

Form No: HCJD/C-121.  
JUDGEMENT SHEET  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT

CRIMINAL APPEAL NO. 211 OF 2020

Waqas & Brothers Enterprises (Private) Limited

Vs

M/s DHL Express through its CEO, etc.

APPELLANT BY: Mr. Asad Ullah Khan, Advocate.

RESPONDENTS BY: Barrister Umar Zia-ud-Din and Ms.  
Ammarah Mahmood, Advocates.

DATE OF HEARING: 12.02.2021

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**BABAR SATTAR, J.**- Through this Criminal Appeal filed under section 10 of the Islamabad Consumers Protection Act, 1995 ("**Act**") the appellant has impugned order dated 12.11.2020 passed by the learned Additional Sessions Judge Islamabad, who by accepting an application filed by the respondent under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("**CPC**"), dismissed the complaint of the appellant on the basis that the appellant did not qualify as consumer under section 2(c) of the Act.

2. Brief facts of the case are that the appellant bought an electronic device from Yaspro Electronics China who hired the services of the respondents to deliver the consignment to the appellant in Islamabad. It was submitted that the shipment was to be delivered in Islamabad before 30.06.2020. The shipment arrived in Lahore instead of Islamabad and it was finally cleared

through customs authorities and delivered in Islamabad on 23.07.2020. The appellant claims that respondents' negligence in provision of services caused substantial loss to the appellant and it was entitled to compensation under the provisions of the Act. The appellant issued a legal notice to the respondents for recovery of damages on 06.08.2020. This was responded to by the respondents through counsel on 25.08.2020. The appellant then filed a consumer complaint under section 10 of the Act and sought compensation in the amount of Rs.1.2 Million for loss suffered due to delay in delivery of consignment by the respondents. In response to the complaint, the respondents filed an application under Order VII rule 11 of CPC seeking rejection of the complaint for being barred by law. The learned Additional Sessions Judge in its capacity as Authority under the Act allowed the application filed by the respondents and dismissed the complaint of the appellant as not maintainable through the impugned order dated 20.11.2020 which has been challenged before this Court.

3. Learned counsel for the appellant stated that the respondents are liable under the Act as they were under an obligation to deliver the consignment handed to them by Yaspro Electronics China to be delivered to the appellant in Islamabad and in breach of the commitment for such delivery, the shipment was instead routed through Lahore where it arrived on 27.06.2020, and it then took the respondents one almost another month to have shipment cleared through customs and delivered in Islamabad on 23.07.2020. The learned counsel for the appellant submitted that the respondents were negligent and

irresponsible and caused delay in processing the customs clearance after wrongly shipping the consignment to Lahore instead of Islamabad. And that the negligence and delay caused the appellant dearly as the consignment had been ordered by a third party, which, due to the delay in delivery of the order that had been placed with the appellant, refused to make balance payment for the consignment and also severed its contract with the appellant for future orders. The learned counsel for the appellant submitted that as a beneficiary of the consignment, for which it had paid consideration, and of the service being provided by the respondents subject to payment, partly made by Yaspro Electronics China and partly by the appellant, the appellant clearly falls within the definition of consumer under section 2(c)(ii) of the Act, which was not appreciated by the learned Additional Sessions Judge. The learned counsel further stated that in view of the judgment reported as Muhammad Farooq Khan v. Excel-Labs, through Central Executive Officer and another (PLD 2015 Islamabad 81) the Act is a beneficial statute promulgated by the Parliament to protect the interests of the consumers and its provisions are not to be given a restrictive meaning. And that in the instant case the appellant clearly falls within the statutory definition of customer and being a direct beneficiary of the services rendered by the respondents, the impugned order excludes the appellant from the scope of the term "consumer" in breach of the literal meaning of the word used in section 2(c)(ii) of the Act. The learned counsel further submitted that CPC is not applicable to proceedings under the Act and the learned Additional Sessions Judge erred in law when

he entertained an application of the respondents under Order VII Rule 11 of CPC and further when he dismissed the complaint of the appellant on the basis of such application. He submitted that the impugned order suffers from material illegality, has been passed in breach of the provisions of the Act and consequently the appellant has been denied his right to fair trial under the Act which has resulted in breach of his rights protected under Article 10A of the Constitution. The learned counsel also relied on Allied Bank Ltd. Faisalabad v. Khalid Mahmood (2013 CLD 1133), Ashfaq Ahmed Khan v. PTCL and others (PLD 2016 Islamabad 112) and Muhammad Farrukh Saif v. The State and 2 others (PLD 2018 Lahore 50).

4. Learned counsel for the respondents submitted that the appellant is not an end user of the equipment ordered by it and admittedly had a contract to supply such equipment to a third party and would therefore not be regarded as beneficiary under section 2(c) of the Act. He further submitted that the appellant did not pay for the shipment or entered into a contract for delivery of the shipment with the respondents and the contract for delivery of shipment was between the respondents and Yaspro Electronics China and as there was no privity of contract between the appellant and the respondents, the appellants cannot bring a claim against the respondents. That the contract for delivery of the consignment between the respondents and Yaspro Electronics China provided a dispute resolution mechanism and vested jurisdiction in the courts in China. That the appellant did not hire services of the respondents or pay for such services and consequently the appellant did not fall within

the definition of consumer under the Act. The learned counsel for the respondents further submitted that there was no agency or sub-agency agreement between the respondents and the appellant and thus no liability could be attached to the actions of the respondents under the agency principle. The learned counsel for the respondents further submitted that "services" has been defined under section 2(c) of the Act and excludes free of charge services. And as the appellant did not pay for the service provided by the respondents for purposes of the Act, it would be deemed that the respondents provided no services to the appellant. In response to a question whether or not an application under Order VII Rule 11 of CPC was maintainable, the learned counsel for the respondents stated that it is settled law that even if a wrong provision of law is cited that does not prohibit the court for passing the appropriate order to the extent that the court is vested with jurisdiction to pass the order that it passes and as the impugned order of dismissal could be passed by the learned Additional Sessions Judge in exercise of powers under the Act, it would not matter that such order was passed in response to an application under Order VII Rule 11 of CPC. The learned counsel for the respondents submitted, on merits, that no delay was caused in the delivery of the consignment due to any negligence on part of the respondents. That the shipment landed in Lahore due to the extraordinary situation created by Covid-19 and availability of limited flights at that time. Further the time consumed in clearing the consignment was due to delay in providing documents, including Web Based One Custom Business (WEBOC), Electronic Import Form (EIF) and National

Tax Number (NTN), by the appellant which were prerequisites to have the consignment cleared and further due to delay by the appellant in making payments and electing to challenge the duty initially imposed by customs authorities for clearance of the consignment, which challenge also failed. The learned counsel for the respondents submitted that the respondents provided courier services and were not under an obligation to provide customs clearing services to the appellant and it was on the request of the appellant that they provided such service and the one month period that it took to have the consignment cleared by the customs authorities in Lahore and have it delivered in Islamabad was due to delay by the appellant in fulfilling the requirements for clearance of the consignment and not due to any negligence or contributory negligence by the respondents. He further submitted that the respondents paid up to Rs.100,000/- of the clearing charges and fines out-of-pocket to expedite the clearance of the consignment, at the request of the appellant, which the appellant now refuses to reimburse. The learned counsel for the respondents submitted that the instant appeal is time barred as the impugned order was passed on 12.11.2020 and the appeal was filed on 23.12.2020 even though it had to be filed within a period of thirty days in view of section 10 of the Act read together with section 417(2)(1) of the Code of Criminal Procedure, 1898 ("**Cr.P.C**"). The learned counsel has relied on Bolan Beverages (Pvt.) Ltd. Limited v. Pepsi Co. Inc and 4 others (PLD 2004 S.C 860), Zia Ullah Malik v. Naeem Baig (PLD 2013 Lahore 69), Talat Inayatullah Khan v. Dr. Anis Ahmed Sheikh (PLD 2015 Sindh 134), Muhammad Ameer Qazi v.

Muhammad Asif Ali (PLD 2015 Lahore 235), Chairman Pakistan Railway v. Shah Jehan Shah (PLD 2016 SC 534), Shifa International Hospital Ltd. v. Mst. Hajira Bibi and others (PLD 2018 Islamabad 372), Kartaz Lal Pirwani v. Muhammad Waqar Azeem and 3 others (2018 YLR 2219), Messrs Walia Steel Industries PLC v. Messrs Saga Shipping and Trading Corporation Ltd and others (PLD 2019 Sindh 22), Messrs Ash Associates, Islam Colony, Sialkot Road, Gujranwala v. The chief Executive Officer, Punjab Rural Support Program and 2 others (2019 CLC 1303) and The General Manager Gulberg Office of TCS and another v. Syed Naeem ud Din (PLD 2020 Lahore 757).

5. The questions that arise in the adjudication of this case are the following:

- 1. Whether the appellant is a consumer for purposes of section 2(c)(ii) of the Act and whether its complaint was competent under section 8 of the Act?*
- 2. Whether the Code of Civil Procedure, 1908 (CPC) is applicable to proceedings under the Act and whether the impugned order suffered from material illegality for entertaining an application under Order VII Rule 11 of CPC and dismissing the complaint for being barred by law?*
- 3. Are the respondents liable to pay compensation to the appellant under the Act?*

6. The definition of the complainant is provided under section 2(c) of the Act as follows:

*"Consumer" means any person who—*

- (i) *buys goods for a consideration which has been paid or partly paid and partly promised to be paid or under any system of deferred payment or hire purchase and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or*
- (ii) *hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services.*

7. There is no standard definition of the term “consumer” that has universal acceptance. The terms “consume” and “consumer” are defined and used in various tax statutes and also in statutes promulgated to protect the interests of consumers and users of goods and services. The scope and meaning of the term consumer thus depends on how it is defined in a statute. As the Act defines the term “consumer” for purposes of interpreting its scope, dictionary definitions cannot be looked at. But in order to appreciate the common understanding of the term as used in ordinary parlance, it would be helpful to look at the definition of consumer as provided in Black’s Law Dictionary, for example:

*“Consumer.(15c) 1. Someone who buys goods or services for personal, family, or household use, with no intention of resale; A natural person who uses products for personal rather than business purposes. 2. Under some consumer protection statutes, any individual. 15 USCA SS 1679a (1), 1681a (c).*

*"The term 'consumer' has various legal meanings. It can be used broadly, to mean citizens who 'consume' or use goods or services, ranging from plumbing to health services and education. Usually it is used in a more restrictive way.*



*Statutory provisions, designed to protect purchasers of goods and services, contain specific measures applicable only to consumers. The statutory definitions of 'consumer' often contain slight variations, but there are certain common core features goods or services. In some instances, in addition to natural persons, it can also include businesses such as sole - traders and partnerships, for example, under consumer credit measures. Occasion ally, even companies come within the definition, if acting outside their normal business activities - for example a manufacturing company buying a car for a director. "Deborah Parry," Consumer, "in The New Oxford Companion to L aw 213, 213 (Peter Cane & Joanne Conaghan eds., 2008).*

8. In some judgments defining the term consumer in other jurisdictions, it has been held that the word consumer refers to a natural person who is a consumer of goods or services in his personal capacity and is not using goods or services for commercial purpose. This is, however, not a universal rule, for example, in the Advanced Law Lexicon Volume-1 3<sup>RD</sup> Edition the following is provided:

*"A construction corporation which purchased the vehicle for the purpose of supervision of the works by its officers, comes within the ambit of the expression 'consumer' under Section 2 (d) of the Act. Alson Automobiles P. Ltd. v. J & K Project Constu. Corpn. AIR 2003 J & K 15, 16, para 5 [J & K Consumer Protection Act (16 of 1987), S. 2(d)]"*

9. In the context of Sales Tax, it was held by the Indian Supreme Court in State of Karnataka VB Raghurama Shetty (AIR 1981 SC 1206) that:

*"Consumption in the true economic sense does not mean only use of goods in the production of consumer's goods or final utilization of consumers goods by consumers involving activities like eating of food, drinking of beverages, wearing of clothes or using of an automobile by its owner for*

*domestic purposes. A manufacturer also consumes commodities which are ordinarily called raw materials when he produces semi-finished goods which have to undergo further processes of production before they can be transformed into consumers' goods. At every such intermediate stage of production, some utility or value is added to goods which are used as raw materials and at every such stage the raw materials are consumed. State of Karnataka V. Raghurama Shetty, AIR 1981 SC 1206, 1208. (Karnataka Sales Tax Act (25 of 1957), S. 6 (i))*

It was further held in Inder Singh v. Kartar Singh, (AIR 1979 SC 1721) that:

*"In its primary sense means the act of consuming and in ordinary parlance means the use of an article in a way which destroys, washes, or uses up that article. It is not necessary that by the act consumption, the commodity must be destroyed or used up. Inder Singh v. Kartar Singh, AIR 1979 SC 1721, 1723. [Saurashtra Terminal Tax and Octroi Ordinance (1949), S. 3, Rules (1949), R. 3, Sch. 1, Item 23]"*

10. Given that there is no conceptual agreement that on what the term consumption entails and there is no standardized format for consumer protection laws across jurisdictions, the definition of the term consumer in statutes from other jurisdictions or the structure and scope of consumer protection laws enacted and applied in other jurisdictions are not very helpful in furthering an understanding of the scope of definitions provided in the Act. We thus need to rely on the text used by the legislature in the provisions of the Act and its meaning as deciphered in relevant judicial pronouncements. It was held by this Court in Muhammad Farooq Khan v. Excel-Labs, through Central Executive Officer and another (PLD 2015 Islamabad 81)

that the Act is a beneficial piece of legislation and the provisions of such law are not to be given a restrictive meaning. It was similarly held by this Court in Nargis Sultana Chohan v. Presiding Officer and others (2015 PCr.LJ 941) that term "service" is not been given a restrictive meaning in the Act.

11. In view of the case law in which provisions of the Act have been interpreted, the term "consumer" is not to be given a restrictive meaning. In the present case, the appellant claims to fall within section 2(c)(ii) of the Act that deals with services. Section 2(c)(ii) has two prongs. It firstly covers a person who hires any service for consideration which has been paid or promised or partly paid or partly promised or is subject to deferred payment. The second prong deals with any beneficiary of such service. It is evident from the language used by the legislature in section 2(c)(ii) that anyone who hires a service for consideration which may or may not be paid by him directly or fully would fall within the definition of consumer. It further provides that any beneficiary of a service, that may have been hired by a third party and may have been paid for a third party or in relation to which compensation may or may not have been made and remains payable under a deferred payment arrangement, would also fall within the definition of consumer.

12. Section 2(c)(ii) defines services as follows:

*"Services" includes of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, manufacturing, processing, accountancy, supply of electrical, mechanical or any*

*other form of energy, boarding or lodging, construction work, amusement, catering, security or purveying a news or other information, and similar other services, but does not include the rendering of any service free of charge or under the contract of personal service;*

As aforesaid, it has been held by this Court in an earlier judgment that the definition of services is not to be given a restrictive meaning.

13. In view of the facts of the instant appeal, it is admitted that the respondents were providing services to deliver a consignment from China to Islamabad which service was engaged by Yaspro Electronics China subject to payment of compensation to the respondents. It is also admitted that the respondents provided the appellant its services as clearing agent to have the consignment cleared by the customs authorities at Lahore and have it delivered in Islamabad. The contention of the respondents is that the services were hired by Yaspro Electronics China and paid by such vendor and consequently the appellant has received the services free of charge and therefore the services did not fall within the definition of services under section 2(c)(ii) of the Act. This argument is misconceived. The respondents are a commercial enterprise and one of the leading courier companies providing courier services across the world. Such services are not provided to ordinary customers for charitable reasons but on payment of the respondents' service charges, which was admittedly done in this case as well. Whether or not the appellant hired the services of the respondents is irrelevant insofar as it is the beneficiary of such

services and therefore clearly false within the definition of consumer under section 2(c)(ii) of the Act.

14. The reasoning of the learned Sessions Court in concluding that the appellant is not consumer for purposes of the Act is as follows:

*"In the instant matter, services of respondents were hired for the delivery of shipment. Admittedly, said services were not hired by the complainant, rather the shipment was booked by Yaspro Electronics in China; it was mainly contended on behalf of complainant that being recipient, the complaint was beneficiary of such services in terms of section 2(c)(ii) of the Act, ibid. The contention of complainant was not strictly in conformity with the scheme of consumer protection for the reasons that, firstly, consumer protection laws are framed for Business to Consumer (B2C) transactions; whereas, admittedly complainant was not the end user/consumer rather it was a commercially/business entity that acted as an intermediary/middleman. Secondly, the complainant was not privy to the service deliver agreement executed in China between Yaspro Electronics and respondents. Thirdly, in order to come within the ambit of section 2(c)(ii) of the Act, id as beneficiary of services, it is a condition precedent that one must also pay for such services as an end user."*

15. With great respect, the reasoning of the learned Additional Sessions Court is fundamentally flawed. It is unclear wherefrom the learned Additional Sessions Court derived the inference that the intent of the legislature in the Act was to protect business to consumer transactions as stated in the impugned order. The impugned order seems to be relying on a general understanding of the purpose of consumer laws as opposed to interpreting provisions of the Act and the legislative intent that can be deciphered from the words used in the Act. It

is settled law that when the words used in a statute provide a clear meaning, it is not for the courts to read into them what is not provided, including the presiding officer's academic understanding of any concept employed in the statute. The learned Additional Sessions Court further erred when it focused its attention on the use of the goods that comprised the consignment to be delivered by the respondents as opposed to the services being rendered by the respondents. It appears that the fact that the goods ordered by the appellant were to be delivered to a third party influenced the learned Additional Sessions Court to reach the conclusion that the appellant was not an end user/consumer of the goods ordered, and was instead an intermediary and consequently did not fall within the definition of consumer. As already discussed above, a beneficiary of a service falls within the definition of consumer under section 2(c)(ii) of the Act. In the instant case, the consumption in question was not that of goods that comprised the consignment, in relation to which the appellant might rightly be considered to be an intermediary. The consumption in question was that of courier services provided by the respondents, of which the appellant was a beneficiary and also the end user. As in the instant case there was no further obligation on part of the respondents to deliver the consignment to a third party that the appellant had contracted with to provide the equipment ordered from China. Further the language in section 2(c)(ii) used the word "any" where it speaks of a beneficiary of services and consequently even if there are multiple beneficiaries of services provided, they need not be end users or end beneficiaries of

such services to fall within the definition of consumer. The learned Additional Sessions Judge further misinterpreted the language and requirements of section 2(c)(ii) when it concluded that a beneficiary must pay for the services that have been hired and being provided in order to qualify as a consumer. As has been explained above, there are two different prongs within section 2(c)(ii) and the second prong that characterizes a beneficiary as a consumer does not require that such beneficiary must also be the person who hires the services in question or pays for them.

16. In view of the above, the answer to the first question is that as a beneficiary of services rendered by the respondents, the appellant would appear to fall within the definition of consumer as defined under section 2(c) of the Act and consequently the complaint filed by the appellant could not be dismissed on the basis that it was not a consumer for purposes of section 2(c) of the Act and consequently not a complainant for purposes of section 8 of the Act.

17. The second question before the Court is whether the learned Additional Sessions Court erred in law when it entertained the application under Order VII Rule 11 of CPC and accepted the same whereby dismissing the complaint of the appellant. While it must be conceded that the provisions of the Act are not happily worded, this much is clear that in its pith and substance and in terms of its dominant purpose the Act does not seek to determine civil rights and liabilities of those who fall within its scope. The legislature could well have chosen to frame

the statute such that it was meant to provide a summary mechanism to resolve the grievances of consumers and provide for civil remedies alone, as has been done in other jurisdictions. But as a matter of policy, the legislature chose not to do so.

18. The Act is a penal statute that creates mandatory legal obligations for providers of goods and services under the threat of penalty which extends to imprisonment for a term of up to two years. The nomenclature and terms used by the legislature are those that belong within a penal statute. Section 8 of the Act speaks of a complaint as opposed to a claim. The term "complaint" is defined under section 4(h) of the Cr.P.C. as, *"the allegation made orally or in writing to a Magistrate, with a view to his taking action under this code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer"*. The use of the word "code" obviously refers to the Cr.P.C. And to the extent that provisions of Cr.P.C are in conflict with provisions of the Act, the Act, being a special law later in time, will prevail. The use of the term complaint in deliberates which is why the definition of the term "complainant" in the Act includes a consumer association, the Federal Government, Chief Commissioner Islamabad Capital Territory and the Capital Development Authority who would not have a pecuniary claim of compensation against a respondent named in the complaint. The jurisdiction to consider the complaint and take cognizance of it, if a case is made out, is vested in the Court of Sessions as opposed to the Civil Court. Section 8A of the Act empowers a Special Magistrate appointed under section 14A of the Cr.P.C to conduct a summary trial



under section 262 to 265 of Cr.P.C., subject to conditions provided therein, and an appeal against an order of the Special Magistrate then lies with the Sessions Court. Similarly, section 9 provides for jail term of up to two years in a case of breach of rights of consumer protected under section 5 of the Act or in cases of false advertisement under section 7 of the Act. Section 10 provides the remedy of an appeal before this Court and explicitly states that provisions of Cr.P.C. are to be applied in respect of an appeal under the Act. It is settled law that an appeal is a continuation of the trial. It can therefore not be countenanced that the Sessions Court is to conduct a trial and adjudicate a matter being guided by the CPC, while the High Court in appeal is to be guided by Cr.P.C. In view of the provisions of the Act and intent of the legislature that emanates therefrom, it is obvious that the Act is a penal statute and the application of Cr.P.C. is explicitly provided for as deemed necessary by the legislature.

19. In view of the scheme of section 8 of the Act that a complainant is to file a complaint which is then taken up by the Sessions Court nominated as the Authority under section 6 of the Act. If the Sessions Court concludes on the basis of the complaint that rights of a consumer have been infringed, it is to issue a notice to the respondent which is required to file a reply within a period of seven days. After considering the complaint and reply and giving parties an opportunity of being heard the Sessions Court is to proceed further. If the Sessions Court concludes that a breach of law is made out, it can proceed by framing a charge, recording evidence and providing the accused

with an opportunity to cross-examine witnesses and an opportunity to adduce his own evidence, before deciding whether the charge has been established or not in view of the evidence adduced, in accordance with principles that regulate a fair trial. In the event that no case is made out, the Sessions Court can pass an order akin to that of acquittal under the Cr.P.C. Even at the preliminary stage, after considering the complaint and response by the accused, the Sessions Court could conclude that no case is made out and pass an order similar to that of discharge. It is only after considering the complaint by the complainant and the response by the respondent that the Sessions Court can determine how to proceed further and whether or not to frame a charge or conduct a trial under section 9(1) or 9(2) of the Act. The Sessions Court can also come to the conclusion that there is a breach but it is not of such nature that attracts the penalty of imprisonment under section 9(1) or 9(2) of the Act, but the infraction as such renders the respondent liability to pay compensation under section 9(3) of the Act for any damage or loss caused due to an unfair trade practice or under section 7 of the Act for loss caused due to false advertisement. However, the fact that in such event the alternate remedy is in the nature of pecuniary compensation and not jail term would not automatically attract provisions of CPC to the proceedings under the Act. This, however, does not mean that in case of award of compensation under section 7(2) or 9(3) of the Act, the Sessions Court can act in a whimsical manner in breach of Article 10A rights of the person held liable to pay compensation to a complainant. For such purposes in order to

determine the liability for compensation and the quantum of compensation payable, the Sessions Court would be under an obligation to afford the parties an opportunity to adduce evidence in support of the case and in defense, respectively, and pass a reasoned order which affixes any liability to pay compensation under section 7(2) or section 9(3) of the Act, as the case may be, which is proportionate to the damage or loss attributable to the respondent.

20. In relation to a fair trial, the principles underlying the Cr.P.C. and the CPC are not in conflict with one another. Both require that a party bringing a grievance to the court should be afforded an opportunity to make out a case, the party against whom the case is being made should be afforded an opportunity to defend himself by confronting the evidence adduced by the complainant and be given the option to adduce evidence in his defense, and after hearing the parties and considering the evidence, the court is to pass judgment in its capacity as a neutral arbiter of the law. It has therefore been held in relation to special laws that deal with civil rights of parties that even when provisions of CPC are not attracted, the court can derive guidance from the principles underlying the CPC. It was in the interest of fair trial that this Court had held in Ashfaq Ahmed Khan v. PTCL and others (PLD 2016 Islamabad 112) that for such purpose, it may be desirable for the Authority to frame issues and allow parties to lead evidence. However, as aforesaid, the provisions of CPC are not applicable to the adjudication of a complaint under the Act, and for purposes of determination of liability and quantum of compensation principles of fair trial must

be abided by. In case of the Act, being a special law, the Authority can derive guidance, for purposes of determining entitlement to compensation and quantum of the compensation payable, from principles of fair trial as enunciated in the Cr.P.C, provisions of which have been made applicable by the legislature explicitly to exercise of authority under Sections 8A and Section 10 of the Act. The principles of Cr.P.C. would also be attracted to guide the exercise of authority and discretion by the Sessions Court under Sections 7, 8 and 9 of the Act.

21. The scheme of the law suggests that the breaches for which liability under the Act can be enforced have been strictly defined even if the definitions of "consumer" and "services" are not strict. Section 9(1) provides that anyone liable for breach of the right of a consumer protected under section 5 of the Act is punishable with imprisonment for upto two years. It is only under section 5(1)(a) and 5(1)(b) that a complaint against a provider of goods or services seems possible as the rest of the sub-clauses of section 5 seem to create an obligation for the State to protect the rights of consumers. Thus, to the extent that a provider of goods or services is marketing goods that are hazardous to life and property or refusing to provide information in relation to quality, quantity, potency, purity, standard and price of goods and services, such conduct of the provider may attract a penalty under section 9(1) of the Act. Section 9(2) seeks to punish a provider of goods or services liable for false advertisement in breach of section 7 of the Act. Further section 8A empowers the Special Magistrate to punish anyone liable for profiteering, hoarding, black marketing, adulteration of food

items, selling of expired items of food and other items unfit for human consumption or charging for goods and services in excess of the prices fixed by the competent authority. Section 2(f) defines "unfair trade practice" which essentially deals with two sorts of injuries: (i) those in relation to which Special Magistrate is also empowered to act under section 8A; and (ii) acts that broadly fall within the larger concept of deceptive marketing. Thus, to the extent that a complainant alleges that he has been injured by an unfair trade practice (in relation to which the Special Magistrate may or may not have exercised any authority), he may be found entitled to compensation by the Sessions Court under section 9(3) of the Act. Likewise, if a complainant alleges to have been injured by a false advertisement that falls within the scope of section 7 and the Sessions Court comes to the conclusion that the infraction as such does not attract a jail term, it may still award compensation to the complainant under section 7(2) of the Act. But as delineated above, it is not every breach or negligence attributable to a supplier of goods or services that would attract penalties under the provisions of the Act. While the terms "consumer" and "services" have been broadly defined in the Act, the concept of "unfair trade practice" and the penal provisions have been narrowly defined. Consequently, while a wide range of a providers of goods and services would fall within the scope of the Act, the scope of acts and omissions that attract penalties, as provided under the Act, is fairly limited.

22. In view of the above, this Court has come to the conclusion in relation to question No.2 that the CPC is not

applicable to proceedings under the Act and the learned Additional Sessions Court could not have been entertained an application under Order VII Rule 11 of CPC to determine whether or not the complaint was barred by law in view of the law and jurisprudence developed in relation to Order VII Rule 11 of the CPC. This is not a simple question of misstating a provision of law, but that of misconceiving the penal nature of the Act and the broader approach to procedure that must be employed by the Sessions Court in its capacity as Authority to adjudicate a complaint while upholding the Article 10A rights of the complainant.

23. The precedents cited by the learned counsel for the respondents do not support the impugned judgment. Talat Inayatullah Khan and another v. Dr. Anis Ahmed Sheikh (PLD 2015 Sindh 134) and Kartar Lal Pirwani v. Muhammad Waqar Azeem and 3 others (2018 YLR 2219) were cited for the proposition that there was no privity of contract between the parties and Bolan Beverages (Pvt.) Limited v. Pepsi Co. Inc and 4 others (PLD 2004 S.C 860) was cited to explain the agency principle in order to argue that the same was not attracted in the instant case. The judgments do not help the case of the respondents as the liability, if any, in the instant case is alleged to emanate from provisions of the Act and neither from a pre-existing contractual relationship between the parties nor a relationship of principal and agent. As has been discussed above, in terms of definitions of the terms “consumer” and “services”, the Act does not set out any precondition that in order for a consumer to be eligible to assert rights against a provider of

goods and services under the Act, such consumer must have a valid claim under the Contract Act, 1872. Messrs Walia Steel Industries PLC v. Messrs Saga Shipping and Trading Corporation Ltd and others (PLD 2019 Sindh 22) and Messrs Ash Associates, Islam Colony, Sialkot Road, Gujranwala v. The chief Executive Officer, Punjab Rural Support Program and 2 others (2019 CLC 1303) were cited for the proposition that an application misstating a provision of law does not bar a court from exercising its power and jurisdiction merely because of incorrect reference to a provision of the law. In Messrs Ash Associates (2019 CLC 1303), cited by the respondents, the learned Lahore High Court actually held that an application under Order VII Rule 11 of CPC could not be treated as an application under section 34 of the Arbitration Act, 1940 and the revision was consequently allowed. This case does not help the respondent. Even the principle laid down in Messrs Walia Steel Industries (PLD 2019 Sindh 22) is not attracted in the present case.

24. In the present case the error that afflicts the impugned order is that the court has misconceived the nature of the statute and the procedure that must be followed in applying its judicial mind while upholding the right of fair trial of the parties and reaching a judicious decision. The learned counsel for the respondents cited a few judgments which interpret provisions of the Punjab Consumer Protection Act, 2005 which do not help the respondents' case or further any argument made by the respondents on enunciating the meaning and definition of the provisions of the Act.

25. In view of the findings of this Court that the appellant falls within the definition of consumer under section 2(c)(ii) of the Act and further that the learned Additional Sessions Court erred in entertaining an application under Order VII Rule 11 of CPC and dismissing the complaint for being barred by law, it need not to adjudicate the third question as to whether the respondents can be held liable for any breach under provisions of the Act. The learned Additional Sessions Court has not passed any order after considering the complaint filed by the appellant and a response filed by the respondents as required under section 8 of the Act. Adjudication of the merits of this case by this court in an appellate capacity would deny the parties a right to appeal under section 10 of the Act, which would be against the interest of preserving the rights of the parties to fair trial and due process.

26. As this court has already held that the impugned order suffers from material illegality and cannot be allowed to stand, the question of whether or not there was sufficient cause for the delay of a few days in filing the appeal, as alleged by the respondent, also becomes insignificant. It was held by this Court in Federal Board of Intermediate and Secondary Education vs. Azam Ali Khan (2017 YLR 906) that, *"the question that crops up in the mind is when a judgment or decree of the learned Civil Court is clearly the consequence of misreading of evidence or is contrary to the law laid down by superior courts, will a revisional court shut its eyes to the illegality in such a judgment and decree simply because an appeal against the same has been dismissed as time-barred? I think not."* The Court had cited



Muhammad Swaleh vs. M/S United Grain & Fodder Agencies (PLD 1964 SC 97) and Town Municipal Administration vs. Rifat Hussain (2003 CLC 1370) in reliance.

25. In view of the above, the impugned order is set aside for suffering from material illegality and having been passed in breach of the provisions of the Act. The appeal is allowed and the matter is remanded back to the learned Additional Sessions Judge to be considered afresh in accordance with the provisions of the Act.

(BABAR SATTAR)  
JUDGE

Announced in the open Court on 07.05.2021.

JUDGE

Approved for reporting.

Saeed.