

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 18699 of 2017

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the letter of respondent No.3 dated 28.01.2017, as illegal, arbitrary and unconstitutional; and consequently direct respondent No.3 to enquire into the matter pursuant to the report dated 22.07.2016 given by the petitioner.

2) The averments in the affidavit filed in support of the writ petition would show that the Chairman of the petitioner company purchased Black Beery Mobile Model No.PR IV on 04.05.2016 with IMEI No.351624070111853 from respondent No.4 vide invoice No.S2-512 for Rs.59,990/- . It is said that while using, the mobile was continuously generating lot of heat and it was impossible to be used as a mobile. In addition to that the battery was getting drained rapidly. As such, the petitioner approached respondent No.6, who inturn forwarded the mobile to respondent No.5. After repair, though the instrument stopped generating heat, but it was not able to log in with the credentials. When the same was brought to the notice of respondent No.5, he inturn informed that the processor has to be replaced and instructed the petitioner to return the same to respondent No.6, but respondent No.6 refused to take back the mobile and also refund the amount though the mobile was under warranty. Hence, the petitioner lodged a report to the Station House Officer, Banjara Hills Police Station on

22.07.2016. After enquiring into the matter, the police issued the impugned letter stating that the contents of the report do not disclose any cognizable offence and the instrument is not a duplicate one but it seems to be a defective one. Anyhow, he advised the petitioner to approach the consumer forum for redressal of his grievance. Challenging the said letter the present writ petition came to be filed.

3) Learned counsel for the petitioner submits that the averments in the report made by the petitioner do disclose cognizable offence as such the impugned letter directing the petitioner to approach the consumer form is illegal and arbitrary.

4) The same is opposed by the Government Pleader for Home. He submits that as the contents in the report do not anywhere indicate any inducement or abetment, no offence of cheating is made out.

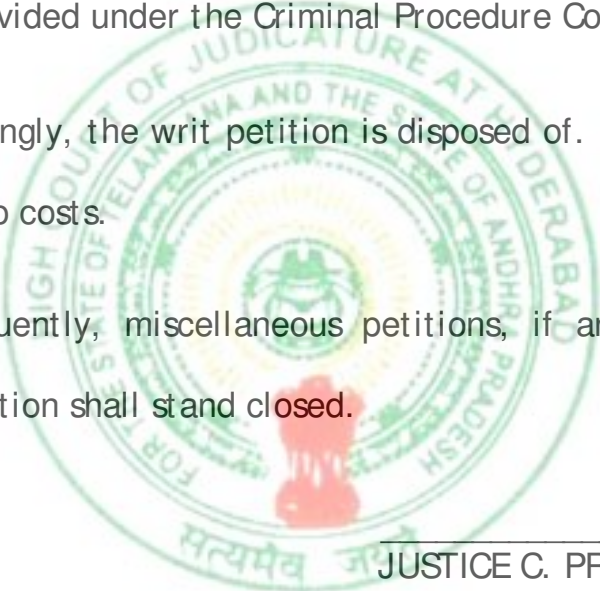
5) As seen from the representation made by the petitioner he claims to have purchased the cell phone from the shop of unofficial respondent, which turned out to be a defective one. It is to be noted here that in terms of judgment of the Apex Court in *Lalita Kumari Vs. Government of Uttar Pradesh*¹, the Sub-Inspector of Police returned the application giving reasons as to why he is not registering a case. According to him, the matter is purely civil in nature and the proper forum to address the grievance of the petitioner is only Consumer Forum since there

¹ (2014) 2 SCC 1

was no deception or inducement on the part of the un-official respondent to purchase the instrument from his shop. In fact, the un-official respondent is neither manufacturer nor a dealer of the said instrument. If there was any deficiency in service, the Sub-Inspector of Police, felt that proper remedy would be to approach the consumer forum. Since there was compliance of judgment of Lalita Kumari (1 supra) I see no merit in the writ petition. However, if the petitioner feels that the ingredients constitute an offence is made out it is always open to him to pursue his remedies provided under the Criminal Procedure Code.

6) Accordingly, the writ petition is disposed of. There shall be no order as to costs.

7) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.



JUSTICE C. PRAVEEN KUMAR

20.06.2017
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