

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Revision No.27 of 2004.

Judgment Reserved on:26.06.2008.

Date of decision: June 30, 2008.

Surjit Kumar

...Petitioner.

Vs.

State of H.P. & Ors.

...Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?¹No

For the Petitioner : Mr Rakesh Jaswal, Advocate.

**For the Respondents : Mr.A.K.Bansal, Addl.A.G. for
respondent No.1.**

**Mr.Jagdish Vats, Advocate for
respondents No.2 and 3.**

Kuldip Singh, Judge.

This revision petition has been directed against the order dated 28.8.2003 passed by learned Additional Sessions Judge(1), Kangra at Dharamshala in Criminal Revision No.13-D/2003 setting aside summoning order dated 28.2.2003 under Section 420 read with Section 468 IPC passed by learned Judicial Magistrate 1st Class, Kangra in case No.94-1/2002.

2. The facts, in brief, are that petitioner filed a complaint against respondents No.2 and 3 under Sections 420, 467, 468, 471 read with Section 34 IPC alleging therein that petitioner / complainant

Whether the reporters of the local papers may be allowed to see the Judgment?Yes

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had been running business of electronic goods at Kangra. The respondents No.2 and 3 / accused are partners of firm and running their business at Kotwali Bazar, Dharamshala and deals in electronic items. The firm of the accused had supplied AIWA TV and Audio sets amounting to Rs.16,36,326 to the complainant from 1.7.1999 to the year 2001. The allegations in the complaint are to the effect that respondents No.2 and 3 had supplied to complainant six AIWA CTV Model 149 ST serial No.31954, 31545, 31552, 31644, 31808, 31550 and three items were delivered at Kangra vide bill NO.032695 dated 1.7.1999 for an amount of Rs.51,900 at the rate of Rs.8650 per TV but no remote of the said sets were supplied. It has been further alleged in the complaint that on 7.11.1999 three AIWA CTV CT 2119, 11316, 11329, 11325 for a sum of Rs.40350 at the rate of Rs.13,450 were supplied and one AIWA Audio 380, 15315 SPL 332-18315 for a sum of Rs.16,513. Similarly, AIWA Audio 111-14117 SPK 112-15484 for a sum of Rs.9590 and AIWA Audio M-22-13408 for Rs.10,503 were supplied at Kangra through Taxi No.HP-02-1875 vide bill NO.033825 dated 7.11.1999. It has also been alleged that similarly on 28.10.1999 one AIWA Music system M-22 serial No.11917 for a sum of Rs.10,503 and one AIWA Music system 333 serial No.15,514 (speaker) and 13062 (Deck) for a sum of Rs.11,965 were supplied vide bill No.33546 dated 28.10.1999 to the complainant at Kangra.

3. The further allegations in the complaint are that maximum retail price of M-22 serial No.11917 and 13408 and 333 and S-94 serial No.46462 and 570 serial No.45968 out of which the maximum retail price inclusive of all taxes of Nos.11917, 13062 have

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been rubbed by respondents No.2 and 3 on the price slips as it is clear from the price list fixed on the boxes of the said TV and Audio system and in case of M-22 serial No.13408 the maximum retail price inclusive of all taxes is shown Rs.6500. In the rest of serial Nos.94 and 570 serial No.46462 and 45968 no price is mentioned. The complainant has further alleged that as per bill No.033825 dated 7.11.1999 respondents No.2 and 3 had charged for AIWA Audio M-22, serial No.13408 Rs.10,503 as against maximum retail price inclusive of all taxes Rs.6500. Respondents 2 and 3 have cheated and thereby dishonestly induced the complainant to make more payment of items No.M-22 of Audio Music system serial No.13408 and in case of Audio system M-22 serial No.11917 and 333 serial No.13062. The original prices of said items which were given on the box of the Audio system were rubbed by respondents No.2 and 3 by forging the actual price of the said items and they had received more money by deceitful means from the complainant. The bill dated 7.11.1999 and bill No.033546 dated 28.10.1999 are forged documents which have been used for the purpose of cheating by respondents No.2 and 3. They had used these bills as genuine, fraudulently and dishonestly, even though they had knowledge and otherwise reasons to believe that those bills were forged.

4. The complainant appeared as CW-1 and the learned trial Magistrate on 28.2.2003 ordered summoning of respondents No.2 and 3 under Section 420 read with Section 468 IPC. The respondents No.2 and 3 had filed revision before learned Additional Sessions Judge against the summoning order dated 28.2.2003. The

learned Additional Sessions Judge has set aside the summoning order dated 28.2.2003 vide order dated 28.8.2003. In these circumstances, the complainant has filed the present revision against the impugned order.

5. Heard and perused the record. Mr.Rakesh Jaswal, learned counsel for the petitioner, has submitted that learned Additional Sessions Judge has erred in setting aside the summoning order dated 28.2.2003. On the basis of complaint and statement of CW-1 offence under Section 420 read with Section 468 IPC for summoning respondents No.2 and 3 is made out. He has submitted that at the time of summoning the consideration is not that the accused would be convicted ultimately, what is to be seen at that stage is *prima-facie* case. According to the learned counsel for the petitioner, on the basis of material on record *prima-facie* case against respondents No.2 and 3 under Section 420 read with Section 468 IPC is made out but learned Additional Sessions Judge has not properly appreciated the material on record and law applicable in the matter. Mr.Jagdish Vats, learned counsel for respondents No.2 and 3, has supported the impugned order and has submitted that no case is made out against respondents No.2 and 3 for summoning them under Section 420 read with Section 468 IPC.

6. The complaint filed by the complainant is most confusing, it lacks clarity but Mr.Rakesh Jaswal, learned counsel for the petitioner, has fairly stated that only bill of one AIWA audio M-22-13408 which was sold vide bill Ext.CB for Rs.10,503 requires consideration in view of the allegations made by the complainant.

According to the complainant, the maximum price shown on slip Ext.PF which was on box of said AIWA Audio system was Rs.6500 but respondents No.2 and 3 as against Rs.6500 have charged Rs.10,503 from the complainant and, therefore, the complainant was cheated. CW-1 Surjit Kumar has stated that respondents No.2 and 3 from 1.7.1999 to 2001 had supplied TV and audio systems of Aiwa; Company to him amounting to Rs.16,36,326. He has stated that on 7.11.1999 Model NO.M-22 Chesis No.13408 of AIWA Company was sold to the complainant by respondents No.2 and 3 for Rs.10,503 against maximum price of Rs.6500 which was rubbed and mentioned on the box. Respondents No.2 and 3 had charged excess amount from the complainant. The respondents No.2 and 3 in this way cheated him. The complainant has produced Ext.CA bill dated 1.7.1999 of C.L.Mehra & Sons amounting to Rs.51,900, Ext.CB bill dated 7.11.1999 amounting to Rs.76,956 wherein sale of AIWA Audio M-22-13408 for Rs.10,503 has been shown. The bill Ext.CB has been issued to M/s.Jagdamba Electronics. Ext.CC bill is dated 28.10.1999 amounting to Rs.22,468. He has also placed on record slips Ext.CE, Ext.CF, Ext.CG, Ext.CH and Ext.CI. The complainant's case is that in Ext.CF the retail price inclusive of taxes has been shown Rs.6500 for AIWA Model 22 but vide bill Ext.CB the respondents No.2 and 3 for AIWA Model-22 Chesis No.13408 have charged Rs.10,503 by rubbing the original maximum retail price of Rs.6500 mentioned in Ext.CF. The allegations of the complainant in the complaint and in his statement with respect to the Model No.22 Chesis No.13408 are not enough to *prima-facie* make out a case

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against respondents No.2 and 3 under Sections 420, 468 IPC. The complainant has nowhere stated that alleged original price of Rs.6500 was rubbed by respondents No.2 and 3. In fact, complainant has placed no material on record that the original price of Model No.M-22 in question was Rs.6500 as claimed by the complainant. The box on which alleged printed price of Rs.6500 was printed was not produced in the preliminary evidence. The perusal of remaining evidence and complaint on record do not remotely *prima-facie* constitute commission of offence under Sections 420, 468 IPC by respondents for supplying electronic items to the complainant. The learned Additional Sessions Judge has rightly appreciated the material on record in coming to the conclusion that no case for summoning respondents No.2 and 3 is made out under Section 420 read with Section 468 IPC. The error of jurisdiction has not been pointed out and similarly no case for interference has been made out.

7. No other point was urged.

The result of above discussion, the petition fails and is accordingly dismissed.

June 30, 2008.

(soni)

**(Kuldip Singh)
Judge.**