

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

(Case No. 142 of 10.11.2017)

Wajid Abbas, S/O Ghulam Abbas, R/O P/O Mahal,
Malikwal, Tehsil and District Mandi Bahauddin.

(Complainant)

Versus

Malik Taj, owner of Sartaj Autos, Old Motor Parts
Dealer, Shop No. 545, Ahata Mithu, Saddar,
Rawalpindi

(Defendant)

**SUIT FOR RECOVERY OF RS ONE CRORE ALONG WITH MARK UP
AT THE PREVAILING BANK RATE.**

ORDER

09-01-2020.

Briefly stated facts of the case are that the complainant belongs to a respectable family and by profession is a practicing lawyer;- that the complainant is owner of car No. AEJ-860, Corolla, Model 2006 Colour silver, the complainant purchased the said vehicle for his own use;- that the engine of the aforesaid car became disabled and failed to function, the complainant went to the shop of defendant to purchase a new engine for his car;- that on 12.07.2017, the complainant purchased a new engine NO. IZZ-3061784 from the defendant in consideration of Rs.42000/- receipt whereof was issued by the defendant with his signature on 12.07.2017 which is attached herewith;- that the complainant paid Rs. 4000/- to the

mechanic for fitting of said engine in his car. He also paid Rs. 3300/- to Jabbar Autos for purchase of some parts for fitting of said engine. He also purchased some material from Hanif Brothers and paid Rs. 1000/- also purchased oil pump from said Hanif Brothers and paid Rs. 2000/-, the complainant also purchased some material from Shahzaib Autos for Rs. 10320/- total comes to Rs. 62620/-; that two weeks ago when the complainant was going to Mandi Bahauddin, at the motorway, the engine purchased by the complainant from defendant failed to function. The defendant did not tell the complainant that the engine was old one, rather he told the complainant that engine was new one;- that the defendant sold a defective car engine to the complainant. He cheated the complainant due to deceitful and illegal act of the defendant, the complainant suffered mental tension and financial loss which are as under:-

Mental Tension	Rs. 1,00,00,000/-
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Other financial loss	Rs. 62620/-
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TOTA: Rs. 1,00,62620/-

That the complainant issued a notice to the defendant requesting him to pay the aforesaid amount but he flatly refused to pay the said amount, hence this suit; that cause of action accrued to the complainant against the defendant

initially on 12.07.2017 when he purchased engine from defendant; secondly when the engine failed to function and finally a week ago when the defendant flatly refused to pay the aforesaid amount and is continuing;- that as the cause of action has accrued and shop of defendant situated within the territorial limits of this Hon'ble court, hence the court has jurisdiction to adjudicate upon the matter;- that value of the suit for the purposes of court fee and jurisdiction is fixed at Rs. 1,00,62620/-. Lastly it is prayed that a decree for recovery of Rs. 1,00,62620/- alongwith markup at the prevailing bank rate may kindly be passed in favour of the complainant and against the defendant with costs. Any other relief which this Hon'ble court deems fit may also be awarded.

2. On the contrary defendant filed his written statement, wherein he took various preliminary objections that the suit is not maintainable and its merits dismissal under Order 7 Rule 11. The suit is meant to blackmail the defendant. Complainant has not disclosed legible cause of action within the four corners of Consumer Rights and Protection Act, 2005. No notice has been served upon the defendant, hence the suit merit dismissal. On facts he replied that paras No.1 & 2 needs no comment. Para No.3 denied to the extent of purchasing a new engine from the defendant, rest needs no comment. Para

No.4 incorrect to the extent of claim of complainant for having purchased new engine from the defendant. Para No.5 denied for want of knowledge. Para No.6 is pack of lies, the complainant is an educated person who knows the difference between old and new engine. The defendant has a shop in old spare parts market saddar, Rawalpindi with hundreds other shops in this market. All the vendors including the defendant use to purchase old spare parts from different vendors and sell here to different clients; so it for all purpose and intent an old spare market where the different buyers come from Pakistan and subscribe the different used items including the engine and gear boxes of different kinds. The rest of the para is denied as complainant purchased old / used / second hand engine and after having satisfied with the working, performance and installation by the mechanics; however, he has not made the full payment and Rs. 10000/- are still outstanding which he does not want to pay and therefore, has instituted the present suit. Para No.7 is pack of lies and technically incorrect, engine like any other commodity and merchandise is first check by the mechanic and before fitting it into the car, it is started and its function are checked on the ground; it is on the satisfaction of the mechanic. The old engine are purchased and sold in the present case and the engine in question was formally checked

and started by the mechanic, if he had not been satisfied, no defective engine could be installed. Moreover, it is submitted that it is not the job of defendant to give a certification of mechanical fitness of the engine as he himself purchased from vendors who dismantle these engine from old cars; here the role of a mechanic who fits the engine is very crucial and important. Defendant is neither mechanic nor electrician nor he can be sure off any mechanical defects if apparent in engine. It is the job of mechanic and his team to check the engine from different corners and when they are satisfied then the deal is done. In the present case, whoever the mechanic was satisfied after ground checks and other checks for hours then the subscribed the engine in question. Moreover, old engine is purchased at the risk & cost of purchaser who knows that engine is complicated machine and if not properly maintained it could be damaged by user himself. The defendant has no responsibility after his merchandise has been finally passed and installed by the concerned mechanic which is a different department and nothing to do with the defendant. Moreover, an engine has several complications and certain parts needs to be maintain on regular basis and there can be hundred of reasons of malfunctioning of engine, there may be malfunctioning due to using low profile engine oil

or due to non filling or periodical checking of engine belts etc. Since the defendant is not the manufacturer who sold the brand new engine nor complainant has pointed at the exact nature of malfunctioning of the engine, it is impossible to fix any liability in this juncture. The suit is only meant for black mailing. Defendant has not cheated any one nor indulge in any false, deceptive or misleading representation nor made any false claim regarding the particular history or usage or quality etc. of the engine in question. Furthermore, the defendant under the law issues a receipt so there is no question of deception and unfair practice which can be complained off. As far as the losses reckoned by the complainant are concerned; these are not supported by any cogent evidence, they are vague and general; there is no criteria to ascertain such kind of damages otherwise not claimable from the defendant, hence denied. Para No.8 is incorrect & denied, no notice was served upon the defendant. In para No.9 he stated that no cause of action has ever been accrued to the complainant whatsoever, hence denied. Para No. 10 is legal, needs no comment. In para No. 11 he stated that no court fees has been paid by the complainant, hence suit be dismissed under Order 7 Rule 11 (c). Lastly prayed that the suit of the defendant may kindly be dismissed with special cost to be levied under section 35-A of

CPC. Any other relief which this Hon'ble court deems fit and proper may kindly be granted in favour of the defendant as against the complainant.

3. In order to prove the case against the defendant, complainant Mr. Wajid Abbas himself appeared as PW-1, he submitted his statement on affidavit Exh-PA/1, he also produced documents i.e. copy of legal notice Mark-PA, postal receipt Exh-PB, bill / cash memo of Sartaj Autos Exh-PC, bill of Ayaz Autos Exh-PD, bill of Abdul Jabbar Autos Exh-PE, bill of Hanif Brothers Old parts Exh-PF/1-2, bill of Shahzab autos Exh-PG, receipt issued by Abu Huraria Engineers genuine parts Exh-PH, delivery report regarding the delivery of legal notice Exh-PJ.

4. On the contrary defendant Malik Taj himself appeared as DW-1, he submitted his statement on affidavit Exh-DA/1-2 and closed his evidence.

5. Arguments heard, record perused.

6. The contention of the learned counsel for the complainant is that complainant is owner of Car No. AEG-860 Corolla Model No. 2006, its engine became disable, the complainant went to the shop of the defendant to purchase a new engine for his car, on 12.07.2019 he purchased a new engine No. 1ZZ-3061784 in consideration of Rs. 42000/- from the defendant, the complainant paid Rs. 4000/- to the mechanic

for fitting the said engine in the car, he paid Rs. 3300/- to Jabbar Autos for purchase of some parts for fitting with the engine, he also purchased some material from Hanif Brothers in consideration of Rs.1000/-, he also purchased oil pump in consideration of Rs. 2000/- from Hanif Brothers, he purchased from Shazaib Autos material valuing RS. 10320/- and in this way he spent total Rs. 62620/- on the said engine, two weeks ago he was going to Mandi Baha-ud-Din, the engine failed to function when he was at the motorway, the defendant did not disclose that engine is an old one and rather told that engine is a new one. He further contended that the defendant cheated with the complainant as the engine was a defective engine, due to said reason the complainant suffered mental torture. He further contended that the in the written statement defendant has taken the stance that the complainant purchased old / used / second hand engine and after having satisfied with the working performance and installation by the mechanic, however he has not made the full payment and Rs. 10000/- are still outstanding which he does not want to pay, thereafter he has instituted the present suit. In this respect sale invoice of the engine issued by the defendant which has been produced by the complainant as Exh-PC is part of the evidence, on it there is no where mentioned that Rs. 10000/- are outstanding towards

the complainant. Moreover, on it, it is mentioned that there is a warranty of one year, the complaint has been filed within the warranty period after fulfilling the requirement of delivery of legal notice, there is no delay in the institution of the complaint. He further contended that the defendant made signature on the written stamen in Urdu, whereas on affidavit Exh-DA/1-2, the signatures of him are in English, there are fake signatures of the defendant on his affidavit or the written statement. In cross examination he could not give any proper reply, it is a case of clear cut defective engine which is lying with the complainant as the complainant has got affixed another engine in his vehicle, the complaint may be accepted and defendant may be directed to fulfill the loss of the complainant. Further contended that in the light of the law laid down in 2019 CLC 1041 and decision of Hon'ble Lahore High Court dated 26.04.2017 in FAO No. 58/16 the complaint has been instituted within the limitation period. Moreover, does not matter the engine was old or new. In this respect he relied on 2015 YLR 2362.

7. Conversely the contention of the learned counsel for the defendant is that old engine was purchased by the defendant, there was warranty of only 15-days of the said engine, the complainant did not disclose that what was the

defect in the engine, the complainant had to pay Rs. 10000/- to the defendant which he failed to pay and instead instituted the instant complaint, after the passing of about 4-months which is barred by time. Moreover, the complainant did not make party to the mechanic who replaced the engine second time, the complainant has failed to prove his case, the complaint may be dismissed.

8. In the light of the above said respective contentions of the learned counsels for the parties, I have gone through the evidence, the complainant himself appeared as PW-1, beside the other documents he submitted his statement on affidavit Exh-PA. In cross examination he deposed that sale invoice is Exh-PC, on sale invoice Exh-PC it is mentioned that Sartaj Autos is Old Motor parts dealer, he took his vehicle to the shop of defendant by toe chaining it, this shop is situated in such market where old and new engines are sold, he denied that there is a warranty of 15-days mentioned on Exh-PC, he volunteered and deposed that warranty of one year is also mentioned on it. Due to empty radiator its engine may become warm, it may also seize, due to the absence of the oil engine may also seize. On 12.07.2017 he got fitted the engine and on 19.08.2017 it became out of order, on Exh-PC it is mentioned that engine is made of Singapore and not Japan, assembly is

called engine, he admitted that the engine which he purchased from defendant it was checked by the mechanic, the name of mechanic is not mentioned in the complaint and affidavit, now he is witness of this case, the mechanic who put the engine in his car, he started the vehicle and checked it, for 40-minutes it remained started, he observed its all checks, after putting engine the mechanic drove the vehicle also, upon the clearance of the mechanic he drove the vehicle to his home, the mechanic who replaced the engine was called by the defendant, he has no complaint against the mechanic, the spare parts which he purchased vide Exh-PF/1-2 from a shop which is located near the shop of defendant, the signatory of Exh-PF/1-2 is not his witness, the article mentioned in Exh-PF/1-2 were new, he was confronted with Exh-P, wherein it was found mentioned that one oil pump Toyota Altas, old, on Exh-PH date is not mentioned, signatory of Exh-PG is not his witness, Exh-PE is not signed by its executants, the mechanic which has been stated in affidavit is another mechanic. For mental agony he used Desi medicines, he did not produce any prescription regarding the treatment of mental agony, he has no knowledge regarding the contents of unani medicines.

On the other hand from defendant's side Malik Taj himself appeared as DW-1, he too submitted his statement on

affidavit Exh-DA/1-2, he admitted on it his signatures at Exh-DA/1-2/1, his cross examination shows that he deposed that he do not remember that on which date he got prepared affidavit on stamp paper, affidavit is not prepared by him, he volunteered and deposed that he is uneducated, he has no knowledge that which oath commissioner attested the Exh-DA/1-2, he has no knowledge regarding the date of attestation, the number of his shop is 545, it is situated at Ahata Mithu Khan, on the same address he receive summons of the court, notice was also received by him, he do not remember the date of deposit of written statement in the court, he used to make signatures in English, he admitted that Exh-PC is issued by him, in throughout proceedings of the court he made signatures in English, he admitted that during the fitting of the engine if any part is used or mobiloil filter etc is put its amount is paid by the owner, he only received the price of the engine, he admitted that after the fitting of the engine in the vehicle they allow the owner to leave the place after the payment of its price, he denied the suggestion that after the purchase of the engine complainant brought of the engine and said engine is defective and return its price, he volunteered and deposed that after the passing of 3 months and 16 days of the warranty

period he was come, he denied that complainant delivered legal notice to him.

The above said evidence shows that the sale and purchase of the engine is admitted between the parties, the perusal of sale invoice Exh-PC which is admitted by the defendant also shows that defendant sold one Corolla Altas engine in consideration of Rs. 42000/- to the complainant, Exh-PC further shows that on it firstly it is mentioned that there is a warranty of 15 days of oil and slander of the vehicle, moreover there is a warranty of not reducing oil, it is a Singapuri engine assembly, moreover under heading "Note" it is mentioned that there is no warranty of broking of it, further more it is mentioned on it that there is a guaranty of one year of standard and fitting. The statement of the complainant shows that engine became out of order after the passing of 15-days, when complainant was on motorway, the complainant brought the vehicle by toe chining it to the shop of the defendant, the cross examination of DW-1 shows that the complainant brought the engine and made complaint after the passing of 3 months and 16 days of the expiry of warranty period, therefore, he did not listen his complaint. His statement further shows that the engine was an old one and not new one. He further taken the defense in the written statement that the complainant did not make the

full payment and Rs. 10000/- were outstanding against the complainant which he does not want to pay, therefore, he instituted the present complaint, I have gone through Exh-PC which is an admitted document between the parties, on it there is nowhere mentioned that Rs. 10000/- are outstanding towards the complainant or Rs. 10000/- have not been paid by the complainant to the defendant. I have also gone through the statement of the complainant which shows that complainant delivered legal notice to the defendant, whereas the defendant has denied that he received the legal notice delivered to him by the complainant. The perusal of the evidence of the complainant further shows that complainant produced copy of legal notice delivered to the defendant Mark-PA, he also produced postal receipt NO. 371 Exh-PB, presumption of truth is attached to the said receipt which has been issued by the post office which is a central Govt. Deptt. The evidence further shows that beside the above said postal receipt the complainant produced the proof of delivery of legal notice to the defendant which is a delivery certificate issued by Senior Post Master GPO, Rwp, it is Exh-PJ. The cross examination of the defendant shows that he deposed that he is an uneducated person, he made his signatures in English throughout the proceedings of this case. The perusal of the

written statement shows that his signatures on the written statement are in Urdu, whereas the signatures on affidavit Exh-DA/1-2 are in English. His cross examination further shows that he has no knowledge that when his affidavit was prepared, who executed the affidavit, who attested it.

Since sale and purchase of the engine is admitted between the parties, there is one year warranty of the engine mentioned in Exh-PC, the engine became out of order during the warranty period, the engine was taken by the complainant to the shop of the defendant, the defendant did not listen to him on the ground that the complainant has brought the engine after the passing of 3 months and 16 days of the expiry of the warranty, the defendant claims that the warranty period of the engine was 15 days, whereas this period is pertaining to the oil and reducing of the oil, admittedly engine is made of Singapore, there is no where mentioned on Exh-PC that it is an old engine, the defendant has admitted in cross examination that at the time of changing of the engine other parts are also put with the engine in the vehicle. The document Exh-PD is regarding the grinding of the crank of the engine for that complainant paid Rs. 1000/- likewise the document Exh-PE shows that complainant paid Rs. 33000/- for purchasing some parts which were also used during the replacement of the

engine, document Exh-PF/1-2 shows that complainant paid Rs. 2000/- for purchasing Toyota Oil pump which was also used during the replacement of the engine. He also vide Exh-PQ spent Rs. 10320/- for purchasing some other parts which were used during the change of the engine. So, in this way it can be safely concluded that the complainant paid Rs. 42000/- towards the price of engine to the defendant and beside it he paid above said total Rs. 20620/- for the purchase of other parts and in this way spent total Rs. 62620/- on the replacement of the engine, engine was having one year warranty, the engine became out of order prior to the expiry of the warranty period. In 2015 YLR 2362 it is mentioned that any violation of Punjab Consumer Protection Act, 2005 including Section 12 of it gives cause of action to the consumer against the seller of product, therefore, it is concluded that the complainant has the cause of action against the defendant as defendant sold a defective engine in consideration of Rs. 42000/- to the complainant which stopped working within guaranty period.

Regarding this that the complaint has been or not filed in the limitation period in this respect I have gone through "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 the of 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."

I have also gone through Deltex Courier Service V.S Sajid Imran Gill and others 2019 CLC 1041 wherein it is held that "cause of action will start from the date of expiry of 15-days of the legal notice, and no time limit was fixed by legislature to serve a notice in writing upon seller / service provider / manufacturer and when a notice under PCPA, 2005 was served such seller / service provider / manufacturer may redress the grievances of the consumer. However, if no reply to such notice was forthcoming the terminus a quo for computing limitation period, limitation under PCPA, 2005 was the date when 15-days expired after receipt of notice by supplier and non reply on the same and on such date cause of action under PCPA, 2005 arose, therefore", in view of the above said case law the complaint has been filed within limitation period, therefore, I find no force in the contention of the learned counsel for the defendant that complaint is barred by time. Moreover, in this contentions that

the complaint is false, no legal notice was received to the defendant and the complaint has no cause of action and the same are hereby turned down and it is concluded that complainant has successfully proved his case against the defendant, consequently the complaint is hereby accepted as under:-

The perusal of the complaint shows that the complainant has demanded Rs. 62620/- towards the price of engine and fitting expenses + additional spare parts oil filter etc. used in process of affixing the engine, the said fact is not specifically denied by the defendant, therefore, in view of the above said, the said claim of the complainant is hereby accepted and defendant is directed to pay Rs. 62620/- to the complainant and receive his engine from the complainant in the court.

The perusal of the complaint further show that complainant has demanded Rs. 100,00,000/- towards the mental tension, the perusal of the evidence shows that he did not produce any oral or documentary medical evidence to prove the said fact, therefore, in view of the above said the said claim of the complainant being unproved is hereby denied. However, 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 defendant has badly failed to perform his obligations, he gave defective engine to the complainant in result the vehicle of the complainant stopped on motorway, the complainant to chained his vehicle brought to the shop of the defendant, spent money on it, thereafter he got replaced another engine in his vehicle, definitely on this process he spent some money, therefore, in view of the above said the defendant is directed to pay Rs. 15000/- as compensation to the complainant in this respect. Moreover, Section 31 (g) of PCPA, 2005 authorizes the court to award actual costs including lawyer's fee incurred on the legal proceedings, the evidence shows that for the redressal of his grievances complainant firstly delivered legal notice to the defendant, but defendant did not listen to him thereafter he instituted the complaint against the defendant, definitely on this process the complainant has spent some amount, therefore, in view of the above said the defendant is directed to pay Rs.20000/- in this respect to the complainant as well.

9. The upshot of the above said discussion is that the complaint of the complainants is hereby partly accepted and partly rejected and defendant is directed to pay Rs. 62620/- towards the price of engine and fitting expenses used on the

engine, Rs. 15000/- towards compensation and Rs. 20000/- towards actual costs including lawyer's fee incurred on the legal proceedings total Rs. 97620/- to the complainant and received his engine from the complainant in the court within 30-days of the passing of this order. File be consigned to the record room.

Announced:
09.01.2020

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

It is certified that this order consists upon 21-pages.
Each page has been dictated, read, corrected and signed by
me.

District & Sessions Judge/
Presiding Officer
District Consumer Court
Rawalpindi