

(1991) 09 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Side 14440-M of 1990

Inder Singh, Managing Director of M/s.Indersons Motors
Private Limited and ors..

APPELLANT

Vs

Hardev Singh

RESPONDENT

Date of Decision : 26-09-1991

Acts Referred:

Citation : (1991) 2 AICLR 915 : (1992) 1 RCR(Criminal) 75

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Advocate : Karan Randhawa Mr. Hemant Kumar Gupta, S.C. Sibal, Advocates for
appearing Parties

Judgement

Harmohinder Kaur Sandhu, J.

1. This judgment will also dispose of Criminal Misc. No. 14482M of 1990 V.S. Devgun vs. Hardev Singh, as the question of law involved in both the cases is the same.

2. Inder Singh and others and Mr. V.S Devgun, petitioner in Criminal Misc. No. 14482M of 1990, filed these petition under Section 482 of the Criminal Procedure Code for quashing the complaint dated 26.10.1990, Annexure p/1) and the order dated 27.10.1990 (Annexure p/2) passed by SubDivisional Judicial Magistrate, Kharar whereby they were summoned to face a charge under Section 420 of the Indian Penal Code.

3. The dispute between the parties related to the purchase of a Swaraj Mazda bus. Asper allegations in the complaint Hardev Singh respondent who is the sole proprietor of M/s Dhanoa Transport Service, 36 New Delhi provided tourist service and luxury cars to various clients. In the month of November, 1987 Inder Singh petitioner who is Managing Director of M/s Inder sons Motors Private Limited, approached Hardev Singh and explained to him the utility and of Swaraj Mazda buses. As a result Hardev Singh placed one order with Inder Singh and Narinder Pal Singh petitioners for the purchase of a Delux bus with A C. 16+1

seater built on 14 feet long chasis. He received invoice from M/s Swaraj Mazda vide which they sold one Swaraj Mazda bus for Rs. 3,79,422.00. In the meantime the complainant Hardev Singh placed another order for the purchase of a second bus and received invoice dated 4.7.1988 in which total cost of the bus with all the assessories was shown as Rs. 4,36,027,00. The bus which was purchased earlier developed some defects at which the petitioners deputed one Mr. M.C Patel, who checked the bus and certified that the defects complained of were genuine. The bus was taken away to M/s Sutlej Bodybuilders and Coachbuilders, Jalandhar and it was replaced by a new bus. The complainant, who was satisfied from the businesslike activities of the petitioners, placed another order for the purchase of a bus and a proforma invoice was issued by the petitioners on 14.3.1989 for a sum of Rs. 4,14,1422 00. Accordingly, a bus was supplied to him for that amount. This bus was allotted Registration No DEP2060. After some time this bus too developed some defects and when it was got checked, it was found that actually this was not a new bus but was the same old bus which was returned to the petitioners, being a defective one. It was having the same engine and chasis number. The petitioners were supposed to deliver a new bus with new chasis No. and engine No. but by supplying the old bus they cheated the complainant and defrauded him of a sum of Rs. 3,79,268.00. The complainant suffered a wrongful loss and the petitioners were wrongfully benefited. The complaint further made allegations against the petitioners for preparing a false document showing the year of manufacture of the vehicle as 1989 instead of 1988. The trial Court after recording preliminary evidence found that a prima facie case under Section 420 IPC was made out against the petitioners and, thus, summoned them to face trial for that offence vide order Annexure p/2.

4. The petitioners had not denied the allegations regarding the return of the first bus as well as supply of the second bus, but it was contended that the complainant had placed an order for the purchase of a reconditioned bus and in pursuance to that order he was supplied the same bus which was originally given to him, after it was renovated and defects were removed. The order for the purchase of bus was placed by M/s Indersons Motors on M/s Swaraj Mazda Limited on 11.4.1989 copy, of which was Annexure p/3 and on the basis of this requisition form bus was supplied. In fact there was no defect in the engine of the vehicle and the defect was only the body which was removed. The price of new bus was Rs. 4,14, 42200 while a sum of Rs. 3,92,545.00 only was received from the complainant and out of this amount a further discount of Rs. 13,153.00 was given to him. The price for the reconditioned bus was the same which was the price originally charged when the first bus was delivered in May, 1989. No misrepresentation was made to the petitioners nor any case of cheating the complainant was made out and by filing the complaint Hardev Singh made an abuse of the process of the Court by putting pressure on the petitioners to pay him more money under threat of prosecution.

5. I have heard Shri H L. Sibal, Senior Advocate with Mr. R.K. Handa, Advocate.

for the petitioners and Shri. Hemant, Kumar, Advocate for the respondent.

6. It was submitted by learned counsel for the petitioners that there were absolutely no allegations in the complaint making out a prima facie case for the offence of cheating against petitioners No. 3 and 4 and against Shri V.S. Devgun petitioner in the connected petition. Petitioners No 3 and 4 are the Managing Director and Manager Sales and Administration respectively of Ms Swaraj Mazda Limited and Shri V.S. Devgun is the Vice President Marketing of M/s Swaraj Mazda Limited which is a Government concern. M/s Indersons Motors Private Limited is a company which is the agent of M/s Swaraj Mazda Limited. The complainant Hardev Singh placed an order for purchase of a bus with M/s Indersons Motors Private Limited and the latter sent requisition form Annexure p/3 which is dated 11.4.1989. According to it the vehicle that was to be purchased was one reconditioned A.C. Coach 16+1 seater. It was contended that the order placed was for purchase of a reconditioned A C. Coach and that was accordingly supplied. There was absolutely no misrepresentation made by the petitioners who are the officers of the Government concern. The only allegation made against them in the complaint was that they were asked to replace the bus but they refused to do so at Mohali. The assertions made against them in the complaint even if they remained uncontroverted, did not make these petitioners liable for any offence. Regarding the other petitioners it was maintained that they too had not committed any offence. They simply charged the price of old bus which was earlier replaced. The engine and chassis number of the bus were duly mentioned in the sale letter and the bus was accepted by the complainant and was used for a period of more than one year before the complaint was filed.

7. It was argued on behalf of the respondent that as the prosecution is yet at the initial stage the only test to be applied by the Court is whether the uncontroverted allegations as made, prima facie establish the offence and whatever defence is open to the accused is not to be taken into consideration. In support of his contention he placed reliance on the case of L. V. Jadhav vs Shankarrao Abasahed Pawar and others, AIR 1983 Supreme Court 1219 wherein it was held

"The inherent powers of Court under Section 482 Cr.P.C. should be used sparingly and with all circumspection when there is reason to believe that process of law is being misused to harass a citizen."

8. It was further contended that it is the function of the trial Magistrate to find out whether the allegations made in the complaint are true or not and at this stage no inquiry is to be made in the truthfulness or falsity of the allegations. The allegations made in the complaint Annexure p/1 do spell out an offence under Sec 420 IPC and the trial Court rightly summoned the petitioners to face trial.

9. I find that a perusal of the complaint shows that there are no specific allegations of misrepresentation or any cheating committed by petitioners Nos. 3 and 4 and Shri V.S. Devgun. Regarding the other petitioners the allegations in

the complaint are that they were asked to supply a new bus but they sold the same bus which was already returned on account of some defects. This allegation is not denied by the petitioners and it is contended that in fact the complainant wanted to purchase the same reconditioned bus. After that bus was replaced, the prices of the vehicle had risen. The earlier bus was sold for Rs. 3,79,422.00 while the price prevailing at the time when the sale was effected in the month of May, 1989 was Rs. 4,14,422.00. The complainant initially paid a sum of Rs. 2,92,645.00 and subsequently paid Rs. 50,000/ on 13.5.1989 and Rs. 50,000/ on 19.5.1989. In September, 1989 he was given a discount of Rs. 13,123/-. Thus, total price paid by him was the same which he paid for the first bus which will show that he intended to purchase only a reconditioned bus and that is why a requisition form was sent to M/s Swaraj Mazda Limited for a reconditioned bus. Admittedly that bus had no (defect in its engine or chassis. The defects in the body were removed before it was resold. The bus was purchased in the month of May, 1989 and, no complaint was filed till October, 1990. The bus was used for a period of 1 year and 5 months. In these circumstances it will not be expedient in the interest of justice to permit the prosecution to continue. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is, expedient and in the interest of justice to permit the prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore no useful purpose was likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceeding even though it may be at a preliminary stage. *Madhavrao Rao Jiwaji Rao Scindia and another v. Sambhajirao Chandojirao Angre*, 1988(1) RCR(Cr.) 565 (SC) : 1988(1) Recent Criminal Reports 565 : AIR 1988 Supreme Court 709 is an authority on this point.

10. Considering the circumstances of the present case I find that the present prosecution was launched by the complaint simply to put pressure upon the petitioners to replace the bus after having used the same for a considerable period and the complaint is nothing but an abuse of the process of the Court.

11. As a result, I allow both the petitions and quash the complaint Annexure p/1 as well as order Annexure p/2 of the trial Court summoning the petitioners.