

(2006) 05 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

RELIANCE INDIA MOBILE LTD.

APPELLANT

Vs

HARI CHAND GUPTA

RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:

Citation : 2006 0 NCDRC 136 : 2006 2 CLT 687 : 2006 2 CPC 545 : 2006 3 CPJ 73

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO J.

Advocate : MAN MOHAN , ASHISH VARMA

Judgement

1. BEING aggrieved and dissatisfied by the Judgment and Order dated 13.12.2005 passed in Appeal No. 155 of 2005 by the State Consumer Disputes Redressal Commission, Union Territory, Chandigarh, Petitioner - M/s. Reliance India Mobile Ltd., has preferred this Revision Petition.

2. THE State Commission confirmed the order dated 29.7.2005 passed by the District Forum-II, Chandigarh, in Consumer Complaint No.1057 of 2004, and imposed Rs.50,000/- as punitive damages with costs quantified at Rs.5,000/-. Further, the District Forum vide its order dated 29.7.2005 passed in Complaint No. 1057 of 2004, directed the Petitioner to shift the mobile telephone of the Complainant from Chandigarh to Kurukshetra region and to pay a sum of Rs.10,000/- as compensation for deficiency in service and costs of Rs.2,500/-. In default, the Petitioner was also to pay interest at the rate of 6% p.a. on the awarded amount. Against the order of the State Commission, the Petitioner has filed this Revision Petition before this Commission. However, the State Commission further ordered for initiation of criminal proceedings against the Petitioner, particularly, its authorised signatory, Shri Padamjit Singh, on the ground that he has filed a false reply and affidavit. For that purpose, the State Commission has ordered inquiry to be made by the District Forum under Section 340 of Cr.P.C. read with Sections 195 Cr.P.C. for the offences alleged to have been committed under Section 191, 192, 193 I.P.C., and to take action against the authorised signatory, if found guilty. At the time of hearing of this Revision

Petition, learned Senior Advocate, Mr. Man Mohan, has confined his submission only with regard to initiation of proceeding to Sec. 340 Cr.P.C. It is his contention that the direction given by the State Commission is without jurisdiction, because, at the time of admission of the appeal, the State Commission had issued notice for the limited purpose of enhancement of compensation. The said order reads as under: "The sole grievance of the Appellant in this appeal is regarding the compensation awarded being grossly inadequate and the Appellant prays for enhancement of the compensation. The appeal is confined to the quantum of compensation. Issue notice on this limited point to the Respondent for 3.10.2005. Record of the Complaint Case be requisitioned from District Forum - II, U.T., Chandigarh in triplicate."

3. THESE proceedings arose from the complaint filed by the Respondent contending that he is a resident of Kurukshetra Nursing Home, Pipli Road, Kurukshetra, Haryana. On 8.3.2003, he had applied for obtaining a connection of Reliance India Mobile Phone as a member of Dhirubhai Ambani Pioneer Club, by paying full amount of Rs.21,000/- by Cheque drawn on Punjab State Cooperative Bank, Chandigarh. As per the scheme, the Complainant was to receive cell phone through courier at his Chandigarh address. It is his contention that the Complainant was required to shift his residence from Chandigarh to Kurukshetra for health reasons. For this purpose, he visited the office of the Petitioner at Chandigarh and filled up the form meant for shifting of mobile phone to his new Kurukshetra address. For this purpose, he has also sent an e-mail on 8.5.2003 giving intimation of change of address from Chandigarh to Kurukshetra. By letter dated 10.4.2003 the Petitioner intimated the Complainant that they had extended the period of free usage of mobile phone upto 30.4.2003. However, the Complainant received a bill dated 1.5.2003 at his Chandigarh address for the period from 1.4.2003 to 30.4.2003, for a sum of Rs.224/-.

4. IT is also contended that till the date of filing of the complaint, the connection of the mobile phone was not shifted from Chandigarh to Kurukshetra, and hence, he was not able use the same since May, 2003 till date. He has also relied upon the brochure (The Mobile Revolution - Dhirubhai Ambani Pioneer Offer - Customer care at your service any time and after sales-service to all promising very good service) issued by the Petitioner giving advertisement. It is his contention that the promises made in the brochure were not fulfilled and the Complainant was required to suffer a lot. Therefore, a notice was sent on 9.9.2003 at the Mumbai Office of the Petitioner. Yet, no action was taken. It is further submitted that the Complainant was doing share business and has invested in shares through V.R.S. Securities Ltd., Ludhiana and for this purpose, he is required to keep in touch with the share broker to update himself with regard to the share market and for this purpose, he has taken the telephone. Because of the deficiency in service by the Petitioner he had suffered monetary and financial loss. He, therefore, prayed that the Petitioner be directed to shift the mobile phone connection of the Complainant from Chandigarh to Kurukshetra and to give all benefits which would have been accrued to the Complainant

during the period from May, 2003, as non-user of the mobile. He has also prayed for compensation of Rs.50,000/- for the deficiency in service and unfair trade practice with interest at the rate of 15% p.a. from May 2003, and the cost of litigation.

5. A . Section 340 of Cr.P.C.As stated above,(a) this complaint was partly allowed by the District Forum. It was held that as no shifting of telephone from Kurikshetra Region to Chandigarh Region was made, it was a case of proven negligence and deficiency in service. The District Forum, therefore, directed the Petitioner to shift the mobile phone and to pay a sum of Rs.10,000/- towards compensation with costs at Rs.2,500/-. (b) The appeal was filed by the Complainant only for enhancement of compensation. That appeal was partly allowed. The State Commission had not enhanced the compensation, but has awarded Rs.50,000/- as punitive damages and the cost of appeal was quantified at Rs.5,000/-.

6. FROM the facts stated above, it is amply clear that the State Commission has issued notice for the limited purpose, that too, only for enhancement of compensation. Compensation, as stated above, was enhanced. In such set of circumstances, there was no question of directing District Forum to hold inquiry under Section 340 of Cr.P.C. and to initiate proceedings. As such, no ground is made out for holding such inquiry. It appears that there were some mistakes in giving computerised bills, with regard to due date of payment, etc. But, that would hardly be a ground for arriving at a conclusion that the said bills were fabricated. However, it is not in dispute that in affidavit, incorrect statement has been made to the effect that mobile connection of the complainant was transferred from Chandigarh to Kurukshetra and a new No. i.e. 01744-311784 was allotted. Admittedly, new number was given as stated above, but it was not transferred from Chandigarh to Kurukshetra.The Petitioner has also produced on record some bills for the use of the telephone were also unjustified. In any case, those bills were given to the Complainant prior to filing of the complaint. In such cases, if the Complainant was aggrieved, he ought to have filed a criminal complaint, if at all he considered the said facts to be offence. Further, normally, in such type of cases it would be futile to initiate proceedings under Sec.340 of Cr.P.C. Law on this subject is settled by a decision of the larger Bench of the Apex Court in Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwan and Anr. (2005) 4 SCC 370 wherein it is observed that"Judicial notice could be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted".Further, after considering various decisions, the Court in pr.23 held as under:

7. IN view of the language used in Section 340 Cr.P.C. the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing

of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.

8. FINALLY it is held (in para.33) that Section 195(1)(b)(ii), Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court, i.e. during the time when the document was in custodia legis. In the present case, the alleged bills were all throughout in existence even prior to the filing of the complaint. Therefore, it was open to the Complainant to file a private complaint, if aggrieved. However, for filing false and incorrect affidavit before the Consumer Fora that the telephone was shifted from Chandigarh to Kurukshetra, appropriate action is required to be taken against the petitioner. It should be borne in mind that Consumer Fora are required to decide the matter speedily and render equitable justice to the consumer. The practice of making false and incorrect statements and the practice of denial of each and every sentence submitted by the claimant/complainant without any justifiable ground, requires to be controlled. For false affidavits or misleading statements in a pending proceedings deponents are required to be dealt appropriately by imposing punitive damages so that in future they or others may not indulge in such practice.

9. IN this view of the matter, punitive damages are required to be enhanced. B. Punitive Damages Complainant who is appearing in person submitted that punitive damages of Rs.50,000/- are totally inadequate. For the wrongs done by such a big company, adequate compensation/punitive damages ought to have been awarded.

10. IT is true that adequate compensation is required to be awarded in appropriate cases. It is also true that the Complainant moved from Chandigarh to Kurukshetra. For this purpose, he had applied for shifting of his telephone from Chandigarh region to Kurukshetra region. For some unknown reason, that

was not done. There are also some errors with regard to the issuance of computerised bill. As stated above, false statement has been made in the affidavit that phone of the complainant was shifted from Chandigarh region to Kurukshetra region. On this ground, the State Commission has directed the Petitioner to pay Rs.50,000/- as punitive damages. In our view, for making such false statement in the affidavit by the officer of the Reliance Infocomm Ltd. - Petitioner, the amount is not sufficient. Punitive damages are required to be enhanced so that in future officers of the Petitioner nor officers of other such big companies indulge in such practices. Hence, we increase the said punitive damages to Rs.1,50,000/- . Out of this amount of Rs.1,50,000/-, Rs.1,00,000/- shall be deposited with this Commission for depositing the same with Consumer Welfare Fund and Rs.50,000/- shall be paid to the Complainant. In addition, Petitioner shall pay to the Complainant Rs.10,000/- compensation and also Rs.2500/- as costs of litigation as awarded by the District Forum and also Rs.5,000/- as costs of litigation in the appeal before the State Commission.

11. IN view of the above discussion, the Revision Petition is partly allowed. The direction of the State Commission regarding initiating inquiry under Sec.340 Cr.P.C. against Padamjit Singh is set aside. The order passed by the State Commission imposing punitive damages is modified. The Petitioner is directed to pay Rs.1,50,000/- as punitive damages. Out of that amount, Rs.50,000/- shall be paid to the complainant and remaining amount of Rs.1,00,000/- shall be deposited with this Commission for depositing the same with Consumer Welfare Fund. There shall be no order as to costs. The petition stands disposed of accordingly.