

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CRM-M-24977-2016

Date of Decision:12.10.2018

Jitender Kumar

.....Petitioner

Versus

State of Haryana and another

.....Respondents

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

Present: Mr. Aditya Sanghi, Advocate,
for the petitioner.

Mr. Manish Bansal, D.A.G., Haryana.

None for respondent No.2.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of FIR No.0031 dated 22.01.2016 under Sections 420, 120-B IPC, registered at Police Station Civil Lines Hisar, District Hisar.

The aforesaid FIR was registered at the behest of complainant- Rajpal Malik, an Advocate by profession and practicing in the District Courts at Hisar. As per FIR on 27.11.2015 at about 6.00 PM, complainant visited the shop of the petitioner-accused to buy a new Mobile. The petitioner had shown him a Mobile set "Lava KKT 28 plus" and claimed it of good company, having good quality and features etc. The complainant had purchased the mobile after paying the bill amount. After reaching home, the complainant inserted his SIM card in the mobile set and found that the right side keypad buttons of the set like "And and Digit Number 6" were not working on its pressing and due to this reason neither the mobile nor any

the petitioner-accused, who checked the set and found that there is a problem with the keypad. Thereafter, the accused asked the complainant to come in the morning, whereafter they will meet the customer care employee of the company and will found a solution. On 28.11.2015 at 10 AM, the complainant went to the accused and was told to visit the customer care centre of the company. The complainant visited the customer care centre and narrated the problem with the set. The employee of the service centre had told the complainant that the company seal of his phone is broken and the complainant has been sold a bad/useless/used phone. He (complainant) was informed that now there is no guarantee on this phone and the set had been sold to him fraudulently. The complainant registered a complaint with the headquarters of the company on 28.11.2015, but no reply was sent to the complainant. Even an email dated 14.12.2015 was sent to the Company, but without any reply.

In reply, the company has told the complainant that the whole fault lies with the accused, who has sold a used/useless mobile set. Thereafter, the complainant had informed everything to the petitioner-accused and complained that he has been sold this phone fraudulently and it has caused undue loss to him. The accused has gone to the extent to state that money has already been digested and these are all business tactics. The matter was reported to the police but no action was taken. Thereafter, the complainant had taken the recourse to Section 156(3) Cr.P.C., which led to registration of FIR in the case.

Nobody is present on behalf of the respondent-complainant, despite having been served in the case.

Learned counsel for the petitioner has argued that the petitioner

is an authorized dealer who sold the aforesaid mobile set for a total sale consideration of ₹1400/- as against the dealer price of ₹1235/-. The complainant had purchased the mobile phone vide tax invoice No.11875 dated 27.11.2015 from the shop of the petitioner i.e. Fancy Stationer, CG28-29, Pushpa Complex, Hisar. The complainant found the mobile set to be faulty after inserting the SIM card and accordingly, on 28.11.2015 has approached the petitioner regarding the defect. The petitioner had asked the complainant to approach the customer care centre for his grievance. The official of the customer care centre checked the mobile phone and informed the complainant that “this hand-set is out of warranty because of no screw or screw seal”.

Learned State Counsel on instructions from ASI Dharamvir Singh states that the complainant on visit to the service station/customer care centre/service centre, was asked to leave the hand-set for its assessment/checking, but the complainant did not leave it at the service centre. One Mohit Mehta, an authorized person of the service centre made a statement before the police that complainant-Rajpal Malik had come to service centre on 28.11.2015 at 4.00 PM, and no job seat was prepared by the company. He stated that the complainant had restrained him (Mohit Mehta) from opening the mobile set and did not leave the set there, but otherwise, the hand-set was in warranty and for this ELS was mandatory. When this mobile was brought to the service centre, a screw was found missing which could have been a manufacturing defect, but the complainant did not allow the service centre to open the mobile. There is complete contradiction in the complaint submitted by the respondent-complainant, as at no point of time, Mohit Mehta or any other person from

the service centre has ever said that the petitioner has been sold a bad/useless/used phone.

I have heard learned counsel for the petitioner as well as learned State Counsel.

There is no dispute that the complainant had purchased the hand-set for ₹1400/- and the petitioner who is a dealer of the company had sold the set for an amount of ₹1235/- to the complainant. To get mobile set repaired, the complainant though had visited the service centre, but when the complainant was asked to leave the mobile set for its checking by an official of the service centre, he did not leave the same with the service centre. A screw was found missing in the hand-set, but the complainant did not allow the service centre to open the mobile. Thus, unless the service centre is allowed to see the set, so as to examine any fault in it, it is too premature for the complainant to state that he was sold a bad/used set. Before this Court, the proceedings were stayed on 26.07.2016 and despite having been served, the respondent-complainant has opted not put in appearance. The averment made in the present petition and argument so raised by the petitioner are not rebutted.

Accordingly, the present petition is allowed and FIR No.0031 dated 22.01.2016 under Sections 420, 120-B IPC, registered at Police Station Civil Lines Hisar, District Hisar, is hereby quashed.

October 12, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No