

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Rev. No.2121 of 2013 (O&M)
Date of Decision: 16.11.2015

M/s Luxmi Electronics

...Petitioner(s)

Versus

Symphony Colambia Hi-Fi Water Heater "Saumya" Baker Circle,
Navrangpura, Ahmedabad & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Sanjeev Sharma, Advocate for
Mr. Parminder Singh, Advocate
for the petitioner.

HARI PAL VERMA J.(Oral)

The petitioner has filed the present revision petition against judgment dated 26.7.2011 passed by learned Judicial Magistrate Ist Class, Karnal, whereby the complaint filed by the petitioner under Section 406, 420 of the Indian Penal Code, 1860 has been dismissed. Further challenge has been laid to judgment dated 16.1.2013 passed by learned Additional Sessions Judge, Karnal, whereby the appeal preferred against the judgment dated 26.7.2011 has also been dismissed.

Briefly stated, the petitioner is an authorised dealer of respondents-accused and used to sell the products of the respondents-accused at his shop since 1997. A circular dated 10.7.1998 was issued by the respondents-accused, vide which they launched a scheme for the dealers. As per the said scheme, any dealer who would purchase 9 water heaters of 25 litres or different water heater models of the equivalent value, then a fun-filled four days holidays in the pleasure island Bangkok and Pattaya would be permitted at the expenses of the company. As per clause 4 of the said circular, the respondents-accused demanded demand draft from the dealers which was to be submitted on or before 8.8.1998 to the Regional Distributor of the region. The complainant-petitioner after going through the aforesaid circular and the scheme, sent a demand draft dated 7.8.1998 for a sum of Rs.35,010/- along with the application form. It has also been pleaded that a sum of Rs.6,000/- was already credited in the account of the respondents-accused for returning of washing machine and Rs.1200/- on account of credit note. Therefore, a sum of Rs.42,210 was paid by the complainant to the respondents-accused on account of the scheme launched by them. As per clause 9 of the aforesaid circular dated 10.7.1998, the holiday trip was to be started in the months of September, October and November, on first come first serve basis. However, the respondents-accused neither sent the water heaters of 25 litres for which the complainant had already paid Rs.42,210/- to the respondents-accused nor sent any intimation with regard to the tour of Bangkok and Pattaya etc. In this manner, the

petitioner has been cheated by the respondents-accused by dishonestly inducing the complainant on false pretexts.

The petitioner filed complaint against the respondents-accused, but the same was dismissed by Judicial Magistrate Ist Class, Karnal vide judgment dated 26.7.2011. The relevant paragraphs of the said judgment reads as under:-

“9. After hearing the contentions of the learned counsel for the complainant and perusing the case file very carefully, it is noticed that a circular dated 10.7.1998 Ex.CW1/A was circulated by accused company vide which any dealer who had purchased 9 water heaters of 25 litres was entitled to apply for a four days holidays at Bankok and Pattaya on depositing the demand draft on or before 8.8.1998. It is noticed that the aforesaid scheme was based on first come first serve basis. Therefore, there was no guarantee in the aforesaid circular that complainant was to be sent for a four days holidays if he had applied for the aforesaid scheme. A perusal of the circular dated 10.7.1998 further shows that the demand draft for the dealers of the State of Haryana was to be sent in favour of M/s P.B. Shah and Marketing Company Pvt. Ltd., who was the Regional Distributor of the company. The complainant also got issued the demand draft of Rs.35,010 Ex.C-1 dated 07.08.1998 in favour of M/s P.B. Shah and Marketing Company Pvt. Ltd. However, the complainant has not filed the present complaint against M/s P.B. Shah and Marketing Company Pvt. Ltd. and has filed the present complaint against the accused, who had merely issued the circular. There is also no document on the case file that the demand draft sent by complainant was received by accused persons and the same was credited into the account of accused. CW-2 Tejpal, Clerk, Oriental Bank of Commerce has not deposed anywhere in his testimony

that the demand draft dated 07.08.1998 Ex.C-1 was credited into the account of accused.

10. Moreover, the complainant applied for the aforesaid scheme on 7.8.1998, but the present complaint has been filed after a gap of nearly 10 years on 10.10.2007. The complainant has placed on record the legal notice Ex.CW1/B, but the same does not bear any date. The postal receipts Ex.CW1/C and Ex.CW1/D are mere photo copies and they are illegible as the date of issue is not visible on the same. If the accused had not sent the water heaters of 25 litres to complainant, then, the complainant was at liberty to take recourse of civil remedies for alleged breach of contract. Hence, the dispute in the present case is of civil nature and there is no document on the case file to show that accused had cheated the complainant vide the aforesaid scheme.”

Against the aforesaid judgment dated 26.7.2011, the complainant-petitioner preferred an appeal, however, the same was also dismissed by the lower Appellate Court vide judgment dated 16.1.2013.

It is in these circumstances, the complainant-petitioner has preferred the present revision petition challenging the judgments dated 26.7.2011 and 16.1.2013 passed by the Courts below.

Learned counsel for the petitioner argued that the trial Court has wrongly dismissed the complaint filed by it by observing that in case of non-sending of water heaters, the petitioner was at liberty to take recourse to civil remedies and no offence of cheating has been made out. He further argued that in view of Section 357(2) CrPC, the Court was required to pay compensation to the complainant-petitioner.

I have heard learned counsel for the petitioner and perused the impugned judgments.

Admittedly, the petitioner applied for the scheme on 7.8.1998, whereas he filed the complaint under Sections 406, 420 IPC on 10.10.2007 i.e. after a gap of more than nine years. In case there was any breach of scheme, the petitioner had the option to take recourse to civil remedy for the alleged breach of clauses of the scheme/contract to claim compensation. However, the petitioner has failed either to resort to the remedy available to it within the prescribed or reasonable period to establish that it was cheated, in any manner, as alleged in the complaint.

Therefore, this Court finds no reason to interfere in the well reasoned judgments passed by the Courts below.

Accordingly, the revision petition is dismissed.

November 16, 2015
AK

(HARI PAL VERMA)
JUDGE