

(2009) 03 SC CK 0171

In the Supreme Court Of India

Case No : Criminal Appeal No. 539 of 2009 (Arising out of SLP (Criminal) No. 6712 of 2007)

M.D. Sonalika International Tractor Ltd.

APPELLANT

Vs

Dinesh Sharma and Others

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1)
Penal Code, 1860 (IPC) — Section 120B, 420, 468

Citation : AIR 2009 SC 2106 : (2009) CriLJ 2432 : (2009) 3 JLJ 81 : (2009) 4 JT 502 : (2009) 5 SCALE 317 : (2009) 11 SCC 435 : (2009) 4 SCR 1031 : (2009) 4 UJ 1591

Hon'ble Judges : Mukundakam Sharma, J;D. K. Jain, J;Arijit Pasayat, J

Bench : Full Bench

Advocate : D. Mehta, Vipin Gogia, Jaspreet Gogia and K.K. Gonga, for the Appellant; Rajesh, V.K. Shukla and K.K. Mohan, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Madhya Pradesh High Court dismissing the Criminal Revision Petition filed by the appellant questioning the order passed by learned Additional Sessions Judge, Gohad, Bhind.

3. Backgrounds facts as projected by the appellant are as follows:

On 19.6.2002 respondent No. 1 purchased a tractor manufactured by the appellant from respondent No. 3. On 12.5.2003 respondent No. 1 filed a complaint bearing No. 87 of 2003 in the District Consumer Forum, Bhind, Madhya Pradesh alleging that the dealer (respondent No. 3) had represented at the time of purchase of the tractor that the capacity of the same is 40HP (horse power) and accordingly payment was made but after some time the applicant came to

know that the said tractor is made of 1035 tafe tractor engine and the model of the said tafe engine is Simpson S-324 of which power capacity is 35 HP. It was thus submitted that trusting the opposite parties and having faith on the company and believing that the tractor is made of 40HP the applicant paid for the same where the tractor is not more than 35 HP.

On 22.7.2003 the District Consumer Forum, Bhind dismissed the complaint filed by respondent No. 1 and observed as under:

on careful consideration it is 40 SAE and not 40 HP in the cash memo dated 19.6.2002 issued at the time of purchase of the said tractor by the complainant. The 40SAE power capacity of the said sold Sonalika D1 740 tractor is shown in the report of Mechanical Engineering Research and Development Corporation, Ludhiana. As such the capacity of 40SAE of the tractor sold and purchased by complainant as per cash memo showing 40SAE is proved in view of the above report of Mechanical = Engineering Research and Development Corporation.

On 25.6.2004 after more than 2 years from the date of purchase of the tractor and one year from the date of dismissal of complaint by the District Consumer Forum, Bhind, the respondent No. 1 with ulterior motives filed a complaint case No. 896 of 2005 before the learned Judicial Magistrate, First Class, Gohad, M.P. against respondent No. 3 as well as the present appellant under Sections 120B, 420 and 468 of the Indian Penal Code, 1860 (in short the 'IPC'). In the complaint the allegation made is that at the time of sale it was falsely represented by the dealer that the tractor was of 40 HP capacity. It was stated that the complainant obtained information about the power capacity of the tractor and came to know that the tractor sold to him is of 33 HP capacity and the accused persons have cheated him. In the meantime, on 20.10.2005 the report was called from Central Farm Machinery Training and Testing Institute, Tractor Nagar, Budhni by M.P. State Commission. On 19.12.2005 the State Commission allowed the appeal and directed the appellant and respondent No. 3 to jointly and severally pay Rs. 27,000/- to respondent No. 1.

On 23.3.2006 the National Consumer Disputes Redressal Commission issued notice and granted interim stay of order dated 19.12.2005 passed by the MP State Commission. On 22.4.2006 the Judicial Magistrate, Ist Class dismissed the complaint of respondent No. 1. On 12.3.2007 the Additional Sessions Judge allowed the Revision Petition filed by respondent No. 1 and directed the learned Magistrate to register the complaint case of the complainant under Sections 120B, 420 and 468 IPC.

The High Court by the impugned order rejected the revision petition.

4. It is the stand of the appellant that the prosecution's complaint lodged even if taken in its totality does not disclose any offence so far as the present appellant is concerned. In the complaint there was no allegation against the present appellant who was A-2. Nothing was also stated in the evidence so far as he is concerned.

5. Learned Counsel for the respondents on the other hand submitted that the High Court has analysed the position in great detail and its order should not be interfered with.

6. The parameters for interference at the threshold have been highlighted by this Court in several cases.

7. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, it has been observed as under:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. A bare reading of the FIR shows that there was no allegation so far as the appellant is concerned. In any event in the evidence recorded no specific role was attributed to the appellant.

9. That being so, the complaint proceedings cannot be maintained qua the appellant and are set aside.

10. The appeal is allowed.