

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

101

**CRM-38415-2022
in/and CRM-A-2196-MA-2017
Decided on : 18.11.2022**

Jagdish Chandra Gajjar

... Applicant

Versus

State of Haryana and another

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE JAGMOHAN BANSAL**

Present: Ms. Nidhi Bansal, Advocate,
Legal Aid Counsel for the applicant.

G.S. Sandhawalia, J. (Oral)

CRM-38415-2022

Application has been filed for recalling the order dated 29.08.2022, whereby the application for leave to contest was dismissed for want of prosecution.

In the application it has been averred that the appellant was being represented through a Legal Aid Counsel, who did not appear on the dates fixed and when the applicant came to know about the dismissal of case then he contacted the legal aid for a new counsel to be engaged. Resultantly, the present counsel has put in appearance. Application is supported by affidavit of the applicant.

Keeping in view the averments made in the application, sufficient cause is made out to recall the order dated 29.08.2022. Accordingly, the application is allowed and the case is restored to its original number and position and taken up on board today itself.

CRM-31782-2017

Application for condonation of delay of 60 days in filing the

application for grant of leave to appeal, is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 60 days in filing the application for grant of leave to appeal is condoned.

CRM stands disposed of.

CRM-A-2196-MA-2017

The present application has been filed under Section 378 (4) Cr.P.C. for grant of leave to appeal against the order of acquittal dated 08.05.2017 passed by the Judicial Magistrate 1st Class, Gurugram (hereinafter referred to as 'JMIC'), whereby the complaint filed under Section 420, 467, 468, 471 IPC was dismissed.

The Trial Court found that it was a case of supply of faulty printer of Fargo Company and the contention was that the respondent No.2-accused was not the authorized dealer of Fargo Company and he had forged the certificate and letter-pad of the company. It was noticed that there was a delivery of printer by the said company including the warranty and declaration of conformity and receiving of the cleaning kit. It was, accordingly, held that the respondent was only a Sales Manager of Print Essentials and the employee, thus, could not be summoned without the manufacturer or supplying company being summoned. It was also noticed that the manufacturer Fargo Company had been given up by the complainant, vide separate statement recorded on 18.02.2014. The transaction of purchasing of the printer was of the year 2003 and the complaint was filed in the year 2006. It was also further noticed that the District Consume Forum had passed an order dated 30.12.2005 (Ex.J3) and held that printer was defective and directed the respondent to refund

the amount on receiving back the said printer. The same had not been returned as per the execution petition and orders Exs.D4 & D5, though the supplier was ready to refund the amount of Rs.50,000/-. Resultantly, it was held that mere breach of contract would not amount to cheating while placing reliance upon the judgment of the Apex Court passed in **Hridaay Rajan Prasad Verma Vs. State of Bihar, 2000 (2) RCR (Crl.) 484**. It was further noticed that there was no evidence on record to show that accused forged the documents to induce the complainant to purchase the printer and no direct evidence was present that the accused Anuj Mehta was not dealer of Fargo Company. Resultantly, it was held that no case is made out under Sections 467, 468, 471 IPC and the benefit of acquittal was granted.

Counsel for the applicant has submitted that it was a case of loss in as much as even on account of the defective printer the job work had not been carried out and results were not as per the technical standards as laid down on the backside of printer selection guide. The card printing order which was received, was lost and, therefore, there was loss of business. It is also submitted that there was a lack of response to come up for repairs inspite of several telephonic calls and serving legal notice.

We are of the considered opinion that the order of the Trial Court does not suffer from any infirmity. It is a classic case where the cloak of criminal proceedings have been given to a dispute which is essentially civil in nature. Reliance can be placed upon the judgment passed in **G. Sagar Suri Vs. State of U.P., 2000 AIR (SC) 754**, wherein

the Apex Court has held that if a matter which is essentially of civil nature has been given a cloak of criminal offence, the proceedings are liable to be quashed. It was also held that the criminal proceedings are not a short cut of other remedies available in law, while allowing the appeal and quashing the proceedings pending before the Chief Judicial Magistrate. Similar view has also been taken in **M/s Indian Oil Corporation Vs. NEPC India Ltd. & others, 2006 (3) RCR (Crl.) 740**, wherein the earlier judgment passed in **G. Sagar Suri (supra)** had been relied upon. Thereafter, also in **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) & others, 2015 (4) RCR (Crl.) 883**, on the same principles the appeal filed by ARCI was allowed and criminal proceedings pending before the II Metropolitan Magistrate at Cyberabad had been quashed.

The question of cheating as such does not arise, specially more so that once the complainant himself had preferred proceedings before the Consumer Court apparently for defective goods and he was also given the benefit of refund of amount provided that he would surrender the printer. But he had chosen himself not to surrender the Printer and apparently continues to use it. Therefore, it cannot be said that the printer was not upto his expectations and, it was not a case of dishonest inducement or delivery of goods. It is a case of purchase of the printer which may not have been upto the standards, performance and expectations of the complainant. The question of forgery also under the provisions of Section 420, 467, 468, 471 IPC are not attracted, since there was nothing on record to show that the accused/respondent No.2 was not

a dealer of the said company and rather the complainant had given up the summoning of the manufacturer as such. It was only the said accused who could have informed that respondent No.2/accused was not a dealer of the company.

In such circumstances, we are of the considered opinion that judgment of the Trial Court does not suffer from any vice or perversity which is liable to be interfered with. Accordingly, no case for grant of leave to appeal is made out and the application stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

18.11. 2022

Naveen

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No