

20.12.2024
Item No.19
Ct. No.35
dc.

W.P.A. 29676 of 2024

**Omar Faruk Mandal
versus
The State of West Bengal & Ors.**

Ms. Devi Priya Mitra ... For the Petitioner.

Mr. Ashim Kumar Ganguly,
Mr. Tarak Karan ... For the State.

Ms. Soni Ojha ... For the Respondent No.4.

Affidavit-of-service filed in Court today be kept with the record.

Learned advocate appearing for the petitioner submits that the petitioner purchased a machine by way of paying Rs.17,00,000/- to respondent no.4. However, the machine was of sub-standard quality and did not operate to its expectations and as such, there has been a financial loss caused to the petitioner. The petitioner not only communicated to the private respondent no.4, but also communicated to the Superintendent of Police, South 24-Parganas as well as the Officer-in-Charge, Beniapukur Police Station.

Learned advocate appearing for the State has drawn the attention of the Court to the documents which have been enclosed by the petitioner in the writ petition and submitted that in the year 2022, in the customer service report there was signature of the customer i.e. the petitioner himself wherein satisfaction was expressed by the petitioner. Subsequently in the year 2023 when inspection

was done, certain issues cropped up and to that effect, the customer service report reflects that the same was also signed by the petitioner.

According to the State, the nature of complaint which has been addressed to the police authorities refers to service dispute and even the petitioner did not approach the jurisdictional police station and made complaint to the police authorities who are far away from the place where the registered office of the petitioner is situated in respect of the gold testing centre.

Learned advocate appearing for the respondent no.4 submits that already a complaint has been preferred before the Consumer Disputes Redressal Forum and the said case is at the evidence stage. The petitioner has suppressed the said fact in the writ petition and filed the present application before this Court.

I have considered the submissions advanced on behalf of the petitioner, the State and the respondent no.4 and I find that the petitioner initially in the year 2022 has for a period of about 11 months made no complaint. The issues cropped up on and from January, 2023. Accordingly, disputes and difference arose between the petitioner and the respondent no.4. Although initiation of a proceeding before the Consumer Disputes Redressal Forum do not prevent a party

from approaching the criminal court, but the police having not acted upon may be for reasons that the factors relating to initial deception was missing in the complaint which was addressed to the police authorities. The same obviously is a subject-matter of appreciation. As such, having considered the whole of the facts which have been presented by the petitioner, the respondent no.4 and the State, I am of the view that since the State authorities have not responded, the petitioner would be at liberty to approach the jurisdictional Magistrate under Section 175(3) of the BNSS. The learned Magistrate would take into account the factual aspects and then decide whether any cognizable offence has been made out for further proceeding with the application filed by the petitioner.

With the aforesaid observations, the writ petition being WPA 29676 of 2024 is disposed of.

As no affidavits have been called for, the accusations made against the private respondents and/or the State-respondents are deemed not to have been admitted.

There will be no order as to costs.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order,
if applied for, be supplied to the parties upon
compliance with all requisite formalities.

(Tirthankar Ghosh, J.)