

Sri Animesh Baidya vs Amazon Seller Services Private Ltd. on 30 July, 2021

TRIPURA STATE CONSUMER DISPUTES REDRESSAL
COMMISSION, AGARTALA.

CASE No. A.172021

1. Sri Animesh Baidya,
S/o Late Satyabrata Baidya,
C/o Sri Sunil Das,
Jogendra Nagar, Near Vidyasagar Bridge, Agartala,
District West Tripura.

. .Appellant/Complainant.

Vs

1. Amazon Seller Services Private Ltd.
Brigade Gateway, 8th Floor,
26/1, Dr. Rajkumar Road, Malleshwaram (W,
Bangalore - 560055,
Karnataka, India.
2. Amazon Courier Service Hub,
Dhaleswar Road No.13,
Near UBI Bank, Blue Lotus Club Chowmuhuni,
Agartala, West Tripura.
3. Manager,
Customer Care,
Xiaomi Technology,
India Pvt. Ltd. 4th Floor,
Ozone Manay Tech Park,
Hongasandra, Bangalore, Karnataka.

. Respondent/Opposite Party

PRESENT
HON'BLE MR. JUSTICE U.B. SAHA
PRESIDENT,
STATE COMMISSION
DR. CHHANDA BHATTACHARYA
MEMBER,
STATE COMMISSION
MR. KAMALENDU BIKASH DAS
MEMBER

STATE COMMISSION For the Appellant: Mr. Mridul Kanti Arya, Adv.

For the Respondent No.1 & 2: Mr. Dipankar Das, Adv.

V, For the Respondent No.3:	Absent.
UN Date of Hearing	23.07.2021.
Date of Delivery of Judgment:	30.07.2021.

JUDGMENT

UB Saha

The instant appeal is filed by the appellant, Sri Animesh Baidya against the judgment dated 12.04.2021 passed by the learned District Consumer Disputes Redressal Commission (hereinafter referred to as District Commission), West Tripura, Agartala in Case No.C.c.76 of 2019 whereby and whereunder the learned District Commission dismissed the complaint petition being not maintainable in the absence of the necessary party.

2. Heard Mr. Mridul Kanti Arya, Ld. Counsel appearing on behalf of the appellant (hereinafter referred to as complainant) as well as Mr. Dipankar Das, Ld. Counsel appearing on behalf of the respondent no.1 and 2, (hereinafter referred to as opposite party no.1 and 2). None appears on behalf of the respondent no.3, (hereinafter referred to as opposite party no.3).

3. Brief facts of the case needed to be discussed are as follows:

The complainant, Sri Animesh Baidya searched for a mobile phone of Xiaomi Mi A3 in the net wherein one of the specification is dual sim card (nano +nano) with dual standby (4G+4G) and internal ram is 64 GB which can be expandable upto 256 GB and other specifications. The complainant booked the mobile through online portal of the opposite party no.1 on 27.08.2019 for an amount of R12,998/-. The said mobile phone, namely, Xiaomi mobile Mi A3 was delivered on 29.08.2019 vide order number 407 0707201-6799550 and invoice number SCCC-74283 dated 27.08.2019 bearing IMEI No.868581045780830 & 868581045780822. After receiving this mobile the complainant noticed that there is only one nano sim card slot and one SD card slot where one nano sim card could be inserted, but at a time if 2 sim card slot used then SD card could not be inserted. Thereafter, the complainant on many occasion tried to return the said phone and lastly, on 05.09.2019, the complainant again made a contact with the opposite party no.3 i.e. the customer care executive for return of the said mobile phone, but the customer care executive again informed that there is no return policy except replacement, if the mobile phone has any technical defect then replacement policy can be available. Therefore, due to misleading advertisement made/marketed by the opposite party no.1, lot.

4. The complainant purchased the same and suffered a Being aggrieved and dissatisfied with the conduct of the opposite parties, the complainant filed a complaint petition before the learned District Commission alleging deficiency of service and claiming R1,60,000/- as deficiency of service and compensation for causing mental agony, harassment and as legal expenses from the opposite parties.

4. The learned District Commission on admission of the complaint petition issued notices upon the opposite parties, but the opposite party no.2 and 3 did not turn up even after receipt of notice and consequently, the case was proceeded ex-parte against them.

5. The opposite party no.1 contested the proceeding by way of filing written argument. In the written

argument opposite party no.1 submitted para-wise reply to the complaint in serial. The opposite party no.1 in their written argument challenged the maintainability of the proceedings on the ground that the opposite party no.1 is not the actual seller as well as manufacturer of the goods. They are only an agent of the seller wherein there is an online marketplace where the independent third party sellers list their products for sales are exhibited. The opposite party no.1 is not involved in the same transaction between the customer and seller, they are only a facilitator. The contract of sale of products on the website is strictly a bipartite contract between the customer and the seller. It is further stated that the complainant did not buy any goods from the opposite party no.1 and it has acted as an inter-media only. Thus, the opposite party no.1 is neither a necessary nor a proper party in the complaint. It is further stated that the complainant purchased goods from the Darshita Aashiyana Private Ltd. (seller) who is selling on the website operated by the opposite party no.1 on 27.08.2019 and that the seller was not made a party in the complaint petition. Therefore, the complaint petition is bad for non-joinder of necessary party as well as mis-joinder of the parties. It is again stated that the Information Technology Act, 2000 exempts intermediaries from liability regarding any third-party information, data or communication link made available or hosted by them. In support of the argument, the opposite party no.1 relied upon some decisions of the Hon'ble Apex Court as well as the Hon'ble National Commission.

6. Complainant examined himself as P.W.1 and submitted his examination-in-chief by way of an affidavit. The complainant produced three documents comprising eight sheets under a specification displayed in Amazon website, Photo Firisti viz. Photo copy of mobile Acopy of mobile specification displayed in Xiaomi website and Photo copy of computer generated cash memo/invoice which were marked as Exhibit-1 series. The complainant also cross-examined by the opposite party no.1.

7. The opposite party no.1 declined to adduce any evidence.

well as hearing the pleadings of the parties as

8. The learned District Forum after evidence on record passed the impugned judgment.

9. Being aggrieved by and dissatisfied with the impugned judgment, the appellant complainant has preferred the instant appeal.

Mr. Arya, Ld. Counsel while urging for setting aside the impugned judgment and

10. consequent there to allow the complaint petition would contend that the appellant complainant purchased Xiaomi Mi A3 mobile phone using the website of the opposite party no.1 through online system on 27.08.2019 for sum of R12,998/- and the price was also paid to the opposite party no.1 through online transaction which will be evident from tax invoice/bill supplied and issued by the opposite party no.1. He has also contended that the learned District Commission in its judgment specifically stated that "After consideration al facts and circumstances of the case we find there is no dispute that the Complainant purchased Xiaomi Mi A3 mobile phone using the Website of the O.P. No.I through online system on 27/08/2019 for sum of Rs.12,998/-", but dismissed the complaint petition on the ground that the complainant is not a consumer of the opposite party no.1, such

findings are nothing but an erroneous one. He has further contended that the opposite party no.1, Amazon Seller Services Private Ltd. is directly receiving the amount from the complainant, thus, they are the seller. According to him, the complainant did not place any order to the Xiaomi, the manufacturer of the mobile phone in question. Thus, it is not necessary on his part either to make the party the manufacturing company or the seller of the mobile phone for fixing any liability upon them. To show that the opposite party no.1, Amazon Seller Services Private Ltd. is liable to pay compensation for their deficiency, he has placed reliance on a judgment of Chhattisgarh State Consumer Disputes Redressal Commission, Pandri, Raipur in Amazon Seller Services Pvt. Ltd. Vs Love Kumar Sahu Anr.

(2018) 2 CPJ 198 herein the Hon'ble State Commission, Chhattisgarh dismissed the appeal preferred by the Amazon Seller Services Pvt. Ltd. and upheld the judgment of the learned District Consumer Disputes Redressal Forum, Raipur whereby and whereunder the 7V learned District Forum allowed the complaint petition directed, inter alia that, Ya) The OPs will jointly or severally pay, within a period of one month from the date of the order, a sum of Rs.9,000/- the cost of the mobile in question, along with simple interest 9% p.a. from the date of filing of the complaint i.e. 07.05.2015 till realization.

(b) The OPs will jointly or severally pay a sum of Rs.3,000/- (Rupees Three Thousand) towards compensation for mental agony to the complainant.

(c) The OPs will jointly or severally pay a sum of Rs.2,000/- towards Advocate Fees and cost of litigation, to the complainant.

He has again placed reliance on a judgment of Honble National Consumer Disputes Redressal Commission, New Delhi in Emerging India Real Assets Pvt. Ltd. & Anr. Vs Kameer Chand & Ors. [Revision Petition No.765 of 2016] and the judgment of Hon ble State Consumer Disputes Redressal Commission, UT Chandigarh in Amazon Seller Services Private Limited Vs Dinesh First Appeal No.A/21/2018]. He has also relied upon a judgment of Hon'ble Chandigarh State Consumer Disputes Redressal Commission, UT Chandigarh in Amazon Seller Services Private Limited Vs Gopal Krishan & Ors. 2017 4 CPJ 12 wherein Honble State Commission Chandigarh rejected the contention of the appellant therein that no liability can be fastened upon the appellant and held that . .An agent, who sells a product, is duty bound to ensure its quality, and if the product is found defective, agent shall be vicariously liable for the loss caused to the purchaser, along with the manufacturer of the product. He has finally placed reliance on a judgment of Hon'ble State Consumer Disputes Redressal Commission, Punjab in Amazon Seller Services Private Limited Vs Vishwajit Tapia [First Appeal No.544 of 2019] wherein the appellant, Amazon Seller Services Pvt. Ltd. was directed to pay compensation of 3000/- as costs of litigation and further directed to refund Rs.11,750/- i.e. the price of the mobile set to the complainant.

11. Mr. Das, Ld. Counsel while supporting the impugned judgment would contend that the appellant-complainant is not a consumer so far the opposite party no.1 is concerned. \$OV According to him, the opposite party no.1 is a platform between the manufacturer/seller of the product and the purchaser of the product. He has further submitted that the complaint petition filed by the

appellant-complainant is bad for non-joinder of necessary party i.e. Xiaomi, the manufacturer and Darshita Aashiyana Private Ltd., the seller as well as mis-

joinder of the parties ie. the opposite party no.1 and 2. In support of his aforesaid contention he has relied upon a judgment of Hon'ble State Consumer Disputes Redressal Commission, Shimla in Amazon Seller Services Private Ltd. Vs Jaskaran Singh & Anr. [First Appeal No.86/2017].

12. We have gone through the evidence on record as well as the impugned judgment and Law Reports cited by Mr. Arya, Ld. Counsel for the appellant-complainant as well as Mr. Das, Ld. Counsel for the opposite party no.1 and 2.

13. In Vishwajit Tapia (surpa), the Honble State Commission, Punjab considered the Section 79 of the Information and Technology Act, 2000 and ultimately, held as under:-

14. Section 79 of the Information and Technology Act, 2000, is a safe harbour provision subject to restrictions imposed in sub-sections (2) and (3) thereof. If an online intermediary has specific knowledge or has reasonable belief based on information supplied by the right holder about the contents and the intermediary fails to act despite such knowledge, online intermediary can be held liable for infringement. To prove actual knowledge obviously is very difficult. E-commerce portal is required to identify and report infringement. Suppose the HP informs an intermediary that it does not manufacture and sell mobile covers, thus, all products on its portal are counterfeit and must be removed. On that basis e-commerce portal/intermediary can insist that it must provide specified URL to act upon the request. Internet Protocol (in short, "IP.") owner will need to put resources to constantly monitor online space and to report to the intermediary seeking its removal. Amazon has become a place where we can get everything quickly and have it delivered in 2 days. The products are coming from third-party sellers ie. products sold on Amazon marketplace merchants. Amazon marketplace serves as a sort of newspaper classified advertisements section, connecting potential consumers with the sellers in an efficient, modern and in a streamlined manner. Amazon places products on its shelves to the stream of commerce. Now a days, the brands are waning consumers against purchasing products online.

15. Admittedly, users carry out activities on market place platform of the portal. Thus, they play an active role in facilitating the infringement conduct. Apparently, online marketplace operator portals appear to be responsible for infringements carried out by the users on their platform it is a very crucial and debatable issue. The liability and exemption of the e-commerce portal acting as hosting service provider, in relation to posting of information provided by the recipients of its services, needs to and the facts of present be examined in the light of statutory provisions consumer complaint.

The following point arises
can be

appeal arising from the
online marketplace operator/portal
for consideration- Whether
on its platform, if so,
then

held liable the infringement that occurred
for

to what extent?

16. In the present case, the complainant

placed the order though
motorola mobile set from opposite party

Amazon for purchase of said

vide ErC-1

Amazon-opposite party No. 1,

No.2. The receipts came from

with reality. It

co-seller. Laws need to catch up

and C-5. So, Amazon is a

is worth noting that the product is apart offulflled by Amazon' program Amazon and which means that the product is being stored with ensure that product being sold on its delivered by it. Amazon should that all is genuine. t cannot be presumed marketplace by the seller has to the sellers are genuine. The portad products sold through it by to the a r e inspected before sending certify that the products shipped on Amazon in two ways:

buyers. The sellers sell products and deliver directly to) The sellers-who list, pack,
ship consumers;

and by ü) The sellers-who opt to list on Amazon using "Fulfilled Amazon'(in short
"FBA) service.

Sub-Section (2) has beern given in

18. The definition of "delivery"

Goods Act, 1930, which means volhuntary of Section 2 of the Sale of to another. The liability of transfer of possession from one person arises from the concept of marketplace e-commerce Company in c a s e in hand Amazon secondary/contributory infringement.

sale 2-Seller and provided a space for facilitated infringement by OP no Amazon had actual or constructive knowledge of of infringing product.

believe that a n infringement had such infringement and has reason to in its box and delivered occurred at its place as the product w a s packed it is also personally and jointly liable.

by it to the complainarnt. As such, Amazon is not a neutral o r passive, instead it optimizes, promotes and in the nature pro-activeness.

of offers for sale and its duties are on record clearly establishes that OP no.1 is not

19. Perusal of evidence ommercial world. I a s considered in the a mere broker or intermediary representative or have no doubt, whatsoever, that it w a s acting as a All transactions routed through

agent of OP ro.2 during the negotiation.

between the complainant and OP OP no.1 and contract also concluded to the complainant was also no.2 through it. The delivery of product is personally answerable for the through it. In view of this, OP no.1 and would also be liable for the supply and delivery of goods consequences arising out of the breach of contract.

the learned counsel for the

20. As far as the contentions raised by that no evidence has appellant during the course of final arguments been placed by the complainant regarding the issuance of job card, etc. are concerned, it is relevant receipt of e-mail regarding the feedback are not part of the pleadings to mention here that these contentions the appeal filed before this before the District Forum as well as in the above. Therefore, in the absence of specific pleadings Commission.

contentions are rejected."

Hon'ble State Commission, UT

14. In Gopal Krishan & Ors. (supra), the Chandigarh while considering the identical circumstances held as under

with liability, was cannot be burdened Contention of the appellant that it mobile handset was purchased rejected by the Forum, by noting that the was bounden duty of the through the appellant, in online transaction. If any individual are facilitator to ensure that goods sold through manufactured as per quality standard. If the goods purchased through online are found not up to the mark online portal through which goods were purchased, cannot escape its liability."

15. In Dinesh (supra), the Hon'ble State Commission, UT Chandigarh also considered the similar point involved in the instant appeal which is also helpful for us to decide the case. In the said case, Ld. Counsel for the appellant, Amazon Seller Services Pvt. Ltd. also contended that the appellant, Amazon Seller Services Pvt. Ltd. was only an intermediary and had not received any benefit from the complainant, as such, it could not be held liable.

16. Similar contention was rejected by the Hon'ble State Commission, UT Chandigarh in Gopal Krishan & Ors. (supra) and observed as under:

Contention of Counsel for the appellant that as per terms and conditions of sale, no liability can be fastened upon the appellant, is liable to be rejected. An agent, who sells a product, is duty bound to ensure its quality, and if the product is found defective, agent shall be vicariously liable for the loss caused to the purchaser, along with the manufacturer of the product. It was so held by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in the case titled as Emerging

India Real Assets Pvt. Ltd & Anr. Vs Kamer Chand & Anr.. ***

17. The Law Report cited by Mr. Das, Ld. Counsel in Jaskaran singh & Anr. (supra), is in no way help the opposite party no.1, Amazon Seller Services Pvt. Ltd. as in the said judgment, the Hon'ble State Commission, Shimla did not consider the case of the Hon'ble National Commission in Emerging India Real Assets Pvt. Ltd. In the instant case also, admittedly, the appellant-complainant place an order for purchasing the mobile phone of Xiaomi Mi A3 through the Amazon Seller Services Pvt. Ltd., the opposite party No.1 and the mobile phone was delivered by the opposite party no.2, Amazon Courier Service Hub. Thus, the Amazon is also a co-seller. Therefore, the opposite party no.1, Amazon Seller Services Pvt. Ltd. and Amazon Courier Service Hub cannot absolve themselves from the liability as the product is being stored and delivered by the opposite party no.1 and 2. As the complainant did not place any order to the manufacturer of the mobile phone, according to us, the Xiaomi, the manufacturer and Darshita Aashiyana Private Ltd., the seller is not a necessary party so far as the complainant is concerned.

18. Taking into consideration all the facts and circumstances of the case, we are of the opinion that the learned District Commission failed to consider the evidence on record in its true sense and as such, the impugned judgment cannot be sustained in the eye of law, hence, it is liable to be set aside and the appeal should be allowed. Accordingly, the impugned judgment is set aside and consequent thereto, the complaint petition is allowed.

It is ordered that the opposite party no.1, Amazon Seller Services Pvt. Ltd. and the opposite party no.2, Amazon Courier Service Hub shall pay an amount of T12,900/-, the price of the mobile phone and shall also pay T5,000/- as legal expenses severally and jointly to the appellant-complainant within a period of one month from the date of the judgment, failing which, the amount shall carry interest @9% per annum till the payment is made in full. However, liberty is granted to the respondent-opposite party no.1, Amazon Seller Services Pvt. Ltd. to receive the price of the mobile phone including the litigation cost from the manufacturer of the mobile phone i.e. Xiaomi, if so advised.

In the result, the appeal is allowed.

Send down the records to the learned District Commission, West Tripura, Agartala.