
(2013) 03 JH CK 0041

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 1896 of 2001

Modi Rubber Limited and Others

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Citation : (2013) 4 JLJR 667

Hon'ble Judges : Dhruv Narayan Upadhyay, J

Bench : Single Bench

Advocate : A.S. Dayal, for the Appellant; T. Kabiraj for the State and Mr. Manoj Kumar for the Complainant No. 4, for the Respondent

Judgement

Dhruv Narayan Upadhyay, J.—This application u/s 482 Cr.P.C. has been filed by the petitioners for quashing the order of cognizance dated 30.9.2000, passed in P.C.R. Case No. 291/2000 [T.R. No. 953/2000], passed by Judicial Magistrate, First Class, Dumka whereby the petitioners have been directed to face trial for the offences punishable u/s 420 of the Indian Penal Code and also entire criminal prosecution of the petitioners arising out of said case. The brief facts which appear from the complaint is that the accused No. 1 Modi Rubber Limited is manufacturer of rubber items and tyres of the vehicle whereas accused No. 2 is the Managing Director of said Company and accused No. 4 happens to be the Regional Sales Manager of said Company. The accused No. 3 happens to be proprietor of M/s. B.K. Enterprises, Bhagalpur Road, Dumka, an authorised and exclusive dealer of accused No. 1 for Dumka. It is alleged that complainant who happens to be the registered owner of the vehicle with registration No. BRJ 9929 had purchased two tyres manufactured by accused No. 1 on 25.8.1999 from the shop of accused No. 3. All sorts of guarantee with regard to life and durability of the tyres were given to the complainant. The informant has paid Rs. 15,500.47 paise against two tyres of size 900 x 20 marathon 16 ply bearing Nos. 109256 and 110610 of July, 1999 make. The complainant got surprised when tyre bearing No. 109256 got busted on 15.9.1999 due to manufacturing defects.

The complainant had reported the matter to the dealer who assured him to replace the tyre but even after chase, no replacement was made nor the amount paid against said tyre was refunded to him. When the complainant felt himself cheated, he has lodged this case.

2. It is submitted that it is incorrect to say that any manufacturing defect was there in the tyre sold to the complainant. The report at Annexure-4 clearly indicates that no manufacturing defect was found in the said tyre and the tyre got damaged due to other reason but the complainant had filed this case only to extort money. There is no document on record to indicate that the petitioners had any fraudulent or dishonest intention. It is admitted fact that the petitioner-Company is registered under the Companies Act and the Company is having good reputation in the field of manufacturing rubber goods like tyres etc. The complainant was never induced to purchase the tyres manufactured by the present company, It was general advertisement about the goods manufactured by the Company that the product is having good quality and it is durable. No specific assurance or undertaking was ever given to the complainant in respect of life of tyres. Though the petitioner do not admit that any manufacturing defect was there in the tyre sold to the complainant but to show their fair intention and also to compensate the loss incurred by the complainant, the petitioners have come forward to pay double of the amount of the tyre i.e. in terms of Rs. 15,000/- and for that a Cheque for a sum of Rs. 15,000/- bearing No. 074884, dated 13.3.2013 drawn in favour of the complainant is presented before this Court. On the basis of averments made in the complaint, no case u/s 420 of the Indian Penal Code is made out. If there was any manufacturing defect in the tyre and false assurance was given, the complainant was at liberty to file complaint before the Consumer Court.

3. Counsel for the complainant as well as State have opposed the arguments. It is submitted that inducement was made by the accused No. 3 on behalf of accused Nos. 1, 2 and 4 that the product of the accused No. 1 is durable one and it is having longer life in comparison to tyres produced by other companies. On believing assurances and guarantee given by the accused No. 3 on behalf of the remaining accused, he purchased two tyres manufactured by accused No. 1 and paid the required amount. Since one of the tyres got bursted within the guarantee period, he has claimed for replacement or refund of payment but it was not attended and, therefore, the petitioner made correspondences even by serving legal notice but all in vain. Lastly, he has filed the complaint to seek remedy.

4. I have gone through the complaint petition and the documents placed before me. It is not in dispute that the accused No. 1 is a Company registered under the Companies Act and the company manufacture rubber items like tyre of. various size of different vehicles. Any advertisement for sale of goods cannot be considered as a guarantee or inducement. Every company, to promote the goods manufactured by them, give advertisement to promote their sale but that does

not mean that they are having deceptive intention at the time when such advertisement is given. If the manufacturer gives any wrong advertisement with regard to its product, that may be an offence punishable under the concerned Act. The complainant has not furnished any document except the cash memo to show that he was induced to purchase a particular product of the accused No. 1. The petitioners have presented Cheque for a sum of Rs. 15,000/- bearing No. 074884, dated 13.3.2013 drawn in favour of the complainant which indicates their bona fide and fairness. Considering all these aspects, I find that the prosecution of the petitioners on the averments made in the complaint is to some extent malicious and therefore, it shall not be permitted to continue. In the result, I feel inclined to allow this application and accordingly order of cognizance dated 30.9.2000, passed in P.C.R. Case No. 291/2000 [T.R. No. 953/2000], by Judicial Magistrate, First Class, Dumka stands set aside. Consequently, the criminal prosecution of the petitioners arising out of said case is also stands quashed but with a direction to the petitioners that the Cheque which has been presented before this Court, be deposited in the concerned court or the court in seisin of the matter before 10th April, 2013 and the complainant be informed so that he may collect the same from court below after giving proper receipt and furnishing proper identification. The Court below is also directed to communicate the complainant so that he may "collect the cheque in time. In any case, if the validity of the said cheque expires, the petitioners shall revalidate it.

Let a copy of this order be communicated through Fax to the Court concerned.