

**IN THE COURT OF MR. ABDUL HAFEEZ
DISTRICT AND SESSIONS JUDGE / PRESIDING OFFICER
DISTRICT CONSUMER COURT, RAWALPINDI**
(Case No. 83 of 25.05.2019)

Arif Hussain, S/o Abdul Khaliq, R/O House No. CB-2061, street No. 4, near Ammar Hamza Mosque Allaabad Westridge-III, Rawalpindi

(Complainant)

VERSUS

- 1) TCS Courier Services through Country Head TCS Express Logistics Center, TCS H.Q Iqbal Avenue Jinnah International Airport, Karachi 75202
- 2) Incharge TCS Courier Service Office Khanapul near Fizaia Colony Service Road, Rawalpindi.

(Defendants)

APPLICATION U/S 28 OF THE OF PUNJAB CONSUMER PROTECTION ACT, 2005 ON THE GROUND THAT DEFENDANTS PROVIDED DEFECTIVE SERVICES TO THE COMPLAINANT AND CAUSED DAMAGES

ORDER
21.01.2020.

Briefly stated facts mentioned in the complaint are that complainant is a respectable and law abiding citizen. The complainant got booked railway ticket for travelling Karachi to Rawalpindi for his brother for 27.04.2019 and delivered through defendants said ticket to his brother at Karachi;- that said ticket was to be delivered in short time, therefore, the complainant paid the additional amount as time choice delivery, the

defendant received the said amount and then delivered the said ticket, the said ticket could not reach the destination till 27.04.2019;- that the brother of the complainant has to necessary reach in connection with the sickness of his father and due to insufficient funds instead of air line ticket, train ticket was sent to him, due to negligence of the defendants the brother of the complainant spent additional amount, again purchased a ticket, the family member of the complainant and complainant during the said period remained under tension which cannot be compensated in the terms of money;- that the defendants after receiving the said amount and thereafter not delivering the ticket have committed the offence under section 13 of PCPA, 2005, for that complainant reserve the right of initiating legal proceeding;- that the complainant engaged counsel paid the professional fee to him and thereafter delivered a legal notice on 16.05.2019, but defendants did not give any reply sent an sms stating therein to collect his money and also admitted that shipment could not be delivered in time, the said attitude of the defendants was not proper, due to non receiving the written reply of the legal notice complainant has instituted the instant complaint. Lastly he prayed that complainant is entitled to receive Rs. 78660/- as damages the detail whereof is as under:-

- 1) Amount paid to sent the post Rs. 500/-

- 2) Additional amount paid for ticket Rs. 660/-
- 3) Professional fees for sending legal notice Rs. 5500/-
- 4) Professional fees paid for complaint Rs. 22000/-
- 5) Damages suffered due to mental torture and agony
Rs. 50000/-

2. Conversely, defendants opposed the said complaint / case filed their written reply, wherein took various preliminary objections and stated that the application is false, frivolous and vexatious, hence liable to be dismissed by this Honourable court;- that the complainant sent the written notice on 09-06-2019, and filed the suit on 25-06-2017, and sufficient time has not been provided by the complainant to reply that notice, which is violation according to the provisions provided in the PCPA, 2005, hence liable to be dismissed by the August court;- that complainant was well aware of the terms and conditions of carriage of shipment and has deliberately wasted time to lodge this frivolous and false claim before this Hon'ble court the application is liable to be dismissed by this Hon'ble court;- that the complainant agreed with the terms and conditions of time choice Delivery after then, his shipment was booked;- that the defendants delivered the shipment to the address in Karachi provided by the petitioner where the representative reached there for delivery and the customer started harassing him and not allowed him to go anywhere as the representative had to

deliver other shipments also, which were also snatched by the customer;- that if there is any negligence committed at Karachi, this Honourable court has no jurisdiction to entertain the instant application. No cause of action has occurred at Rawalpindi. The Honourable court situated at Rawalpindi lacks jurisdiction to plead, adjudicate and try this matter and therefore the complaint of the petitioner should be dismissed alongwith levying phenomenal costs/ penalties upon the petitioner for initiating such false and bogus litigation against the respondents;- that the defendants performed their duties diligently and safely handed over the shipment at the address provided by the petitioner complainant;- that it is the principle of equity "he who come into equity must come with clean hands" (Settled principle in R.H. Marlin Inc. V.S Indiana Department of Rev). In the present case petitioner has not come to this court with clean hands so the application in hand is liable to be dismissed;- that defendants are a reputable business entity operating in Pakistan and abroad and it known nationally and internationally for its reliable service so there is no chance of negligence on the part of the respondents. The respondents deliver a large quantity of shipments on a daily basis with utmost dedication without compromising on customer satisfaction;-that petitioner has filed this frivolous complaint to harass and blackmail the respondents in order to

secure illegal gains which shows the mala-fide intentions of the petitioner;- that the application under section 28 of the PCPA 2005, is not applicable in such conditions, above mentioned facts and circumstances shows that the petitioner just wants to drag the respondents in such a frivolous litigation in order to secure illegal gains;- that the complainant has no right to claim damages from the respondents. It is pertinent to mention here that he was offered according to the terms and conditions of time choice delivery to collect his charges back from the office of the respondents and the same was denied by the petitioner. On facts they replied that para No.1 need no reply. As the respondents are unaware of the actual facts and therefore, cannot comment upon the same. Para NO.2 is incorrect, hence denied. That the petitioner had booked shipment bearing C.N.5066177478 on 25-04-2019, at 8:57PM from the franchise office of the respondent No. 1 of rewards delivery to the consignee at Karachi. Para No.3 is incorrect hence denied. The shipment was duly delivered at the address provided by the petitioner. It is pertinent to mention here that in the normal course of business, the respondent NO. 2 delivers shipments at the designated addresses provided by the respective shippers. In the current case the shipment was booked at 8:57PM which was dispatched for further delivery on the very next day. Para No.4 is denied, It is also pertinent to mention here that at the

time of booking of the shipment, the petitioner had agreed to the terms and conditions of carriage with the respondent No. 1. The petitioner, in violation of clause No. 4 and 5 of the said terms and conditions miserably failed to bring further his claim before the defendants. Para No.5 is incorrect hence denied. The defendant according to his own statement sent the notice on 25-05-2019, which has not been received by this office so far. It is pertinent to mention here that the petitioner/complainant by violating the provisions of section 28(2) of PCPA 2005, brought this claim before the august court, hence liable to be dismissed by this Hon'ble court. Lastly it is prayed that captioned application may kindly be dismissed with special costs alongwith the expenditures paid on the instant case. Any other relief this Honourable court may deem fit and proper in the circumstance of the case may also be awarded.

3. To prove the case against the defendants, complainant Mr. Arif Hussain complainant himself appeared as PW-1, he submitted his statement on affidavit Exh-PA. He also submitted documents i.e. copy of legal notice Mark-PA/1-2, postal receipt Exh-PB, delivery report issued by Post Master Pakistan Post Exh-PC, copy of TCS courier receipt Mark-PB, Track result of TCS courier Exh-PD, copy of railway ticket Exh-DA/1-2.

4. From defendant's side Mr. Asif Raza Assistant Operation Manger, TCS was examined as DW-1, he submitted

documents i.e. authority letters Exh-DB & Exh-DC, he submitted his statement on affidavit Exh-DD/1-2, Copies of terms and conditions of TCS Hazir Time Choice Delivery Mark-DA/1-2 & Exh-DE/1-2.

5. The contention of the learned counsel for the complainant is that the complainant purchased a railway ticket for his brother who was residing at Karachi for travelling Karachi to Rawalpindi on 27.04.2019, the complainant contacted the defendants and paid the amount for time choice delivery so that said ticket could be reached to his brother prior to train time. Said ticket was handed over by the complainant to the defendants on 25.04.2019, whereas it has to be delivered to the complainant's brother on 27.04.2019 at 11:00 Am, said fact is very well mentioned on TCS receipt Mark-PB, whereas the track report Exh-PD shows that it was delivered on 29.04.2019 at on 10:21 Am. He further contended that when the said ticket was not received in time to the complainant's brother, he paid extra amount and thereafter travelled from Karachi to Rawalpindi. He further contented that the ticket was delivered from Rawalpindi through defendant No.2 who is also running his business at Rawalpindi, therefore, this court has the jurisdiction. The complainant has successfully proved his case and is entitled for receiving of the damages.

On the other hand the contention of the learned counsel for the defendants is that the complainant has no right to claim damages from defendants, the complainant was offered according to the terms and conditions of time choice delivery to collect his charges back from the office of defendants, but the same was denied by the complainant, the complainant has filed the frivolous claim which is not maintainable in this court, moreover the complainant has no cause of action against the defendants. He further contended that there is no intentional delay on the part of the defendants in the delivery of the shipment because despite delivering the message to the representative of the complainant, the said representative did not contact with the representative of the defendants, the complaint may be dismissed with costs.

6. Arguments Heard, Record perused.

7. The perusal of the evidence shows that in order to prove his case against the defendants, complainant himself appeared as PW-1, he submitted his statement on affidavit Exh-PA, in it he reiterated the facts mentioned in the complaint, his cross examination shows that he deposed that he purchased the railway ticket on 25.04.2019, he sent the original railway ticket, copy whereof is Exh-DA through TCS, he sent the parcel on the address of Karachi office, he has stated in his complaint that his father was sick, when his brother did not receive the

ticket in time through TCS then he sent the copy of it through WhatsApp, his brother further paid Rs. 660/- thereafter he went to Rawalpindi on same train, he made complaint on TCS on 27.04.2019, he made first telephonic call at 10:00 AM 2nd at 02:00 PM 3rd at 06:00 PM and then at 07:00 evening, ticket was delivered on 29.04.2019. In the delivery report it is mentioned that who received the ticket on 29.04.2019 through TCS courier at Karachi. He denied the suggestion that the person who wanted to deliver the ticket on 29.04.2019 he was kept in illegal confinement for 02:00 hours by the person of the complainant, he did not pay the insurance charges of the shipment.

On the other hand Asif Raza was examined as DW-1, beside the other documents he submitted his statement on affidavit Exh-DC/1-2, his cross examination shows that he is working in TCS from previous four years, legal notice was not received till the submitting of the written statement, in the preliminary objections para No.2 it is stated that notice was delivered on 09.06.2019 whereas complaint has been filed on 25.06.2019 and sufficient time was not provided to them for filing of the reply to legal notice. It is correct that TCS is a Pvt. Ltd company for normal delivery TCS requires 24 hours time, he admitted that they used to deliver the shipment according to the time given in time choice delivery, the questioned shipment was also a time choice delivery, it was booked on 25.04.2019, it

is in his knowledge that the representative of the TCS delivered the said shipment on 29.04.2019, he admitted that in this duration the complainant remained contacted with them and remained asking about the shipment, he admitted that they received extra amount, so that shipment could be delivered earlier, it is in his knowledge that the legal notice was delivered on 20.05.2019 at Karachi, he admitted that all cases are dealt in the supervision of TCS Head quarter, they did not move any application to any form regarding the illegal confinement of their representative, he has come to give the evidence on behalf of the company, TCS is responsible of the acts of his employees, prior to the submission of written statement a conversation was made by them with the complainant. If TCS company offered the shipment charges and extra amount of ticket paid by the complainant, but it could not be settled, they conducted the enquiry regarding the cause of delay of the shipment, he has no knowledge about the decision of said enquiry of not delivering the shipment in time is considered the negligence of the delivery agent.

The above said evidence shows that booking of the shipment by the complainant for Karachi through defendants is admitted by the defendants, it is also admitted by the defendants that shipment was delivered on 29.04.2019, the documents Mark-PB is the copy of TCS shipment booking

receipt, it is dated 25.04.2019, on it, the time choice delivery is mentioned 27.04.2019 at 11:00 AM, its consideration amount is Rs. 500/-, the track report of it Exh-PD, it shows that it was delivered on 29.04.2019 at 10:21 AM to one Javed at Karachi after the passing of two days of delivery date i.e. 27.04.2019, the written statement filed by the defendants shows that in para No. 12 of preliminary objection No. 12 of the written statement the defendants have replied that they offered according to terms and conditions of time choice delivery to the complainant to collect his charges back from the office of the defendants, but he denied, meaning thereby the defendants have admitted that due to their fault the shipment could not be delivered to the addressee on the given date and time. The perusal of the complaint shows that complainant is resident of District Rawalpindi, defendant No.2 is also running his business at Rawalpindi, therefore, in view of the above said under section 27 of PCPA, 2005 this court has the jurisdiction to entertain and try this complaint. The evidence of the complainant shows that prior to the institution of the complaint the complainant delivered legal notice to the defendants, the copy of the said notice is Mark-PA/1-2, postal receipt is Exh-PB, delivery report of said legal notice issued by Pakistan Post Office is Exh-PC. The cross examination of the DW-1 shows that he has admitted that legal notice was received to their office,

the delivery date of the shipment was 27.04.2019, whereas the complaint shows that it has been filed on 25.05.2019 within the limitation period, therefore, in view of the above said I find no force in the contention of the learned counsel for the defendants that there was no fault of the defendants in not delivering the shipment on 27.04.2019 to the brother of the complainant or this court has no jurisdiction or complaint is not maintainable as complainant has no cause of action against the defendants, therefore, the same are hereby turned down and it is concluded that complainant has successfully proved his case against the defendants that despite receiving of the time choice delivery charges of the shipment the defendants did not deliver the shipment on the time and date agreed by the defendants to deliver the shipment, consequently the complaint is hereby accepted as under:-

The perusal of the complaint shows that the complainant has demanded Rs. 500000/- towards mental torture and agony, the perusal of the evidence shows that to prove the said facts the complainant did not produce any medical evidence, therefore, the said claim being unproved is hereby denied. However the perusal of the section 31(e) of PCPA, 2005 shows that it authorizes the court to direct the defendant to pay reasonable compensation to the complainant, since in this case defendants have badly failed to

perform their obligations, gave defective services to the complainant, therefore, in view of the above said and in the light of the facts and circumstances of the case, the defendant No.1 is hereby directed to pay Rs. 10000/- as compensation to the complainant.

The perusal of the complaint further shows that complainant has demanded Rs. 500/- as shipment charges paid by complainant to the defendants Rs. 660/- additional amount paid for railway ticket, the evidence shows that the amount of Rs. 500/- was duly paid by the complainant but shipment was not delivered in time and thereafter his brother has to pay Rs. 660/- additional charges to the Railway for traveling on train, therefore, in view of the above said, said claims are hereby accepted and defendant No.1 is hereby directed to pay Rs. 1160/- in this respect to the complainant.

The perusal of the complaint further shows that complainant has demanded Rs. 27500/- as legal charges which are exorbitant in the light of the amount of basic claim of the complainant. However, section 31(g) of PCPA 2005, authorizes the court to direct the defendants to pay actual costs including lawyers fee incurred on the legal proceeding, to the complainant, therefore, in view of the facts and circumstances of the case defendant No.1 is hereby directed to pay Rs. 15000/- towards actual costs including lawyers fee incurred on

the legal proceeding to the complainant and remaining claim is hereby denied.

8. The upshot of the above said discussion is that claim of the complainant is hereby partly accepted and partly rejected against the defendant No.1 and defendant No.1 is hereby directed to pay Rs. 500/- as shipment charges paid by complainant to the defendants Rs. 660/- additional amount paid for railway ticket total Rs.1160/- in this respect. Rs. 10000/- towards compensation and Rs. 15000/- towards actual costs including lawyers fee incurred on the legal proceeding total: Rs. 26160/- to the complainant within 30-days of the passing of this order. File be consigned to the record room.

Announced:
21.01.2020

ABDUL HAFEEZ
District & Sessions Judge/
Presiding Officer
District Consumer Court
Rawalpindi

It is certified that this order consists upon 14-pages. Each page has been dictated, read, corrected and signed by me.

District & Sessions Judge/
Presiding Officer
District Consumer Court
Rawalpindi