
(2023) 08 JH CK 0019

In the Jharkhand High Court

Case No : Writ Petition (Criminal) No. 238 Of 2023

Achyuta Samanta And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Citation : (2023) 08 JH CK 0019

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Saurabh Shekhar, Anurag Kumar, Aman Dayal Singh, Shail Lakra, Amitesh Kumar Geasen

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Vide order dated 12.05.2023, notices were issued upon respondent no.2 and notice upon respondent no.2 has been effected. On 18.07.2023, on repeated calls, nobody had responded on behalf of respondent no.2 and that is why, the matter was adjourned with a view to provide one more opportunity to respondent no.2 and it was also observed that if respondent no.2 will not appear on the next date of listing, this case shall be decided in her absence. Today is the identical situation. On repeated calls, nobody has responded on behalf of respondent no.2.

2. In view of that, this writ petition is being heard in absence of respondent no.2.

3. Heard Mr. Saurabh Shekhar, learned counsel for the petitioners and Mr. Amitesh Kumar Geasen, learned counsel for the State.

4. This petition has been filed for quashing the entire criminal proceeding arising out of Complaint Case No.2719 of 2021 including the order taking cognizance dated 12.07.2022, pending in the court of the learned Judicial Magistrate, 1st Class, Jamshedpur.

5. The complaint case was filed alleging therein that the complainant had taken admission in KIIT School of Management, KIIT University for MBA programme, and for this purpose she had made payment of Rs. 1,00,000/- as fee, through Demand Draft of Central Bank of India, bearing Memo No. 008793, dated 07.06.2013 and the University had issued money receipt, dated 12.06.2013. The complainant thereafter attended the classes for about a week, after which she developed severe spinal problem, and had to undergo medical treatment, so could not attend classes. The complainant had informed the University about the reason of absence. On 25.09.2013, one e-mail was received from the petitioner no.3 that if she does not join her course by 27.09.2013, she would be debarred from MBA programme automatically. That on receipt of the e-mail dated 25.09.2013, reply was preferred on the same date, that she could not attend the course due to the long period of ill health, being undergone by her. Thereafter the complainant went to attend the classes in the month of October, 2013, where she was forced to deposit advance fee of the second semester for the first year of her programme, to the tune of Rs. 2,80,000/- again through Demand Draft. The amount was deposited vide Demand Draft dated 03.10.2013. When she went to join the classes, she came to know that her admission has already been cancelled, prior to the deposition of Demand Draft, which had already been encased by the University officials. The complainant had no knowledge about this fact. Thereafter the complainant along with her father approached the petitioner no.1, who is Head of the institution, but he also denied to advance any relief in terms of refunding the amount. The case is that the amount that has been taken for admission in the second semester, to the tune of Rs. 2,80,000/-, was received by the accused persons, knowingly well that the admission of the complainant has already been cancelled. The accused persons refunded the amount of Rs. 70,800/- for non-use of different amenities like hostel facility, mess facility, laptop, etc. The amount of Rs. 3,09,200/- was withheld. It has also been made that the enquiry was conducted in which the committee has given a finding about the admission of the guilt of the accused persons. There are references of legal notices. Further the complainant had raised the fee amount through bank loan, for which she has suffered certificate case proceeding. The complainant had also approached the police, which denied to take the case against the accused persons, therefore, the present complaint petition was filed being Complaint Case No. 2719 of 2021.

6. Mr. Saurabh Shekhar, learned counsel for the petitioners submits that petitioner no.1 is the founder of KIIT deemed to be University, Bhubaneswar, petitioner no.2 is the Dean of the said University and petitioner no.3 is the Director of the said University. He submits that respondent no.2 was admitted in the said University in the year 2013 for MBA course and in terms of brochure, she has deposited fee and other amount with regard to the laptop and mess fee etc. He further submits that subsequently she was not attending the classes and on the request of the father of respondent no.2, the name of respondent no.2 was cut-off from roll of the University in 1st semester. She was again admitted

on receiving prescribed fee in 2nd semester. He also submits that in view of the policy of the University, the entire amount was not returned to respondent no.2. He submits that for that legal notice was received by the University and it was properly replied. He further submits that in terms of the policy of the University, the sum of Rs.70,800/- was refunded in favour of respondent no.2, which has also been admitted in paragraph 16 of the complaint petition. He submits that in this background, so far as criminal case is concerned, that is not made out. He submits that at best it is the case of Consumer Redressal Forum and criminality is not made out. To buttress his arguments, he relied upon the judgments passed in *Buddhist Mission Dental College & Hospital v. Bhupesh Khurana and others*; [(2009) 4 SCC 473], *Ashok Kumar Roy v. State of Jharkhand*; (MANU/JH/0162/2022) and *Alok Kumar Singh v. the State of Jharkhand*; (MANU/JH/0112/2022).

7. On the other hand, Mr. Amitesh Kumar Geasen, learned counsel for the State submits that the learned court has taken cognizance looking into the complaint petition as well as the solemn affirmation and has rightly taken cognizance. There is no illegality in the order taking cognizance.

8. In view of the above submission of the learned counsel for the parties, the Court has gone through the materials on record including the contents of the complaint petition and finds that admittedly in para 20 of the complaint petition it has been disclosed that the complainant had availed loan facility to pay her educational fees from the Central Bank of India and being unable to repay the same, she along with her father are now facing Certificate Case proceedings being Certificate Case No.128/B1/2017-18 and as per the order of the Certificate Officer, the complainant is liable to repay the amount of Rs.9 Lakhs to Central Bank of India and a warrant has also been issued against the complainant and her father for no fault on their part but due to deception practiced on them by the accused persons. Thus, it is clear in the complaint petition itself the cause of filing of the complaint petition as it has been disclosed that the complainant was facing certificate case arising out of loan amount. Further, the complainant was admitted in the University in the year 2013 and the dispute is of the year 2013 and the certificate case is of the year 2017 and the complaint case has been filed in the year 2021, which further suggest that filing of the case was after thought. Annexure-5 is the document issued in the handwriting of the father of the complainant, wherein, the father of the complainant has requested to cancel the admission of her daughter and pursuant to that the same was cancelled. Annexure-6 series are the correspondences of the institution, which recommended to refund the amount of Rs.70,800/-. The breakup of the said amount has also been disclosed in the said Annexure. In this background, it appears that the complaint case is not tenable. No criminality is made out. What has been done by the petitioners, that is in terms of the policy and at best, this case is of civil nature, for which, the petitioners can be sued before the competent authority of civil jurisdiction or before the District Consumer Forum for deficiency of service.

9. It is well settled that any deficiency detected post-purchase opens up an avenue for the aggrieved consumer to seek relief before the Consumer Fora. A reference may be made to the judgment passed by the Hon'ble Supreme Court in *Debashis Sinha v. R.N.R. Enterprise*; [(2023) 3 SCC 195]. Paragraph 16 of the said judgment is quoted hereinbelow:

"16. We have failed to comprehend as to what NCDRC meant when it observed that the appellants "ought to have known what they were purchasing". More often than not, the jurisdiction of the Consumer Fora under the CP Act is invoked post-purchase. If complaints were to be spurned on the specious ground that the consumers knew what they were purchasing, the object and purpose of the enactment would be defeated. Any deficiency detected post-purchase opens up an avenue for the aggrieved consumer to seek relief before the Consumer Fora. The reasoning of NCDRC, thus, indefensible. Indeed, the appellants had purchased their respective flats on payment of consideration amounts as per market rate and there was due execution and registration of the deeds of conveyance preceded by agreements for sale and these instruments did indicate, inter alia, what formed part of the common facilities/amenities; however, the matter obviously could not have ended there. Whether the appellants had been provided what the respondents had promised did survive for consideration, which does not get reflected in the impugned order."

10. In view of the above facts, reasons and analysis, the entire criminal proceeding arising out of Complaint Case No.2719 of 2021 including the order taking cognizance dated 12.07.2022, pending in the court of the learned Judicial Magistrate, 1st Class, Jamshedpur are quashed.

11. Accordingly, this petition is allowed and disposed of.

12. Interim order, if any granted by this Court, stands vacated.