

CRM-M-7843-2017
Date of decision: 15.11.2022

.....Petitioner

...Respondent

Mr. Kanwal Goyal, Advocate
for the respondent.

Learned counsel for the petitioner contends that the petitioner purchased a vehicle after he retired from the Army and after some time due to some manufacturing defects in the chassis, the said vehicle started rusting and aggrieved by the same petitioner filed a criminal complaint under Section 420 of IPC against the respondent, who was summoned, the trial court framed charges vide order dated 05.01.2016. Thereafter, the revision petition filed by the

respondent against the said order was accepted vide order dated 03.12.2016 and the respondent was discharged from the charges, which is not sustainable in the eyes of law.

Learned counsel for the respondent contends that the present petition is misconceived and a result of malafides as a civil dispute, which already stands settled amongst the parties i.e. Mahindra and Mahindra (Manufacturer of vehicle) and (petitioner/purchaser) is being given a criminal colour by implicating the dealer (Imperial Motors of whom the answering respondent was a Managing Director) who has already been absolved of his civil liabilities by Consumer Courts by giving a finding of fact regarding the vehicle suffering from manufacturing defect. He further contends that the malafides are further apparent from the fact that after more than five years of accrual of the alleged cause of action and after availing compensation as granted by the Civil/Consumer Courts, the petitioner filed the criminal complaint on a similar set of allegation as stated before Consumer Forum, to blackmail and extort money from the answering respondent, who has no concern whatsoever.

He further argues that the Revisional Court in its order dated 03.12.2016 (Annexure P-2) has rightly set aside the wrong committed by the trial Court while framing charges (Annexure P-1) against the respondent, by rightly observing in Paragraphs 9,10,11, and 12 of its order that the trial Court had failed to consider the orders Ex.DZ3, Ex. DX and Ex.DY passed by, District, State and National Consumer Forums whereby the grievances of petitioner stand redressed.

I have heard learned counsel for the parties.

Vide order dated 05.10.2018 notice of motion was issued and as per vide order dated 20.04.2022 the respondent had filed its reply.

Factual matrix of the case are that there is no dispute that the

Camper DI Long 2 WD CMVR vehicle which got rusted after the purchase and the same was not a brand new vehicle rather than the garb of a new vehicle the old vehicle was foisted upon the petitioner by the respondent, who is Proprietor of Imperior Motors and the same is of civil nature and is a second round of litigation once having the remedy under the Consumer Protection Act where the State Consumer Disputes Redressal Commission, Punjab while passing the order dated 30.03.2012 observed that since the vehicle got rusted within a few months after the purchase, the vehicle was obviously of inferior quality for which the manufacturer was liable as such the petitioner was entitled for compensation which was also awarded to the tune of Rs.1,25,000/-. In the order passed by the State Commission, it was observed that the respondent did not have any concern with the defect in the vehicle rather the same was a manufacturing defect. The Additional Sessions Judge, Bathinda while accepting the revision filed by the respondent mentioned in the order that the only aspect which was to be seen against the respondent was whether the respondent had committed any offence under Section 420 IPC or not and to constitute a crime, act (actus reus) and intent (mens rea) must concur to constitute a crime which is the basic ingredient of an offence but in this case no such act has been done by the accused/respondent which could have attracted the mischief of Section 420 of IPC because the order passed by the State Commission had categorically termed it to be a manufacturing defect, for which Mahindra and Mahindra Company was liable and the respondent was exonerated even in the civil proceedings i.e. complaint filed before the Consumer Forum. It is also observed in the order dated 03.12.2016 that there was no material to show on record and the respondent had in any way cheated the complainant, while selling the Bolero Camper vehicle in question and, if any, fault or manufacturing defect was there then for the said act, only the manufacturer was liable against whom the petitioner did not take any action and

the manufacturer was not even impleaded as a party in the criminal complaint. Accordingly, the respondent was discharged under Section 420 of IPC and the impugned order dated 05.03.2016 passed by the trial Court was set aside.

A perusal of the order dated 05.03.2016 shows that the trial Court did not record any reason while framing the charges against the respondent as to how the respondent committed an offence under Section 420 of IPC whereby the dispute is purely civil. Further, it was found by the Revisional Court that none of the ingredients of the offence punishable under Section 420 of the IPC have been found to exist. Also, neither the complaint nor the order passed by the trial court contains any reference to the essential requirements underlying Section 420 of IPC. Moreover issue already stands adjudicated by the consumer court but the trial court ignored this aspect and wrongly summoned the respondent, such action is not sustainable.

In this backdrop, this Court is not inclined to exercise it's powers under Section 482 of Cr.P.C. as the impugned order dated 03.12.2016 had been rightly passed and doesn't require any interference. Consequently, the present petition is hereby dismissed.

15.11.2022
Sumit Gulati/Sapna

(DEEPAK MANCHANDA)
JUDGE

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