

**IN THE COURT OF MR. ABDUL HAFEEZ  
DISTRICT AND SESSIONS JUDGE / PRESIDING OFFICER  
District CONSUMER COURT, RAWALPINDI**

(Case No. 28 of 22.02.2018)

Tayyaba Kanwal, W/O Hassan Mamraiz,  
R/o P/O Attock Oil Company, Morgah,  
Tehsil and Distt. Rawalpindi.

(Complainant)

**Versus**

Nauman Ahmed, s/o Mangta Khan,  
owner of Nauman Bangles, H. No.9,  
Chaudhary Plaza Near Lal Haveli, Sarafa  
Bazaar, Rawalpindi.

(Defendant)

**COMPLAINT / PETITION FOR GRIEVANCE OF THE PETITIONER /  
COMPLAINANT**

**ORDER**

**02.10.2019.**

Briefly stated facts of the case are that complainant given her 6 gold bangles weighing 37.200 gms to the defendant in order to change its design on 05.05.2017 and defendant promised to change its design till 20.07.2017;- that the said gold bangles are lying with defendant as **AMANAT** but defendant through fraud and forgery, cheated with the complainant and now defendant denied to return back to the said 6 gold bangles;- that on 19.09.2017 a Jirga was convened headed by Union of Sarafa Bazar in which defendant took time till 10.10.2017 but thereafter defendant refused to return the same and defendant badly failed to perform his part of obligation and in this regard, complainant suffered financial loss Rs. 300,000/- and also faced agony due to defendant's

acts and deeds;- that defendant's acts and deeds clearly contravene the provisions of Consumer Protection Act, 2005, as defendant have provided the faulty service which is not warranted under law;- that due to defendant's acts and deeds, complainant faced agony and torture at defendant's hands and also financial caused loss to him;- that ultimately the complainant sent a legal notice Ref. No.215/LN/2018 dated 22.10.2017 to the defendant with the advise to the defendant to pay the complainant the actual amount of Rs. 300,000/- and damages of Rs. 500,000/-, the defendant replied the same but total neglecting the stance of complainant;- that the defendant also providing the services of designing / changing etc. The complainant placed order against due consideration of amount, however, the defendant remained failed to provide the services;- that now the complainant has left with no other option but to knock the doors of this Hon'ble court for redressal of his negligence by filing the instant complaint. Lastly it is respectfully prayed that the instant complaint may kindly be accepted and the defendant may graciously be directed to return the 6 bangles of weighing 37.200 gms and further the complainant may graciously be awarded the compensation of Rs. 500,000/- from the defendant in order to meet the ends of

justice. Any other relief which this Hon'ble court deems fit and proper also be awarded to the complainant.

2. On the contrary defendant filed the written reply wherein he took various preliminary objections and stated that the above mentioned complaint filed by the complainant on the plea that she gave 6 gold bangles to the defendant and order to change its design and defendant promised to return the same on 20.05.2017, actual facts in the instant case are the complainant's husband previously purchased the above bangles from the defendant and paid partial amount to the defendant and promised to pay the remaining amount i.e. Rs. 66,389/- to the defendant later on, which is still outstanding against him and when the complainant demanded the same, the complainant and her husband, just for harassing, humiliating and just to grab the above said amount, started the false, frivolous and baseless litigation, therefore, the complainant is not entitled for any relief, hence this complaint is liable to be dismissed;- that the complainant is not falls within the definition of consumer hence this Hon'ble court have lacks jurisdiction, therefore, the Hon'ble court could not entertain the complaint;- that the said gold ornaments were purchased about 6 years ago and were defective and some of them was given for change of design in May 2017 and the instant

complaint is filed on 06.02.2018 in accordance with section 28(4) of PCPA, 2005 limitation for filing of claim was 30 days from the cause of auction while complaint was filed after prescribed period of limitation, therefore, the complaint is badly time barred and liable to be dismissed;- that the narrated damages in complaint are not falls within jurisdiction of this Hon'ble court as he can seek the remedy from the civil court, hence the complaint is liable to be dismissed;- that at the same time husband and wife are proceeding against the defendant on the different forums which is absolutely against the law, hence the instant complaint is liable to be dismissed;- that the husband of complainant moved an application in the Police Station, Waris Khan, Rawalpindi and the local police FIR No. 917 dated 15.12.2017 under section 406 PPC later on converted into 420 PPC registered against the defendant, in which the complainant is on bail in the instant case and facing the trail, therefore, the complainant has no cause of action against the defendant. The complaint is, therefore, liable to be rejected under Order 7 Rule 11 CPC;- that the instant complaint is not proceedable and the same is liable to be dismissed;- that the defendant is entitled to be awarded special costs as the complainant has filed a false, frivolous and vexatious suit against the complainants. On facts he denied the paragraphs

of complaint and lastly he prayed that the instant complaint may graciously be dismissed with heavy cost.

3. In order to prove the case against the defendant complainant Mst. Tayyaba Kanwal herself appeared as PW-1, she produced her statement on affidavit (Exh-PA(1), postal receipt regarding the delivery of legal notice (Exh-PB), sealed envelope of Pakistan Post (Exh-PC), acknowledgment receipt (Exh-PD), bill / cash memo (Exh-PE), agreement Mark-PB, Postal receipt Exh-PF, copy of legal notice dated 08.02.2018, (Mark-PA (1-2).

4. On the contrary Mr. Nauman Ahmed himself appeared as DW-1, he submitted his statement on affidavit (Exh-DA). Ch. Abdul Majeed as witness appeared as DW-2, he submitted his statement on affidavit (Exh-DB(1) and Decision of New Sarafan Bazar Union, Rawalpindi dated 05.12.2017 duly signed by General Secretary (Exh-DC (1), Secretary Information (Exh-DC (2) and Vice President (Exh-DC(3).

5. The contention of learned counsel for the complainant is that it is a case of defective service on the part of the defendant, the defendant has admitted that complainant handed over to him gold ornaments for change of design on 05.05.2017, the defendant promised to change the design on 20.07.2017, on 20.07.2017 he did not change the

design and started delaying the matter. On 22.10.2017 the complainant delivered legal notice Mark-PC to the defendant. He further contended that thereafter the defendant took the matter in the Jirga, in the Jirga on 19.09.2017 the defendant admitted that on 10.10.2017 he will hand over the gold ornaments to the complainant, otherwise she would be free to take legal action against him, photocopy of the agreement made by him in the Jirga is Mark-PD. He further contended that in order to wriggle out from the Mark-PD defendant inconvenience with DW-2 prepared a forged and fabricated document Exh-DC and gave it the name of \_\_\_\_\_, in the said \_\_\_\_\_ there are stamps of Secretary Information, Vice President and General Secretary, The General Secretary is DW-2, he himself appeared to produce the said document, in cross examination he admitted that he do not know that there was a dispute of handing and taking over of gold ornaments, except him no other member of said \_\_\_\_\_ appeared before the court, said document was produced at belated stage with the permission of the court, but this document has no evidentially value in the eye of law as it does not bear the signature of the complainant or her husband nor any affidavit of complainant or her husband given to decision makers has been produced, wherein he or she had authorized to the DW-2 or others to give

\_\_\_\_\_ in the matter of handing and taking over of money, whereas receiving of the gold ornaments from the complainant is admitted by the defendant. He further contended that defendant did not fulfill his commitment which he made at the time of preparation of agreement Mark-PB till 08.02.2018, at this on 08.02.2018 the complainant served fresh legal notice to the defendant Mark-PA/1-2. The receipt of dispatch of said legal notice Mark-PA/1-2 / Exh-PC-1/1-2 is Exh-PB. He further contended that the defendant refused to receive the legal notice, at this the envelope Exh-PC un-delivered returned to the complainant with AD Exh-PD, on the envelope there is a report of the post man that defendant has refused to receive the envelope. He further contended that thereafter on 22.02.2018, at this having no option the complainant instituted the complaint on 22.02.2018, the complaint has been filed within limitation period. In support of his contention he relied upon "F.A.O No.58 / 2016 titled as Sheikh Abdul Shahid VERSUS Gulzar Khan decided on 26.04.2017 by the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi. On this point that in presence of criminal proceedings the civil proceedings cannot be proceed he relied upon Haji Sardar Khalid Saleem V.S M. Ashraf and others 2006 SCMR 1192 and prayed that complaint may be accepted.

6. The contention of the learned counsel for the defendant is that complainant's husband previously purchased the above bangles from the defendant and paid partial amount to the defendant and promised to pay the remaining amount i.e. Rs. 66,389/- to the defendant later on, which is still outstanding against him and when the complainant demanded the same, the complainant and her husband, just for harassing, humiliating and just to grab the above said amount, started the false, frivolous and baseless litigation, therefore, the complainant is not entitled for any relief. He further contended that complainant does not fall within the definition of consumer hence this Hon'ble court have lacks jurisdiction, and the Hon'ble court could not entertain the complaint. His further contention is that the said gold ornaments were purchased about 6 years ago and were defective and some of them were given for change of design in May 2017 and the instant complaint is filed on 06.02.2018.he further contended that in accordance with section 28(4) of PCPA, 2005 limitation for filing of claim was 30 days from the arising of cause of action, while complaint was filed after prescribed period of limitation, therefore, the complaint is badly time barred and liable to be dismissed. The narrated damages in complaint are not falls within jurisdiction of this Hon'ble court as



she can seek the remedy from the civil court. He further contended that complainants are proceeding against the defendant on the different forums which is absolutely against the law, further complainants moved an application in the Police Station, Waris Khan, Rawalpindi and the local police registered FIR No. 917 dated 15.12.2017 under section 406 PPC later on converted into 420 PPC against the defendant, in which the complainant is on bail and facing the trial, therefore, the complainant has no cause of action against the defendant. The complaint is, therefore, liable to be rejected under Order 7 Rule 11 CPC;- that the instant complaint is not proceedable and the same is liable to be dismissed and defendant is entitled to be awarded special costs as the complainant has filed a false, frivolous and vexatious suit against the defendants, lastly he contended that complaint may be dismissed with heavy costs.

7. Arguments heard, record perused.

8. In order to prove the case the complainant herself appeared as PW-1, and she submitted her statement on affidavit Exh-PA and in it he retreated the facts mentioned in the complaint, in cross examination she deposed that she is graduate, bangles which she handed over to the defendant for change of design were given to her by her in laws she has

no knowledge that from where they procured the said bangles, she has no knowledge that her husband purchased said bangles from defendant she has no knowledge that beside the bangles which articles were got prepared by him from the shop of the defendants he has no knowledge that sum of Rs. 66389/- towards the price of the Jewelry is outstanding towards her husband or not, she volunteered and deposed that her husband never talked in this respect, Mark-PB, is head pad of the union and it has stamp of Union on it. She has no knowledge that on 05-12-2017, Jirga of union was constituted she denied that in the Jirga no writing was prepared, she denied that in the decision dated 05-12-2017 of Jirga, it was written that there is a dispute of giving and taking, she admitted that in this matter her husband got registered the FIR No. 917 dated 15-12-2017 under section 406 PPC, later on converted into 420 PPC, she admitted that separate criminal case is pending in the court, she denied that in the inquiry dated 06-12-2017, she was suggested to take the matter to the Civil court she not present during the police investigation. When she went to handover the bangles, she was accompanied with her husband and her mother they gave are not witness with her she denied that real matter is of handing over and taking over the money which is to be paid by her husband. Defendant

received the first legal notice, whereas second returned to her. She volunteered and deposed called on telephone and got constituted Jirga. She have stated in amended complaint that defendant gave reply to the notice.

On the contrary defendant Nauman Ahmed was examined as DW-1, he submitted his statement on affidavit Exh-DA, in it he restarted the facts mentioned in the written statement in cross examination he deposed that the complainant handed over to him her bangles in 5<sup>th</sup> month of year 2017, after 15 days he had to change the design of the bangles and return to the complainant. On that day when complainant handed over the bangles, she was accompanied with her mother and her husband, he did not institute any suit regarding the recovery of the amount of Jewelry of 2011, he volunteered and deposed that, it was their family matter, he admitted that he did not return the bangles of the complainant to her till today. The outstanding amount is pertaining to year 2011, he denied the suggestion that, he in connivance with Sarafa Bazaar Union wanted to usurp the bangles on the pretext of the false and concocted story. Ch. Abdul Majeed was examined as DW-2, he submitted his statement on affidavit Exh-DB in it he deposed that there was a dispute of handing and taking over the amount in between Hassan Memraiz

husband of the complainant and Nauman Ahmed at this in this respect a Jirga was constituted on 05-12-2017, in presence of representative of the union i.e. vice president, secretary information and him as general secretary, in said Jirga Hassan Memraiz admitted that he has to pay Rs. 66389/- of defendant but he refused to pay the said amount. The proceeding of the Jirga was prepared on letter head pad of the union, signature of the members of the Union and of him are on the said document. In cross examination he deposed that from 1½ years he is secretary jewelers union, Rawalpindi, that in the year of 2017, he contested the election, defendant Nauman Ahmed was his voter, he has no knowledge regarding the handing and taking over the bangles Nauman Ahmed gave an application that complainant has to pay Rs. 66000/- to him, previously three to four time he has given evidence from his voter side.

The evidence further shows that Ch. Abdul Majeed DW-2 on application of the complainant was reexamined on 01.10.2019 as DW-2, he deposed that he has seen the decision of the Jirga dated 05-12-2017 in it, beside him Waqar Ahmed, and Sheikh Muhammad Din Vice president were included, this document is signed by him and he produces it as Exh-DC, and further deposed that it bears his signature on it at Exh-DC/1 he further deposed he can identify the signature of Sheik Waqar

Ahmed Exh-DC/1-2 and of Muhammad Deen Exh-DC/3, in cross examination he deposed that Sheikh Waqar Ahmed And Sheikh Muhammad Deen did not appear as witness today, who typed Exh-DC has also not appeared, Exh-DC does not bear the signature of Hassan Memraiz. He denied the suggestion that in order to usurp jewelry of complainant forged documents has been prepared.

The Above said evidence shows that the complainant handover 6 gold bangles weighing 37.200 gms to the complainant to change the design of the bangles the defendant received the said bangles and issued receipt Exh-PE on it, he gave the date of return date 20-07-2017. On the due date he did not return the bangles to the complainant after changing the design, at this on 22.10.2017 complainant delivered legal notice Mark-PC to the defendant, at this Jirga was convened on 19.09.2017 in the Jirga the defendant took time till 10-10-2017, in this respect the complainant has produced the copy of agreement whereby defendant admitted to return bangles on 10.10.2017. The defendant did not return the Jewelry to the complainant on 10-10-2017, and delayed the matter on different pretext. The defendant produced DW-2 in support of his version DW-2 produced a different decision of Jirga Exh-DC, in cross examination he

deposed that there was a dispute of handing and taking of money. He has no knowledge regarding the handing and taking of Bangles. The person who typed Exh-DC and its witnesses Sh. Waqar and Sh. Muhammad Deen have not appeared as witness in the case, Exh-DC does not bear the signature of Hassan Memraiz husband of complainant. DW-3 has admitted that defendant in his voter he has given evidence in 3 / 4 matters for defendnat. He denied the suggestion that to usurp the jewelry forged document Exh-DC has been prepared.

The contention of the learned counsel for the defendant is that the gold ornaments were purchased about 6 years ago and were given to the defendant for change of design in May, 2017 and the instant complaint has been filed on 06.02.2018 in accordance with section 28(4) of PCPA, 2005 limitation for filing of claim was 30 days from the arising of cause of action, while complaint has been filed after prescribed period, therefore, complaint is time barred and is liable to be dismissed. On the other hand the contention of the leaned counsel for the complainant is that it is a case of defective service on the part of the defendant, the defendant has admitted that complainant handed over to him gold ornaments for change of design on 05.05.2017, the defendant

promised to change the design on 20.07.2017, on 20.07.2017 he did not change the design and started delaying the matter. On 22.10.2017 the complainant delivered legal notice Mark-PC to the defendant. He further contended that thereafter the defendant took the matter in the Jirga, in the Jirga on 19.09.2017 the defendant admitted that on 10.10.2017 he will hand over the gold ornaments to the complainant, otherwise she would be free to take legal action against him, photocopy of the agreement made by him in the Jirga is Mark-PD. He further contended that in order to wriggle out from the Mark-PD defendant inconvenience with DW-2 prepared a forged and fabricated document Exh-DC and gave it the name of \_\_\_\_\_, in the said \_\_\_\_\_ there are stamps of Secretary Information, Vice President and General Secretary, The General Secretary is DW-2, he himself appeared to produce the said document, in cross examination he admitted that he do not know that there was a dispute of handing and taking over of gold ornaments, except him no other member of said \_\_\_\_\_ appeared before the court, said document was produced at belated stage with the permission of the court, but this document has no evidentially value in the eye of law as it does not bear the signature of the complainant or her husband nor any affidavit of complainant or her husband given to decision makers has

been produced, wherein he or she had authorized to the DW-2 or others to give \_\_\_\_\_ in the matter of handing and taking over of money, whereas receiving of the gold ornaments from the complainant is admitted by the defendant. He further contended that defendant did not fulfill his commitment which he made at the time of preparation of agreement Mark-PB till 08.02.2018, at this on 08.02.2018 the complainant served fresh legal notice to the defendant Mark-PA/1-2. The receipt of dispatch of said legal notice Mark-PA/1-2 / Exh-PC-1/1-2 is Exh-PB. He further contended that the defendant refused to receive the legal notice, at this the envelope Exh-PC undelivered returned to the complainant with AD Exh-PD, on the envelope there is a report of the post man that defendant has refused to receive the envelope. He further contended that thereafter on 22.02.2018, at this having no option the complainant instituted the complaint on 22.02.2018, the complaint has been filed within limitation period. In support of his contention he relied upon "F.A.O No.58 / 2016 titled as Sheikh Abdul Shahid VERSUS Gulzar Khan decided on 26.04.2017 by the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi as under:-

"Perusal of record reveals that complaint / claim filed by appellant / complainant was dismissed



being time barred on the ground that legal notice was given on 08.11.2015 and complaint was filed on 20.06.2015 after lapse of about 6 months of the issuance of notice whereas complaint should have been filed within 30 days from the date of arising of cause of action. The law has been misapplied by the learned Consumer Court while passing the impugned order because the items were purchased on 03.09.2014, admittedly, without any warranty and the complaint/claim was filed on 20.06.2015. By virtue of second proviso to section 28(4) of the Punjab Consumer Protection Act, 2005, one year from the date of purchase of the product would be considered as a period of limitation provide for filing claim before the Consumer Court. The relevant portion of law is reproduced hereunder:-

“Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of services”

Therefore, keeping in view the date of purchase i.e. 03.09.2014, the claim, at the most, can be filed by or before 03.09.2015 and as such same was filed on 20.06.2015 which is within time provided under the law."

Since the defendant has admitted in his written statement that in May, 2017 the gold ornaments were given to him and while he appeared as DW-1. He admitted that the complainant handed over the bangles to him in the 5<sup>th</sup> month of 2017, after the passing of 15-days he has to change the design of the bangles, the complainant came to his shop to hand over the bangles to him with her mother and her husband, he has not instituted any case regarding the recovery of outstanding amount of the year 2011, he has not returned the bangles to the complainant till today, so it can be safely concluded that bangles were owned by the complainant, the bangles were received by the defendant in may, 2017 from the complainant in presence of the mother and husband of the complainant, the bangles were received by the defendant for change of design, under the law he was bound to provide correct services to the complainant and hand over her bangles within 15-days, but he did not do so, at this she instituted the complaint on 22.02.2018 prior to the expiry of one year from the date of

providing of the services by the defendant to the complainant, therefore, while relying upon the above said case law I find no force in the contention of the learned counsel for the defendant that complaint is barred by time and same is hereby turned down and it is held that complaint has been filed within limitation period.

The next contention of the learned counsel for the defendant is that complainant does not fall in the definition of the consumer, therefore, this court has no jurisdiction to entertain and try this complaint. The complainant may be directed to seek the redressal of his grievance from the civil court. Since the defendant has himself admitted in the cross examination that he is working as jeweler from previous 17-years, the complainant handed over to him bangles in May, 2017, after the passing of 15-days he has to change the design and hand over to the complainant. He did not return the bangles to the complainant so far, therefore, in view of the above said in the light of the definition of the consumer mentioned in section 2(c)(ii) of PCPA, 2005 the complainant is a consumer as she hired the services of the defendant and in the light of definition of services mentioned in section 2(k) of PCPA, 2005 the defendant falls in the definition of service provider, consequently I find no force in the said contention of the

learned counsel for the defendant, therefore the same are hereby turned down and it is concluded that complainant is a consumer and defendant is a service provider in this case and this court has the jurisdiction to decide this case.

The next contention of the learned counsel for the defendant is that husband of the complainant moved an application in the police station waris khan, Rwp and the local police registered FIR No. 917 dated 15.12.17 under section 406 PPC later on converted into 420 PPC registered against the defendant in which defendant is on the bail and is facing the trial, therefore, the complainant has no cause of action against the defendant, therefore, complaint is liable to be rejected under order 7 rule 11 CPC. On the other hand the contention of the learned counsel for complainant is that there is no bar in the registration of the FIR in presence of the pendency of civil matter in the civil court or consumer court and in this respect law is settled that civil and criminal proceedings could proceed side by side. In support of his contention he relied on Haji Sardar Khalid Saleem V.S M. Ashraf and others 2006 SCMR 1192.

In the light of the respective contention of the learned counsels for the parties, I have gone through the said case law, in it, it is held that criminal proceedings are not barred in presence of civil proceedings and that civil and

criminal proceedings can be proceeded simultaneously, therefore, in view of the above said I find no force in the said contention of the learned counsel for the defendant that in presence of criminal proceedings this complaint case is not proceedable and same is hereby turned down.

9. The upshot of the above said discussion is that for all the reason stated above it is concluded that the complainant has successfully proved that defendant as a jeweler received her 6-gold bangles weighing 37.200 gms to change its design on 05.05.2017 and thereafter did not return to her after the changing the design, therefore, complaint is hereby accepted as under:-

The perusal of the complaint shows that in the complaint the complainant has prayed that defendant may be directed to return the 6-gold bangles weighing 37.200 gms to her. Since the receiving of the said bangles is admitted by the defendant. Moreover, in view of the above said finding of the court the defendant is directed to return the said gold 6-bangles weighing 37.200 gms or in the alternative their present market price within 30-days of the passing of this order.

The perusal of the complaint further shows that the complainant has demanded Rs. 500,000/- as compensation. I have gone through section 31(e) of PCPA, 2005, it authorizes

the court to direct the defendant to pay compensation to the consumer if the court is satisfied that product claimed against suffer from any of the defects specified in the claim or that any or all of the allegation contained in the claim about the services provided are true. Since in this case the defendant has deprived the complainant from the usage of her gold bangles from previous long period, therefore, in view of the above said the defendant is directed to pay Rs. 15000/- as compensation to the complainant as well.

The perusal of section 31(g) of PCPA, 2005 shows that the court may also award actual costs including lawyer's fee incurred on the legal proceedings. Since in this case the complainant had knocked various doors for redressal of her grievances, she delivered legal notice to the defendant for redressal of his grievances, the defendant did not listen to him, having no option she instituted the complaint before this court, defiantly on the said process she had spent huge amount, therefore, in view of the above the defendant is directed to pay Rs. 15000/- towards actual costs including lawyer's fee incurred on the legal proceedings to the complainant as well.

10. The upshot of the above said discussion is that the complaint of the complainant is hereby partly accepted and partly rejected and defendant is directed to return the said (i)

gold 6-bangles weighing 37.200 gms or in the alternative their present market price, (ii) Rs. 15000/- towards compensation and (iii) Rs. 15000/- towards actual costs including lawyer's fee incurred on the legal proceedings to the complainant within 30-days of the passing of this order. File be consigned to the record room.

**Announced:**  
**02.10.2019**

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

It is certified that this order consists upon 23-pages. Each page has been dictated, read, corrected and signed by me.

**District & Sessions Judge/**  
**Presiding Officer**  
**District Consumer Court**  
**Rawalpindi**