

(2009) 01 P&H CK 0209

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-6055 of 2008

Managing Director Malkiat Singh, INternational Tractors
Limited

APPELLANT

Vs

Chhote Lal

RESPONDENT

Date of Decision : 12-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420

Citation : (2009) 30 CriminalCC 514 : (2009) 2 RCR(Criminal) 643

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Advocate : H.S. Gill, with Mr. Vivek Goyal, for the Appellant; Parampad Moudgil, for the Respondent

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—Prayer in this petition, filed u/s 482 of the Code of Criminal Procedure, is for quashing of a private complaint titled as "Chhote Lal v. Managing Director, International Tractors Limited and another", pending in the Court of Judicial Magistrate Ist Class, Gurgaon, as well as the summoning order dated 24.01.2008.

2. The petitioner, is the Managing Director of M/s Sonalika International Tractors Limited. The respondent purchased a Sonalika International Tractor Model DI-740 from M/s Kissan Tractor Agency, Pataudi Road, Haily Mandi, District Gurgaon, in September, 1998. On 07.04.2003, the respondent filed a private complaint, before the Judicial Magistrate Ist Class, Gurgaon arraying the petitioner and Ashok Kumar, partner of Kissan Tractor Agency, Haily Mandi as accused for commission of offences under Sections 420, 467, 468, 471 of the Indian Penal Code by alleging that he was falsely allured into purchasing a 35 Horse Power tractor, by stating that it was of 40 Horse Power. The Judicial Magistrate Ist Class, Gurgaon, after recording preliminary evidence, dismissed the complaint,

vide order dated 27.01.2005 by holding that the respondent had failed to establish forgery and cheating. The respondent was, however, granted liberty to approach the Consumer Forum.

3. In the meanwhile, the respondent had already preferred a consumer complaint No. 31, dated 08.01.2003 before the District Consumer Disputes Redressal Forum, Gurgaon. The complaint was dismissed on 05.02.2004 by holding that there was no deficiency in service. An appeal filed by the respondent was dismissed for non-prosecution on 31.12.2007. During the pendency of these proceedings, the respondent filed a second criminal complaint, before the Judicial Magistrate Ist Class, Gurgaon, repeating the averments made in the first complaint, but in addition pleading that before the filing of the earlier complaint, he had come to know that the engine used in the tractor was manufactured by Simpson Company, Madras and a similar engine Model S-324 is being used in the Tafe Model of Messey Forgusan Tractor. He, therefore, took his tractor to the Messey Furusan Agency at Haily Mandi and to his utter surprise, the mechanic informed him that the engine used in his tractor was of 35 Horse Power and not of 40 Horse Power. It was, therefore, claimed that in view of the new facts, that have come into existence and the dismissal of the earlier complaint would not bar the second complaint.

4. The Judicial Magistrate Ist Class, Gurgaon, after recording preliminary evidence ordered the summoning of the petitioner and his co-accused, by recording the following order :

Arguments on the point of summoning heard. From the perusal of preliminary evidence. counsel of complainant and accompanying documents, a prima facie case punishable u/s 138 of Negotiatble Instruments Act is made out against the accused. Accused be summoned accordingly for the said offence on filing of PF, RC, copies etc, for 7.7.2008.

5. It would be appropriate to mention here that not only did the Magistrate, fail to consider the relevance of the dismissal of the prior complaint, but also directed summoning of the petitioner u/s 138 of the Negotiable Instruments Act, though the complainant's prayer was to summon the petitioner under Sections 420, 467, 468, 471 of the Indian Penal Code.

6. The petitioner thereafter, filed the present petition, praying for quashing of the complaint and the summoning order. During the pendency of this petition, the respondent/complainant filed a revision, before the Additional Sessions Judge (Fast Track Court), Gurgaon, praying that the summoning order be set aside as the petitioner had been summoned under a wrong enactment. It was allowed and the summoning order was set aside vide order dated 22.5.2008 and the matter was remitted to the Chief Judicial Magistrate to pass a fresh order and now pending consideration before the Chief Judicial Magistrate.

7. Counsel for the petitioner urges that despite the setting aside of the order of summoning the complaint should be quashed as it is a blatant abuse of the

process of law. A second complaint, cannot be filed on the same set of facts, particularly where no fresh material has come into existence. It is submitted that with the dismissal of the first complaint, on merits, the petitioner stood discharged. A second complaint on the same set of facts is, therefore, impermissible. The complainant has set into motion the process of law by procuring a fresh report to circumvent the rejection of the earlier complaint. It is also submitted that the respondent tried his luck before the District Consumer Disputes Redressal Forum, Gurgaon and failed. As regards the merits. it is submitted that specifications published in the brochure clearly mentions the Horse Power category of the tractor as 36 BHP as per BASU 141 equivalent to 40 SAE and, therefore, even on merits the respondent's grievance is unfounded. Even otherwise the first complaint was filed 4-1/2 years after purchase of the tractor.

8. Counsel for the respondent, on the other hand, submits that the present petition has been rendered infructuous. During the pendency of this petition, the Additional Session Judge, Fast Track Court, Gurgaon has vide order dated 22.05.2008, set aside the summoning order. The matter is now pending before the Chief Judicial Magistrate and, therefore, the present petition be dismissed as infructuous. On merits, it is submitted that there is no bar, under the Code of Criminal Procedure, to the filing of a second complaint particularly when new facts came to the knowledge of the complainant. The respondent has pleaded fresh facts in the complaint and, therefore, there is no warrant for the argument, that the complaint be quashed.

9. I have heard counsel for the parties, perused the complaint, the orders passed by the Judicial Magistrate Ist Class, Gurgaon, dated 22.01.2008 and the order dated 22.05.2008, passed by the Additional Sessions Judge, Fast Track Court, Gurgaon.

10. The complainant purchased a Sonalika International Tractor Model D-I-740 in September, 1998 and after using it for four years filed Criminal complaint on 07.04.2003. before the Judicial Magistrate Ist Class, Gurgaon, alleging that a 35 Horse Power tractor was sold to him by passing it off as a 40 Horse Power tractor. The Magistrate recorded preliminary evidence and after considering the complaint and the evidence on record dismissed the complaint on merits, vide order dated 27.01.2005 by holding that no offence of cheating or forgery is made out. A relevant extract from the order dismissing the first complaint reads as follow :

It was incumbent upon complainant to prima facie prove that accused persons have made certain alterations in an already existing status of apparatus with sole intention to cheat others. Similarly u/s 420 IPC, it is at least prima facie to be proved that accused persons's intention was dishonest to have a wrongful gain in their favour by causing wrongful loss to the complainant. The entire deposition of complainant is miserably silent about a single ingredient of forgery. There is also no deposition that mentioning where installed engine i.e. to be 40 H.P.

accused persons had been dishonest and that the said inducement had caused certain loss to the complainant. The difference in the price value of the engine with 35 H.P. and that of 40 H.P. could be little prima facie in favour of complainant which is totally missing on record. Otherwise also, present is the controversy for which the proper redressal forum is the consumer forum.

11. It is, therefore, apparent that the learned Judicial Magistrate dismissed the complaint after due consideration of the material on record, by returning a finding that there is no material to support the allegations of the commission of offences of cheating and forgery. The respondent, thereafter filed a complaint before the Consumer Forum, which was also dismissed, as was his appeal. The complainant, did not rest here and thereafter proceeded to file a second criminal complaint by pleading that a few days before filing the earlier complaint he had obtained a fresh report from a mechanic, which clearly establishes the offences of cheating and forgery. Paragraph 7 of the second complaint reads as follows :

That few days before filing the earlier complaint which was dismissed in the court of Smt. Rachna Gupta, JMJC, Gurgaon, on the ground that the complaint was silent on facts which would bring the case within the purview of definitions of alleged sections, the complainant came to know that the engine used in his tractor was S-324 manufactured by Simpson company, Madras, and the similar engine model S-324 has been used in the Tafe Model of Messary Ferguson tractor, the complainant took his tractor to Messary Ferguson Agency Haily Mandi, Tehsil Pataudi, District Gurgaon. To the utter surprise of the complainant when it was disclosed by the mechanic of that agency that the engine used in his tractor was that of Simpson company bearing Model S-324 which is also used in Tafe Model of their Messary Ferguson tractor and is being sold as having the capacity of 35 Horse Power. It was found by the complainant that the accused in collusion with each other have caused wrongful gain of around Rs. 40,000/- to them and wrongful loss to the complainant of the similar amount, as this was the difference of value of his tractor projected to be of 40 H.P. And the actual value of 35 H.P. tractor, and thereby have committed cheating and fraud with the complainant.

12. In view of the facts noticed hereinabove the first question that would require adjudication is the circumstances in which a second complaint, is maintainable.

13. The Code does not place a bar on the filing of a second complaint. A second complaint, however, can only be filed and entertained if the complainant is able to establish, to the satisfaction of the Court, the existence of exceptional circumstances, namely, that the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, despite due diligence have been brought on record in the previous proceedings. In order to place the aforementioned facts in their correct perspective, reference in this regard would necessarily have to be made to a few judgments of this Court.

14. In *Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar*, , the Hon''ble Supreme

Court observed as follows:

Therefore, if he has not misdirected himself as to the scope of the enquiry made u/s 20, Criminal Procedure Code and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal u/s 203, Criminal Procedure Code is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances i.e. Where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings have been adduced. cannot be said to be in the interests of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into AIR 1930 879 (Lahore); Ram Narain Chaubey Vs. Panachand Jain, ; Hansabai Sayaji Payagude Vs. Ananda Ganuji Payagude, ; Doraisami Aiyar v. Subramania Aiyar AIR (1918 Mad 484)]. In regard to the adducing of new facts for the bringing of a fresh complaint the Special Bench in the judgment under appeal did not accept the view of the Bombay High Court or the Patna High Court in cases above-quoted and adopted opinion of Maclean, C.A. in Queen Empress v. Dolegobind Dass (ILR (1901) 28 Cal 211), affirmed by a Full Bench in Dwarka Nath Mondul v. Beni Madhab Banerjee (ILR(1901) 28 Cal 652). It held, therefore, that fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming.

15. In Poonam Chand Jain and another v. Fazru, 2005 (1) RCR (Cri.) 600 : 2005 (1) AC 273 and while considering the question of maintainability of a second complaint, the Hon"ble Supreme Court held as follows :

9. As was observed in Mahesh Chand Vs. B. Janardhan Reddy and Another, , there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reason the Magistrate u/s 204 Cr. P.C. may take cognizance of an offence and issue process if there is sufficient grounds for proceeding. But the second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings have been adduced. The second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Farther second complaint on the same facts would be entertained only in exceptional circumstances, namely, where previous order was passed on an in complete record or on misunderstanding of the complaint or it was manifestly absurd or

unjust.

16. The principles referred to hereinabove, when applied to the facts of the present case, disclose the absence of any special circumstance as would entitle the respondent to file a second complaint. The first complaint was dismissed after a considered appraisal of the complaint, and the material on record. The trial Court recorded clear and cogent findings that the offences of cheating and forgery are not made out. The order dismissing the first complaint does not suffer from any misunderstanding as to the nature of the complaint, is neither unjust nor absurd. The complainant, however, seeks to justify, the filing of the second complaint on a plea that new facts, relating to the horse power of the engine that establish the ingredients of the offences of cheating and forgery, have come to his notice. As admitted by counsel for the complainant, a fresh report was obtained to facilitate the filing of the complaint on the allegation that a 35 Horse Power engine was passed off as a 40 Horse Power engine. This allegation was specifically rejected by the learned Magistrate while dismissing the earlier complaint. The essential facts, in both the complaints, are identical. They relate to the sale of a 35 Horse Power tractor as a 40 Horse Power tractor. It, therefore, belies comprehension as to how a fresh report, obtained from a mechanic, would entitle the petitioner to maintain a second complaint. Accepting such a plea would be acceptance of the right of the complainant to file a third and a fourth complaint and so on and so forth, after obtaining fresh reports. The complainant, has apparently adopted this modus, after failure in the prior complaint and in proceedings before the Consumer Forum. It would also be necessary to mention that the first complaint was filed 4-1/2 years after the purchase of the tractor. The second complaint is, therefore, an attempt, to abuse the benevolence of law, that permits the filing of a second complaint. in exceptional circumstances. Exceptions to the rule that once dismissed, a second complaint shall not be filed have been set out so as prevent a miscarriage of justice. Unscrupulous litigants, exploit these exceptions. It would, therefore, have to be held that in the absence of any exceptional circumstances the second complaint is not maintainable.

17. A reference would necessarily have to be made to an aspect of the case, namely, that the order summoning the petitioner has been set aside by the Additional Sessions Judge, Gurgaon and the matter has been remitted to the Judicial Magistrate. To direct the petitioner to await the outcome of the complaint would only postpone the inevitable. Where a complaint discloses an abuse of the process of law, it is the duty of a court in the exercise of jurisdiction u/s 482 of the Cr.P.C to quash such a complaint, for there is no greater injustice than to permit an abuse of the process of law.

18. In view of what has been stated here in before, the dismissal of the earlier complaint on merits, the absence of any special circumstance to warrant the filing of the second complaint, the fact that the respondent has lost his case before the District Consumer Disputes Redressal Forum, Gurgaon, the fact that

the first complaint was filed 4-1/2 years after the purchase of the tractor, are in my considered opinion, sufficient to hold that the second complaint is an abuse of the process of law and should, therefore, be quashed.

In view of what has been stated hereinabove, the present petition is allowed and the complaint titled as "Chhote Lal v. Managing Director, International Tractors Limited and another" pending in the Court of Judicial Magistrate Ist Class, Gurgaon is quashed.