IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9568 of 2018

Arising Out of PS.Case No. -410 Year- 2017 Thana -PATNA COMPLAINT CASE District- PATNA

Samsung India Electronics Pvt. Ltd., a Company incorporated under the Companies Act, 1956 having its registered Office at 6th Floor, DLF Center, Sansad Marg, P.S.- Sansad Marg, New Delhi- 110001 through its authorized Signatory, Manager (Legal) Mr. Manish Kumar son of Late Mukhtar Singh,resident of 504D, Regent, Shipara Suncity, Indirapuram, P.S.- Indrapuram, Gaziabad, Utter Pradesh.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Nikhil Kumar son of Sri Pawan Kumar Sah, resident of G/5, ABC Complex, Exhibition Road, P.S.- Gandhi Maidan, District- Patna.

.... Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate
	:	Mr. Rajesh Ranjan, Advocate
For the Opposite Party No.2	:	Mr. Rajeev Sah, Advocate
For the State	:	Mr. Ashok Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 05-03-2018

Heard Mr. Chitranjan Sinha, learned Senior Advocate appearing for the petitioner, Mr. Ashok Kumar, learned Additional Public Prosecutor for the State and Mr. Rajeev Sah, learned Advocate, who appeared suo motu on behalf of the complainant opposite party no.2.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing of the order dated 11.10.2017 passed in

Complaint Case No.410(c) of 2017 by the learned Judicial Magistrate, 1st Class, Patna by which she has summoned the petitioner and three others under Section 204 of the Cr.P.C. after finding a prima facie case to be made out under Sections 406 and 420 of the Indian Penal Code (for short 'the IPC').

3. The short facts of the complaint according to the complainant are that he is a businessman residing in Patna. He purchased a Samsung Grand Prime 4G Smart Phone on 08.01.2016 on payment of rupees ten thousand from a shop named as 'New Mahi Telecom' situated at Twin Tower, South Gandhi Maidan, Patna. After 4-5 months, the said phone began to give trouble and the same was presented to M/s Baidnath Electronics, the Samsung authorized service centre, but even after keeping the phone for 2-3 days problem in the phone could not be sorted out. Thereafter, the said phone was sent to the said service center on several occasions, but no improvement was made in the performance of the phone rather the phone allegedly began to heat up and battery backup was also affected adversely. Again, on 26.12.2016, the phone was sent to the service centre, but the same was not handed over to the complainant on the fixed date. Thereafter, the complainant lodged his complain to the consumer care centre of the company, but even after repeated assurance, his phone was returned to him in damaged condition which he refused to accept. Thereafter, he sent a legal notice dated 20.01.2017, which was not replied by the petitioner company.

4. On the basis of the aforesaid allegations, the complainant alleged that the accused persons have cheated him by not fulfilling the promise of the warranty and proper service. It was also alleged that the accused persons are selling inferior products and misappropriated his money on false promise of providing quality product.

5. The complainant was examined on solemn affirmation under Section 200 of the Cr.P.C. and on behalf of the complainant one more witness was examined in course of enquiry conducted under Section 202 of the Cr.P.C. After conducting enquiry, the learned Magistrte vide her order dated 11.10.2017 summoned all the accused persons named in the complaint. They are Samsung India Electronics Private Limited, Managing Director, Samsung India Electronics Private Limited, Mr. Ashwathi Nair, Senior Executive Customer Experience, Samsung India Electronics Private Limited and M/s Baidnath Electronics, an authorized service centre of the Company situated at Patna.

6. Assailing the impugned order dated 11.10.2017, learned Senior Advocate appearing for the petitioner submitted that allegation of selling of inferior or faulty products made by the complainant is false and fabricated. He submitted even if the entire allegations made in the complaint are taken to be true at its face value, at best, a civil claim would be made out, but just in order to extort money from the petitioner and blackmailing the accused persons essentially a consumer dispute has been given a colour of criminal case. The averments made in the complaint would clearly show that the complainant had used the phone for more than eleven months without any complaint and his first claim was recorded in the company authorized service centre on 12.12.2016. His phone was delivered to him after necessary repair, but he refused to receive the same complaining deficiency in the service.

7. On the other hand, learned Advocate appearing for the complainant submitted that there is no error in the order impugned passed by the learned Judicial Magistrate whereby the petitioner and others have been summoned to face trial. He submitted that the allegations made in the complaint do attract ingredients of cognizable offences punishable under Sections 406 and 420 of the IPC. The complainant was assured of the quality of the phone by the accused persons and the promise made by the accused persons regarding quality of phone set was apparently false as the same went out of order within few months of purchase. He submitted that simply because the complainant may also have remedy before the consumer court, the same would not mean that he would be barred to launch criminal prosecution against accused persons, if ingredients of the offences alleged are clearly attracted.

8. I have heard learned counsel for the parties and perused the record.

9. To constitute an offence of cheating, as defined under Section 415 of the IPC, it is imperative that the intention of the parties at the time of making the promise was dishonest and fraudulent.

10. In **Hriday Ranjan Prasad Verma and Others vs. State of Bihar and Others [(2000)4 SCC 168],** the Supreme Court held the offence of cheating defined under Section 415 requires:-

> *"(1) deception of any person;*
> *(2)(a) fraudulently or dishonestly inducing that person*
> *(i)to deliver any property to any person, or*
> *(ii)to consent that any person shall retain any property; or*
> *(b)intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property."*

11. Hence, ingredients of inducement, promise and dishonest intention are *sine quo non* for constituting an offence of cheating. Those ingredients are entirely missing in the case in hand.

12. In **Hriday Ranjan Prasad Verma** (supra), the Supreme Court further held as follows:-

> *"To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."*

13. In the present case, the admitted case of the complainant is that the authorized service centre of the petitioner company attended the complaint made by the complainant and returned the phone after repair. However, the complainant was not satisfied with the service rendered by the authorized service centre. Thus, he refused to receive the phone. The said act of authorized service centre cannot be said to be an act of dishonest intention right from the beginning, as mere failure to keep up the promise cannot be said to be an offence of cheating. Moreover, there was no occasion for the petitioner company to make any promise at the initial stage.

14. The phone in question was admittedly sold and sale amount was received by the local shop-keeper, who was acting independently. The petitioner company was responsible only for after sale service, which it has performed through its authorized service centre in accordance with the terms and conditions of the warranty.

15. Apart from Section 420 of the IPC, as noted above, the learned Magistrate has also taken cognizance of the offence punishable under Section 406 of the IPC. Section 406 of the IPC prescribes punishment for the offence of criminal breach of trust defined in Section 405 of the IPC.

16. In **Binod Kumar and Others vs. The State of Bihar and Another [(2014) 10 SCC 663,** the Supreme court laid down as follows:-

> *"Section 406 IPC prescribes punishment for criminal breach of trust as defined in Section 405 IPC. For the offence punishable under section 406 IPC, prosecution must prove:*
> *(i) that the accused was entrusted with property or with dominion over it; and*
> *(ii) that he (a)misappropriated it, or (b) converted it to his own use, or (c) used it or (d) dispose of it. The gist of the offence is misappropriation done in a dishonest manner. There are two distinct parts of the said offence. The first involves the fact of entrustment, wherein an obligation arises*

in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created."

17. In **Rashmi Kumar(smt.) vs. Mahesh Kumar Bhada [(1997) 2 SCC 397**, the Supreme Court held as follows:-

"The essential ingredients for establishing an offence of criminal breach of trust as defined in Section 405 and punishable under Section 406, IPC with sentence for a period upto three years or with fine or with both, are:(i) entrusting any person with property or with any dominion over property; (ii) the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or wilfully suffering any person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust."

18. In the present case, even if the entire averments made in the complaint petition are taken at its face value, none of the ingredients of Sections 405 and 406 of the IPC are attracted.

19. In view of the discussions made above, I am of the considered opinion that allowing the prosecution to continue on the basis of the complaint would amount to an abuse of process of the court. The court below failed to appreciate that a dispute of civil nature has been given a cloak of criminal proceeding. The learned Magistrate before summoning the accused persons was required to appreciate the well settled position in law that criminal proceedings are not a short cut for resolving disputes of civil nature.

20. In view of the discussions made above, the impugned order passed by the court below cannot be sustained.

21. Accordingly, the impugned order dated 11.10.2017 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No.410(c) of 2017 and the entire proceedings arising out of said complaint are set aside.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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