

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 927/2011 and Crl. M.A. No. 3462/2011 (stay)**

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Reserved on: 16th April, 2012

Decided on: 9th July, 2012

ASHOK SACHDEV & ANR

..... Petitioners

Through: Mr. Siddharth Luthra, Sr. Advocate
with Mr. Vipin Singhania and Mr.
Kunal Sood, Advocate.

versus

G.S.CHAUHAN

..... Respondent

Through: Mr. Chetan Sharma, Sr. Advocate
with Mr. Brijesh Singhal, Mr.
Sikander Arora and Ms. Sudipa Das,
Advocates.

+ **CRL.M.C. 3691/2011 and Crl. M.A. No. 17604/2011 (stay)**

SHWETA KHANNA

..... Petitioner

Through: Mr. Sameer Chandra, Advocate.

versus

G S CHAUHAN

..... Respondent

Through: Mr. Chetan Sharma, Sr. Advocate
with Mr. Brijesh Singhal, Mr.
Sikander Arora and Ms. Sudipa Das,
Advocates.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petitions the Petitioners Ashok Sachdev and Praveen Sahni in CRL.M.C. 927/2011 and Shweta Khanna in CRL.M.C. 3691/2011

seek quashing of criminal complaint bearing No. 137/1/10 titled as G.S. Chauhan Vs. Ashok Sachdev & Ors.” pending in the Court of Shri Rajinder Singh, Metropolitan Magistrate-04, Saket Courts, New Delhi and the order dated 14th January, 2011 summoning the Petitioners for offence under Section 420 IPC.

2. Learned counsel for the Petitioners contend that at best the allegations in the complaint are of manufacturing defect, however by the order of summoning the manufacturer i.e. accused No.4 Ms. Toyota Kirloskar Motor Private Limited has been dropped and the Petitioners herein who were only dealers, G.M. (Sales) and sales representative respectively have been summoned. The vehicle i.e. Toyota Innova, multi-utility vehicle was purchased by the Respondent from the company on 23rd May, 2007. However the first complaint was lodged in the month of May, 2008 i.e. after 12 months of the date of purchase of the vehicle. The complaint of the Respondent was that the bumpers and the fenders of the vehicle were dented, repaired and repainted. The Petitioners were not liable for any manufacturing defect in the vehicle. The dispute is purely commercial in nature and no criminal liability can be fastened against the Petitioners. On a perusal of the complaint and the statement of the Respondent, no criminal offence under Section 420 IPC is made out against the Petitioners. The allegations in the complaint are contrary to the petition filed before the Consumer forum wherein it is alleged that the company sold an old car. Reliance in this regard is placed on *B.Suresh Yadav Vs. Sharifa Bee & Anr. (2009) 1 SCC (Crl) 282* to contend that if contrary pleas are taken in the criminal and civil proceedings, then the same assumes importance. Relying

upon *Ford India Ltd. and Anr. Vs. Sunbeam Ancilliary P. Ltd.* 152 (2008) DLT 50 it is contended that the dispute is entirely civil in nature and hence no criminal liability can be fastened.

3. Learned counsel appearing on behalf of the Shweta Khanna in addition contends that the only role assigned to the Petitioner Shweta Khanna is that she informed that a red colour vehicle was available at the Moti Nagar showroom. There is no other allegation. Reliance is placed on *M/s. Thermax Ltd. and Ors. Vs. K.M. Johny and Ors.* 2012 Crl.L.J. 438.

4. Learned counsel for the Respondent on the other hand contends that the Petitioners are relying upon the service history of the vehicle placed on record by the Respondent which gives a totally different version. Since the sales representative Shweta Khanna went out of the way to inform the complainant about the availability of one car of limited addition being available at Moti Nagar, the misrepresentation is evident. The Petitioners sold a damaged car as a brand new edition. At this stage this Court has only to see prima facie evidence. Learned Trial Court has summoned the Petitioners by a well-reasoned order which does not call for interference. The Petitioners are liable to be tried for the offences and the veracity of the complaint will be tested during trial when the technicians will be called for and the Court will evaluate the evidence placed on record. In the letter written by the Petitioner Praveen Sahni to the Respondent, there is an implied admission as correction of paint mis-match was offered to the complainant/ Respondent. Since the case does not fall in any of the parameters laid by the Hon'ble Supreme Court in *State of Haryana Vs.*

Bhajan Lal & Ors. 1992 Supp (1) SC 335, no case for quashing of the complaint or the summoning order is made out.

5. I have heard learned counsel for the parties. Briefly the facts giving rise to filing of the present petition are that the Respondent G.S. Chauhan filed the abovementioned complaint along with an application under Section 156 (3) Cr.P.C. before the Learned Metropolitan Magistrate wherein no order under Section 156 (3) Cr.P.C. was passed by the Learned Metropolitan Magistrate. A complaint case procedure was followed. After recording the evidence of the Respondent/ complainant, the Learned Metropolitan Magistrate summoned the Petitioners herein for offence under Section 420 IPC. The allegations as set out in the complaint by the Respondent are that the Petitioner Ashok Sachdev was CEO of Galaxy Toyota and the other two Petitioners were his employees, thus acting under his direct supervision. The complainant came to know that the company was selling Toyota Innova (limited addition) and ICICI bank was providing finance for the purchase of the said vehicle. In May, 2007 the complainant approached the accused at their showroom at Kotla Mubarakpur and the sales manager informed that they had only one car left from the limited addition version. The complainant refused to purchase the car as the stickers of the cars were not properly fixed. After some time the complainant received a call from the Petitioner Mrs. Shweta Khanna, the sales executive, insisting the complainant by saying that there was one more car of the same colour (impression red) at their Moti Nagar showroom. Believing on that the Respondent purchased the vehicle on hire-purchase basis and got the same financed from ICICI bank. In the month of May, 2008 the complainant

observed some colour difference between the doors and the fenders of the vehicle in question. After noticing the defect, the complainant sent the car for servicing at the service centre and upon queries made to the technicians it was informed that both fenders and bumper of the car were dented, repaired and repainted. Thus, according to complainant, the Petitioners sold him a used and defective car. The Respondent called upon company many times and spoke to a number of persons, however nobody paid heed to his grievance. Finally on 17th July, 2008 the Respondent gave a written complaint to the company bringing all facts to their notice which was replied by the company on 9th October, 2008 stating that the matter was under investigation and an early response was assured. On 21st October, 2008 the Respondent rejected the claim of complainant. Though the Respondent again sent letters but the company did not reply. The Respondent took the vehicle for servicing on 25th January, 2009 at Meerut Road, Industrial Area, Ghaziabad where he was informed that due to major technical problems, the car needed more time to diagnose the actual problem and the problem was latent and could not be traced by naked eye inspection. Thus, according to the Respondent the accused committed cheating and criminal breach of trust. They further committed forgery by manipulating the documents, having sold an old and used car to the complainant by representing the same to be a new car, thus causing a wrongful gain to them and wrongful loss to the complainant.

6. The complainant in the witness box reiterated the allegations in the complaint. It has been further stated that in the month of May 2007 he approached the showroom at Kotla Mubarakpur where the sales

representative Mrs. Shweta Khanna informed that they had only one car left of limited addition. However, the complainant refused to purchase the said car as its stickers were not sticking properly and after some time he received a call from Mrs. Shweta Khanna stating that they have one more limited addition Innova car in their Moti Nagar showroom and the same was in perfectly all-right condition. It is stated that on the assurance so made the Respondent/ complainant purchased the car and got it financed.

7. As held by the Hon'ble Supreme Court in *Maksud Sayeed Vs. State of Gujarat* 2008 5 SCC 668 no criminal liability can be fastened vicariously for an offence punishable under the Indian Penal Code. A perusal of the complaint and the statement of the Respondent show there is no allegation that the Petitioners Ashok Sachdev or Praveen Sahni represented that the car was in the perfect condition with no defects. The only allegation of misrepresentation is against Mrs. Shweta Khanna against whom it is alleged that as a sales executive she told the complainant that there was one more car of the same colour at their Moti Nagar showroom. There is no allegation that the Petitioners in conspiracy with each other misrepresented to the Respondent that there was no defect in the car. As a matter of fact the perusal of the complaint shows that the only thing the Respondent believed was that one more car of impression red was available at their Moti Nagar showroom and relying upon the credibility of Toyota the complainant purchased the car on hire-purchase agreement. In case the person purchases the car relying upon the credibility and not upon the misrepresentation, the offence under Section 420 IPC is not attracted. At this stage it would be relevant to reproduce para 6 of the complaint:

“6. That after some time the complainant received a call from Mrs. Shweta Khanna, the sales executive of the Accused insisting the complainant by saying that there is one more car of the same colour (impression red) at their Moti Nagar showroom. That believing on that the complainant visited accused at Kotla Mubarakpur showroom and relying on the credibility of Toyota, the complainant purchased that car on hire purchase basis. That the car bearing No. DL-4C-AE-7819 was financed by ICICI Bank vide loan account No. LADEL-00010560402.”

8. Section 420 IPC reads as under:

“Section 420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

9. The essential ingredients of Section 420 IPC are that there is misrepresentation and on the basis of misrepresentation the complainant acts upon causing a wrongful loss to the complainant and a wrongful gain to the accused. If a person acts on credibility of a firm, there is no misrepresentation. Even the version improved in the statement in Court by the Respondent that the car was in perfectly alright condition does not show that it was represented that the car was new brand one. Since the basic ingredients of Section 420 IPC are missing the impugned order dated 14th January, 2011 is set aside and the complaint bearing No. 137/1/10 titled as G.S. Chauhan Vs. Ashok Sachdev & Ors.” pending in the Court of Shri

Rajinder Singh, Metropolitan Magistrate-04, Saket Courts, New Delhi against the Petitioners is also quashed.

10. Petitions and applications are disposed of accordingly. Order dasti.

(MUKTA GUPTA)
JUDGE

JULY 9, 2012
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