

**203 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 6041 of 2017 (O&M)

Date of Decision: 12.09.2018.

Rahul Pam Pvt. Ltd.

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Parminder Singh, Advocate,
for the petitioner.

Mr. Sanjay Kumar Saini, AAG Haryana.

Mr. Rishi Lal, Advocate,
for respondent No.3.

JITENDRA CHAUHAN.J.(ORAL)

This civil writ petition under Articles 226 and 227 of the Constitution of India has been filed for setting aside the order dated 17.02.2017, Annexure P-6 passed by the Commissioner, the Persons with Disabilities (Handicapped) Social Justice and Empowerment Department, Haryana (for short “the Commissioner”) vide which a direction has been issued to lodge FIR against the petitioner.

It is contended that on 16.06.2016 respondent No.3 booked a Grand ASTA Automatic A-7 car and deposited an amount of Rs.5000/- with the petitioner. Thereafter, the manufacturing of said model was discontinued and the company launched the upgraded model, therefore, the only one vehicle in the aforesaid model was available in the showroom. Respondent No.3 was informed time

and again that the car was on the display in the showroom and it was the last piece of the old model car, therefore, the petitioner advised respondent No.3 to take delivery of the car without any delay but, respondent No.3 submitted that he was seeking permission to purchase the said car under handicapped quota for the purpose of relaxation in the excise duty. The petitioner kept waiting and ultimately in the last week of July, 2016, it sold the car to another person. Respondent No.3 visited the showroom of the petitioner on 20.07.2016. The petitioner made an offer to sell a new model car and to adjust the excise duty relaxation and asked respondent No.3 to submit document through e-mail message on 21.07.2016. Respondent No.3 did not turn up but instituted a false complaint under the Consumer Protection Act. Thereafter, he filed another complaint before the Commissioner. The Commissioner had passed the following order:-

“Therefore, this Court recommends to the Superintendent of Police Karnal to register a matter of breach of trust and for registration of case under Section 420; case of causing social-financial and mental pain against Rahul Pam Pvt. Ltd., near Tau Devi Lal Chowk, G.T. Road, Karnal. The Superintendent after taking action against the company with immediate effect may inform to this Court.

Besides, this Court recommends to the Ministry of Heavy Industries and Public Enterprises, Government of India, New Delhi to take appropriate action against the company.”

It has been further contended by the learned counsel

for the petitioner that taking into consideration the entire facts and

circumstances, no case under Section 406 or 420 IPC is made out at all.

It has been further submitted that the petitioner is ready and willing to refund double the amount of earnest money.

On the other hand, the learned counsel for respondent No.3 contends that the petitioner has harassed respondent No.3, who is a handicapped person, by selling the car in question to somebody else against understanding which has caused great mental agony to him.

Heard.

Considering the fact that an amount of Rs.5000/- was deposited by respondent No.3 as booking amount of the car in question and thereafter the petitioner kept on waiting till last week of July 2016, however, respondent No.3 did not turn up and remained pursuing his case for relaxation in excise duty, the Court feels that the petitioner was not obligated to wait for respondent No.3 indefinitely. The sale of the car to some other person would neither amount to breach of trust nor fraud. The ingredients of the offence under Sections 406 or 420 IPC are conspicuously missing. In the circumstances, the recommendations made by the Commission in the impugned order dated 17.02.2017 (Annexure P-6) are uncalled for and liable to be set aside. At the most, respondent No.3 can be compensated in terms of costs by directing the petitioner to pay the double the amount of earnest money of Rs.5000/- i.e. Rs.10,000/- as offered by the petitioner, which would be in the fitness of things, the present petition is disposed of with a direction to

the petitioner to refund double the amount of the earnest money i.e. Rs.10,000/- to respondent No.3 through registered post within a period of six weeks from the date of receiving of certified copy of the order. The recommendations made in the order, Annexure P-6 are hereby quashed.

12.09.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No