonel S.S. Malik and Sh. Neeraj Gupta told him that this was the only car which they could offer him and they could not offer any other car. The complainant approached State Consumer Forum against the petitioners in the year 2001 vide Complaint Case No.C-375 of 2001 claiming compensation on account of deficiency in service and delivery of defective car. The complainant filed a criminal complaint before learned Metropolitan Magistrate on 23rd July, 2007. The learned Metropolitan Magistrate vide impugned order summoned the petitioners to face trial under Sections 418/420/463/468 IPC.

3. A perusal of order of learned Metropolitan Magistrate shows that while taking cognizance of the offence he did not look into Chapter XXXVI of Criminal Procedure Code which provides the period of limitation within which cognizance of an offence can be taken nor analyzed the nature of offence. Section 468 Cr.P.C. bars taking of cognizance of any offence if the period of limitation as stated therein had expired. The period of limitation, for offence punishable with imprisonment for a term exceeding one year but not exceeding three years, is three years. Section 469 provides the commencement of period of limitation, that the date of commencement of limitation will be from the date of commission of offence and in case, commission of offence was not

known to aggrieved person, the commencement of limitation will be from the date when the offence came to its knowledge.

4. The averments made by the complainant in the petition are that the alleged offence (if any) had come to his knowledge latest on 4th October, 2000. The complainant approached criminal court after about 7 years. The petitioners have been summoned for offences under Sections 418/420/463/468 read with Section 120-B IPC. Sections 418 and 420 IPC are offences relating to cheating. Under Section 418, cheating is with the knowledge that wrongful loss may ensue to person whose interest offender is bound to protect while Section 420 IPC is made out when a person dishonestly induce other to deliver the property. Learned Metropolitan Magistrate has summoned the accused under both the offences without specifying how offence either under Section 418 or 420 IPC was made out. The facts as disclosed in complaint show that it was not a case of taking delivery of property by inducement but it was a case where the complainant contended that there was defect in the car sought to be delivered to him and the contention of accused was that the car was okay and it was not defective. There was thus no element of dishonest inducement even as per the complainant nor it is alleged by complainant that he was shown some other car and after showing some other car, he was induced to part with the money and that car was not delivered to him. The complainant booked a car and he was sought to deliver a car which the complainant alleged was a defective car. Thus, an offence at the most could be under Section 418 IPC and the punishment for this offence was upto three years.

5. Similarly, under Section 463 IPC forgery is defined. The punishment for Section 463 IPC is provided under Section 465 IPC. Section 468 IPC is made out only in those cases where forging of document is done with the intention that same shall be used for the

purpose of cheating. The allegations in the present case are that the delivery note was not signed by the complainant and on the basis of forged delivery note, the car was got registered in the name of the complainant. Thus allegations, if found true, were covered under Section 463 IPC, punishable under Section 465 IPC and not under Section 468 IPC. The punishment under Section 465 IPC is two years.

6. Learned Metropolitan Magistrate in his order failed to state as to how offences under Sections 420 IPC and 468 IPC were made out instead of offences under Sections 418 IPC and 465 IPC. Learned Metropolitan Magistrate had also not dealt with the fact that the complainant had approached Consumer Court in the year 2001 in respect of the same dispute.

7. I consider that before taking cognizance, the learned Metropolitan Magistrate was supposed to make inquiries from the complainant as to what steps he had taken in respect of deal which had taken place in the year 2000 and why he had approached the criminal court in the year 2007. It is apparent that the petitioners used criminal law as a tool. If the complainant had really thought that he had been cheated, he would have immediately filed a complaint against the petitioners. The very fact that he approached State Consumer Forum for not providing proper service to the consumer by petitioner shows that the dispute between the complainant and the petitioners was about dissatisfactory service and it was not a case of criminal offence.

8. The court of Metropolitan Magistrate had not taken minimum essential care which every criminal court should take before taking cognizance that the criminal justice system should not be allowed to be used as a tool. The allegations made by the complainant in the complaint even if considered true, no cognizance could have been taken by the

Metropolitan Magistrate since taking of cognizance of alleged offences was barred by limitation. Learned Metropolitan Magistrate failed to address the question of limitation and the nature of offence committed. Only a vague order is passed that offences under Sections 418/420/463/468 read with Section 120-B IPC was made out.

9. The order of learned Metropolitan Magistrate is not tenable under law and is hereby set aside. The complaint filed by the complainant, being barred by limitation, could not have been entertained and is liable to be quashed and is hereby quashed.

10. The petition stands disposed of.

SHIV NARAYAN DHINGRA
[JUDGE]

JULY 29, 2010
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