
(1995) 08 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

G.L.GOSWAMY

APPELLANT

Vs

MANDOVI MOTORS

RESPONDENT

Date of Decision : 08-08-1995

Acts Referred:

Citation : 1995 3 CPJ 553 : 1995 3 CPR 116

Hon'ble Judges : D.R.Vithal Rao , Susheela Cheluvaraju J.

Final Decision : Complaint dismissed

Judgement

1. IN this complaint under Section 17 read with Section 12 of the Consumer Protection Act, 1986, the complainant has sought compensation in a sum of Rs. 19,04,195/- from the opposite party.

2. IT is the case of the complainant that he registered for allotment of a Maruti 1000 CC. A.C. motor car in the month of August, 1994 with the opposite party and made payment, of a sum of Rs. 3,65,000/- under three banker cheques bearing Nos. 824919, 824918 and 824920 for a sum of Rs. 1,00,000/-; Rs. 1,00,000/- and Rs. 1,65,000/- respectively. He also made payment of a sum of Rs. 55,000/- in cash to a middleman. It is the further case of the complainant that after he registered the motor vehicle and made payment of the said amount to the opposite party, he was able to buy a motor car from a private party and the said car was transferred in the name of the complainant and he took possession of the said car.

The complainant nextly averred that thereafter he requested the opposite party to refund the said amount under those three banker cheques as the car for which he had made payment was no more required by him and the opposite party issued crossed account payee cheque bearing No. 379102 on 5.9.94 for a sum of Rs. 3,65,000/-. The complainant put the said cheque into his account for realisation and in the meanwhile the opposite party issued an instruction for stop payment of the said cheque. It is the grievance of the complainant that the opposite party in collusion with one Moolchand defrauded and cheated him in instructing the bankers to stop payment. The complainant thereafter filed a

complaint before the Cubbon Park Police against the opposite party; the police on receipt of the said complaint registered a case in Crime No. 677/94 under Sections 406, 409 and 420 read with Section 341.P.C.

3. THE complainant nextly averred that he required the said amount badly and by instructing stop payment, the opposite party committed deficiency in service and in that view the complainant sought compensation in a sum of Rs. 19,04,195/including the said sum of Rs. 3,65,000/- paid by him. The opposite party filed its version and admitted the fact that the complainant had made payment of those three banker cheques for a sum of Rs. 3,65,000/- and booked a Maruti 800 A.C. Car in the name Mrs. Gunavathi and Mrs. Savitha Sharma.

4. THE opposite party further averred that in the meanwhile the complainant purchased a Maruti A.C. Car from one Mr. Moolchand and asked for refund of the said amount under those three banker cheques. THE opposite party also issued a cheque in favour of the complainant but in the meanwhile a notice was received from Wilson Garden Police Station that one Moolchand has filed a complaint on 6.9.94 against the complainant for cheating and on the basis of which a case in Crime No. 387/94 under Section 420 I.P.C. had been registered against the complainant and the said complaint was in respect of the above referred three banker cheques and asked the opposite party to stop all the proceedings in the matter till the investigation was over. THE opposite party on receipt of the said notice of the police gave instructions to their bankers to stop payment of the cheque issued in favour of the complainant. The opposite party on the basis of these averments, sought the complaint to be dismissed. During enquiry the complainant filed his affidavit and the Manager of the opposite party filed the affidavit in evidence. The documents filed by the complainant came to be marked as Exs. C. 1 to C. 25 and the documents filed by the opposite party came to be marked as Exs. R. 1 to R. 8.

5. WE heard the learned Counsel for the parties, perused the pleadings and the material on record.

6. IT is not disputed that the complainant had made payment of a sum of Rs. 3,65,000/- under those three banker cheques to the opposite party. Subsequently the opposite party had even issued a cheque for a sum of Rs.3,65,000/- to the complainant to refund the said amount to him. Ex. R. 8 is the copy of the complaint filed by one Moolchand against the complainant to the police, Wilson Garden Police Station, Bangalore. On receipt of which the police registered a case in Crime No. 387/94 under Section 420 I.P.C. against the complainant on 6.9.94. This complaint filed by the said Moolchand against this complainant is in respect of those three banker cheques referred by the complainant in the present complaint.

The police issued a notice to the opposite party on 6.9.94 as per Ex. R. 1 asking the opposite party to stop further proceedings in the matter as a case in Crime No. 387/94 under Section 420 I.P.C. had been registered against this

complainant Dr. Goswamy in respect of those three banker cheques. On receipt of the said notice, Ex. R. 1 the opposite party gave instructions to its bankers to stop payment as per Ex. R 2.

7. EX. R.8 contains a copy of the chargesheet. It shows that police after completing the investigation have already filed a charge-sheet against this complainant for having committed the offence punishable under Section 420 I.P.C. and the said case is pending trial before the Metropolitan Magistrate, Bangalore in C.C. No. 14360/1995. The complainant has averred in his complaint that he had also filed a complaint before Cubbon Park Police Station against the opposite party for having committed the offences punishable under Sections 406, 409 and 420 I.P.C. and on the basis of the said complaint a case in Crime No. 677/94 came to be registered but the complainant has not placed any such material on record to show that on the basis of his complaint any such case came to be registered.

8. THIS complaint came to be filed by the complainant on 16.2.95. Therefore, it is clear that even before the complainant filed this complaint the said matter is subjudice before the Criminal Court as per Ex. R. 8. The National Commission while considering such an aspect of the matter in Santosh Sharma & Ors. v. State Bank of India & Ors. reported in II (1991) CPJ Page 262 (NC) held as under: "The present complaint has been brought against the State Bank of India represented by its Managing Director, Chief General Manager and the Manager of the Rajory Garden Branch as Respondent Nos. 1 to 3 and Respondent Nos. 4 & 5 are said to be the employees of the said Bank who have allegedly assaulted the husband of the complainant No. 1. Complainant No. 1 has claimed to recover from the respondents a sum of Rs. 17,48,000/- by way of compensation for having caused the death of her husband. It is common ground before us that the police investigated into the matter and have registered a criminal case in which respondent Nos. 4 & 5 figure as the accused and the said case is pending trial before the concerned Sessions Judge. The matter is thus Subjudice before the Criminal Court. It is not open to us to hold an enquiry into the factual question as to whether the allegations contained in the complaint petition are correct and true when the matter is pending before the Criminal Court. Quite apart from what has been stated above we are clearly of opinion that this is not a case where there has been any deficiency in service on part of the Bank so as to entitle the complainant to seek relief before the Consumer Redressal Forum, set up under the Act."

Having regard to this principle, as laid down by the National Commission, we are constrained to hold that this complaint is untenable as the said matter is subjudice before the Competent Criminal Court.

9. IN the result, therefore, this complaint fails and it is dismissed.

10. THE parties are directed to pay and bear their own costs. Complaint dismissed.