

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
JUDICIAL DEPARTMENT**

Cr.A.No.104-P/2021

Date of hearing: 17.01.2022

Mr.Ali Azeem Afridi, advocate for the  
appellant.

Mr.Aqeel Hussain, advocate for the  
respondent No.1.

**JUDGMENT**

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**LAL JAN KHATTAK, J.-** This consumer appeal under section 17 (2) of Khyber Pakhtunkhwa Consumers Protection Act, 1997 is directed against the order of the learned Consumer Court, Swabi, dated 01.10.2020, whereby complaint of the respondent No.1 has been accepted and he is held entitled to the recovery of amount as prayed for.

2. Respondent filed a complaint against the petitioner under the provision of Khyber Pakhtunkhwa Consumers Protection Act, 1997 alleging therein that he had purchased maize seeds and pesticides from the petitioner against the amount mentioned in the complaint which seeds and pesticides could not yield the desired fruits for their being defective. The learned Consumer



Court after recording evidence in the case held the respondent entitled to recover from the petitioner the amount as mentioned in the complaint vide judgment dated 08.12.2020. Being aggrieved therefrom the appellant has filed this appeal.

3. Arguments heard and record gone through.

4. It is the respondent's case that the appellant provided him seeds and pesticides which did not yield the desired results being defective and not of worth quality. In order to determine whether the goods provided to a consumer has some defect therein, there is a set procedure to that effect contained in section 14 (c) of the Khyber Pakhtunkhwa Consumers Protection Act, 1997 which is reproduced hereinbelow:-

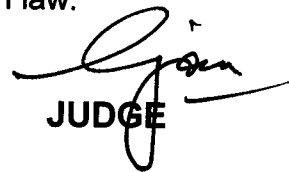


**(c). Where the complainant alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the Authority or magistrate shall obtain sample of the goods from complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to a laboratory along with a direction to make an analysis or test, whichever may be necessary with a view to finding out whether such goods suffer from any defect and to report its findings thereon to**

the Authority or magistrate within a period of thirty days of the receipt of the reference or within such period as may be extended by the Authority or magistrate;

5. The learned Consumer Court did not decide the case brought before it by the respondent on the touchstone of the above provision of law for which omission the impugned judgment cannot be upheld for its being contrary to law.

6. For what has been discussed above, this appeal is allowed, the impugned judgment is set aside and the case is remanded to the learned Consumer Court for its decision in accordance with law.

  
JUDGE

Announced  
17.01.2022.

Sadiq Shah, CS

SB

Hon'ble Mr. Justice Lal Jan Khattak