



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Reserved on : 16.07.2019**  
**Delivered on : 30.07.2019**  
CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

**Crl.O.P. (MD) .Nos.12790 and 14815 of 2014**  
**and**  
**M.P. (MD) Nos.1 and 1 of 2014**

**Crl.O.P. (MD) .No.12790 of 2014:**

1.M/s.Anamallai's Motors Private Ltd.,  
Through its Managing Director,  
23, SIDCO Industrial Estate,  
Kappalur,  
Madurai.

2.Lakshmi Narashimhan

3.Nadunchezian

: Petitioners/Accused Nos.3to5

Versus

R.Subbaiah

: Respondent/Complainant

Prayer: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to the proceedings in C.C.No.87 of 2014 on the file of the learned Judicial Magistrate, Thirumangalam and quash the same insofar as the petitioners are concerned.

For Petitioners

: Mr.M.Ajmal Khan,  
Senior Counsel,

For Mr.T.Antony Arul Raj

For Respondent

: Mr.B.Rajesh Saravanan

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**Crl.O.P. (MD) .No.14815 of 2014:**

1.M/s.Renault India Private Limited,  
Rep. by its Managing Director,  
Mr.Marc Nassif,  
Having its Corporate Office at  
Nos.37 & 38, Venkatnarayana Road,  
ASV Ramanas Towers, 4<sup>th</sup> Floor,  
T.Nagar, Chennai-600 017.

2.Mr.Marc Nassif,  
Managing Director,

Rep. by his Attorney Mr.Galametz Axel,

M/s.Renault India Private Limited,  
Having its Corporate Office at



Nos.37 & 38, Venkatnarayana Road,  
ASV Ramanas Towers, 4<sup>th</sup> Floor,  
T.Nagar, Chennai-600 017.

: Petitioners/Accused Nos.1 and 2

Vs.

1.Mr.R.Subbiah

2.M/s.Annamalai's Motors Private Limited,  
Rep. by its Managing Director,  
No.23, SIDCO Industrial Estate,  
Kappalur,  
Madurai District.

: Respondents

Prayer: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records in connection with C.C.No.87 of 2014 on the file of the Court of the Judicial Magistrate, Thirumangalam, Madurai District and quash the impugned private complaint in C.C.No.87 of 2014 and the summons issued thereupon dated 11.06.2014 with regard to the petitioners.

|                     |   |                                                                    |
|---------------------|---|--------------------------------------------------------------------|
| For Petitioners     | : | Mr.Isaac Mohanlal,<br>Senior Counsel,<br>For Mr.T.Cibi Chakraborty |
| For Respondent No.1 | : | Mr.B.Rajesh Saravanan                                              |
| For Respondent No.2 | : | Mr.M.Ajmal Khan,<br>Senior Counsel,<br>For Mr.T.Antony Arul Raj    |

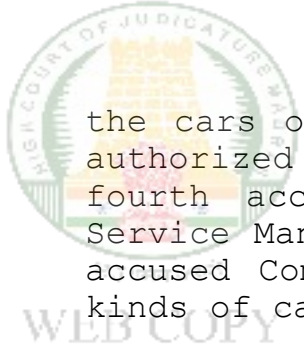
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### **C O M M O N     O R D E R**

Both the Criminal Original Petitions have been filed to quash the private complaint in C.C.No.87 of 2014 on the file of the learned Judicial Magistrate, Thirumangalam, Madurai District.

2. The petitioners in CrI.O.P.(MD).No.14815 of 2014 are Accused Nos.1 and 2 and the petitioners in CrI.O.P.(MD).No.12790 of 2014 are Accused Nos.3 to 5. Now, summons has been issued to them under Section 204 of the Code of Criminal Procedure, based on a private complaint filed by one Subbiah, the respondent in CrI.O.P.(MD).No.12790 of 2014 and the first respondent in CrI.O.P.(MD).No.14815 of 2014, for the offences under Sections 417, 418 and 420 r/w 34 of the Indian Penal Code. Now, to quash the aforesaid criminal proceedings initiated against the petitioners, the present petitions have been filed.

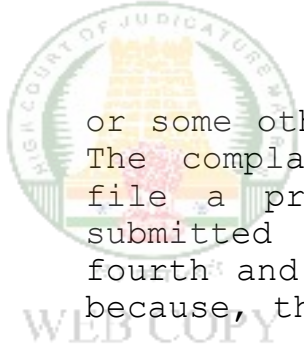
3. The complainant, viz., Subbiah, filed a private complaint against the petitioners herein on the ground that, the first accused is a Company engaged in manufacturing and selling cars in India, and the second accused is its Managing Director, he is having over all control and mastermind of manufacturing and selling



the cars on behalf of the first accused. The third accused is the authorized dealer of the first accused for selling the cars. The fourth accused is the Sales Manager, the fifth accused is the Service Manager, and the sixth accused is the employee of the third accused Company. All the above accused are engaged in selling all kinds of cars manufactured by the first accused Company.

4. The complainant intended to buy a 'Scala Diesel RXZ' car and approached the Accused Nos.3 to 5 and trial drive was also arranged by the sixth accused, Accused Nos.3 to 5 have given an assurance that all the parts of the car are all new. Believing their words, the complainant purchased the car on 19.08.2013 on payment of entire cost. Subsequently, on 24.09.2013, the complainant wanted to put cool papers on window screen, and he approached a service provider, by name S.Sankaran, an Expert motor mechanic, after examination, he found that the left rear door window was already fixed with cool papers, on further scrutiny, he found that the left rear door is old one, rear pumper is repaired and repainted. Further, in top rear right side window, repaint work had been done. On a further scrutiny, it was also found that the boot door was manufactured by one 'Nissan' company, not by the first accused company. Immediately, he informed the same to Accused Nos.3 to 6. On receipt of the complaint, the fourth and fifth accused inspected the car, accepted that the parts are old one, and promised to rectify the same by replacing the car with a new one, but, they failed to do so. Hence, the complainant issued a legal notice on 17.10.2013, the third accused sent a reply denying the allegations. Since all the accused have dishonestly induced and deceived the complainant and sold the car with old parts, they committed the offences under Sections 417, 418 and 420 r/w 34 of the Indian Penal Code. In the said circumstances, he has filed a complaint before the learned Judicial Magistrate, Thirumangalam and the learned Judicial Magistrate has taken the cognizance of the offence and issued summons to the accused. Challenging the same, the present quash petitions have been filed by the petitioners.

5. Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioners in CrI.O.P.(MD)No.12790 of 2014, would submit that the present complaint has been filed in total abuse of process of law. The allegations made in the complaint, even accepted in toto, do not disclose any offence against the petitioners herein. That apart, the order passed by the learned Judicial Magistrate, Thirumangalam, issuing summons to the accused, do not state any reason, and the order also do not show the application of mind on the part of the learned Magistrate before issuing the summons. If at all there is any deficiency in the car, it is only a civil dispute, and the remedy is only before the Civil Forum, the complainant cannot give a criminal flavour to it and file a complaint under Section 200 of the Code of Criminal Procedure. Apart from that, the allegations made by the complainant require a detail examination by Experts, to find out whether the door is new one or used one and whether the boot door is manufactured by the first accused company



or some other company, which cannot be done in a private complaint. The complainant, without approaching the police, cannot directly file a private complaint. The learned Senior Counsel further submitted that in absence of any provision in the Statute, the fourth and fifth accused cannot vicariously be made liable, merely because, they are the employees of the third accused Company.

6. Mr. Isaac Mohanlal, learned Senior Counsel appearing for the petitioners in CrI.O.P. (MD) No. 14815 of 2014/Accused Nos. 1 and 2 reiterated the contentions of the learned Senior Counsel appearing for the Accused Nos. 3 to 5 and also contended that the complaint do not *prima facie* disclose any cognizable offence and the learned Judicial Magistrate, without considering the materials available on record, in total non-application of mind, has taken cognizance of the offence and issued process under Section 204 of the Code of Criminal Procedure. The company and its Managing Directors have been made as accused, without any specific allegation regarding the role played by the second accused, the complainant cannot initiate any criminal action against the petitioners.

7. The learned Senior Counsel appearing for the petitioners in both the petitions, relied upon the following judgments, in support of their contention:

- (i) **Pepsi Foods Ltd. v. Special Judicial Magistrate [1998(5) SCC 749]; and**
- (ii) **Sunil Bharti Mittal v. Central Bureau of Investigation [AIR 2015 SC 923].**

8. Per contra, the learned counsel appearing for the complainant would contend that, the first and second accused, being the manufacturers of the cars, and Accused Nos. 3 to 5 are its dealers, with a clear intention to cheat the complainant, have dishonestly induced him to purchase a car with old parts, by making him to believe that all the parts in the car are new and manufactured by the first accused company. All the accused have intended to cheat the complainant from the inception, by making a false promise, they have cheated the complainant. The averments made in the complaint and the sworn-in-statements of the witnesses clearly make out an offence against all the accused. That apart, while taking cognizance of the offence and issuing summons, the learned Magistrate need not give any elaborate reason. It is sufficient to mention that he has satisfied with a reason stated in the complaint, and other materials for issuing summons. Even assuming that the order does not contain any reasons, for the fault of the Court, the complainant cannot be penalized and the complaint cannot be rejected on that score. When the complaint and other materials *prima facie* disclose a cognizable offence, it is sufficient to take cognizance and issue process, in this case, as such, the order issuing summons cannot be found fault with. The learned counsel would further contend that it is not a civil dispute between the parties. All the accused acted in concert, to cheat the complainant, the offence under Section 420 of the Indian Penal Code



is clearly made out. In support of his contention, he has relied upon the following judgments:

- "(i) **Kanti Bhadra Shah v. State of W.B. [2000(1) SCC 722].**
- (ii) **MEDCHL Chemicals & Pharma (P) Ltd. v. Biological E.Ltd. [2000(3) SCC 269].**
- (iii) **U.P.Pollution Control Board v. Mohan Meakins Ltd. [2000(3) SCC 745].**
- (iv) **Arun Bhandari v. State of U.P. and others [2013(2) LW (Cr1.) 261].**
- (v) **Sridhar v. State & another [2013(2) LW (Cr1.) 657]."**

9. I have considered the rival submissions and perused the materials available on record carefully.

10. The primordial contention of the learned Senior Counsel appearing for the petitioners in both the petitions is that, while taking cognizance of an offence and issuing process under Section 204 of the Code of Criminal Procedure, the learned Judicial Magistrate should apply his mind and form an opinion that there is a sufficient ground available for proceeding with a complaint, which is a condition precedent for issuing summons. But the order passed by the learned Judicial Magistrate, issuing summons do not disclose whether the learned Judicial Magistrate has applied his mind, and the order did not contain any reason, and it does not disclose whether the learned Judicial Magistrate satisfied himself that a cognizable offence is made out before issuing the process.

11. Before considering the above submissions, it is useful to refer to the order passed by the learned Judicial Magistrate, which reads as follows:

**"Records perused. Prima facie case is made out against the respondents for the offences mentioned in the complaint. Hence the case is taken into file U/s. 34, 417, 418 and 420 IPC. Issue summons to A-1 to A-6 on process call on 11.07.2014."**

12. Section 204 of the Code of Criminal Procedure deals with issuing of process, which reads as follows:

**"Issue of process.- (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -**

**(a) a summons-case, he shall issue his summons for the attendance of the accused, or**

**(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some**



other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

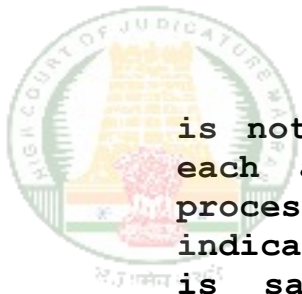
(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87."

13. A cursory reading of the above provision makes it clear that, before taking cognizance of an offence, the learned Magistrate should satisfy himself that there is a sufficient ground available in the complaint or other materials filed along with the complaint for proceeding against the accused. The order passed by the learned Judicial Magistrate taking cognizance and issuing process should reflect, whether the learned Judicial Magistrate has applied his mind, and satisfied from the materials available on record, a cognizable offence is made out, which is sufficient to initiate a proceedings against the accused. Even though the learned Judicial Magistrate need not write an elaborate order, but, the order should reflect that the learned Magistrate has carefully considered the materials brought on record and he has examined the nature of allegations made in the complaint placed before him.

14. At this juncture, it is worthwhile to refer to the judgment of the Hon'ble Supreme Court in **Mehmood Ul Rehman v. Khazir Mohammad Tunda** [2015(12) SCC 420], wherein, in Paragraph 22, it has been held as follows:

"The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate



is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

15. In **Pepsi Foods Ltd. v. Special Judicial Magistrate** [1998 (5) SCC 749], referred to above, the Hon'ble Supreme Court has held as follows:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

16. The said judgment has been recently followed by the Hon'ble Supreme Court in **Sunil Bharti Mittal v. Central Bureau of Investigation** [AIR 2015 SC 923], wherein it has been held as follows:



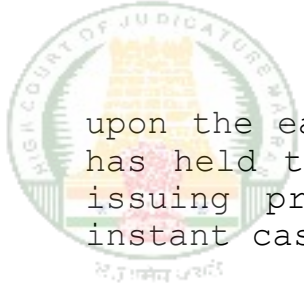
"45. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

47. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

17. From the law laid down by the Hon'ble Supreme Court, it is clear that while taking cognizance and issuing summons, the learned Judicial Magistrate though not required to give elaborate reasons, should indicate his application of mind in the order and state the reasons for issuing summons, especially, when the accused are Managing Director and the employees of the company, regarding their involvement in the commission of offence. In the above circumstances, I am of the considered view that the order passed by the learned Judicial Magistrate issuing summons is bereft of any reasons and do not disclose his application of mind.

18. Coming to the judgment relied upon by the learned counsel appearing for the respondent/complainant in **Kanti Bhadra Shah v. State of W.B. [2000(1) SCC 722]**, in matters relating to framing of charges, wherein the Hon'ble Supreme Court has held that there is no legal requirement for the Trial Court to write an order showing reason for framing charges and it is totally unnecessary, as it is only time consuming, the said judgment is not applicable to the case at hand.

19. In the other judgment relied on by the learned counsel for the complainant in **U.P. Pollution Control Board v. Mohan Meakins Ltd. [2000(3) SCC 745]**, the Hon'ble Supreme Court, while relying



upon the earlier judgment in **Kanti Bhadra Shah's** case cited *supra*, has held that there is no need to give reasons in the order while issuing process, which is also not factually applicable to the instant case.

20. That apart, it is settled law that, any individual, who has committed an offence on behalf of the company, can be made as an accused along with the company, provided there are sufficient materials available to show that the individual played an active role with a criminal intent. He can also be implicated as an accused, in cases where Statute itself attracts vicarious liability. In the instant case, the materials available on record do not disclose the role played by the Accused Nos.2 to 5 and no materials available to show that they have acted with any criminal intent. In the above circumstances, if at all any offence is committed, it could be attributed only to the first accused company, the other accused, being the Managing Director, the authorized dealer of the car, and its employees, cannot be made vicariously liable.

21. In this regard, it is useful to refer to the judgment of the Hon'ble Supreme Court in **R.Kalyani v. Janak C.Mehta [2009(1) SCC 516]**, wherein, it has been held as follows:

"32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created."

22. In another judgment in **Sharon Michael v. State of T.N. [2009(3) SCC 375]**, the Hon'ble Supreme Court has held as follows:

"16. The first information report contains details of the terms of contract entered into by and between the parties as also the mode and manner in which they were implemented. Allegations have been made against the appellants in relation to execution of the contract. No case of criminal misconduct on their part has been made out before the formation of the contract. There is nothing to show that the appellants herein who hold different positions in the appellant Company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the Company."



23. The Hon'ble Supreme Court in **Keki Hormusji Gharda v. Mehervan Rustom Irani** reported in 2009(6) SCC 475, has held as follows:

"17. The Penal Code, 1860 save and except in some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company."

24. In the above circumstances, in the absence of any express provision creating vicarious liability, Accused Nos.2 to 5 cannot be made liable. The learned Judicial Magistrate, without considering all those issues, has mechanically issued summons. On that ground also, the impugned order passed by the learned Judicial Magistrate is liable to be set aside.

25. In the result, the order issuing summons to the accused is liable to be set aside and accordingly, set aside. Consequently, the private complaint in C.C.No.87 of 2014 on the file of the learned Judicial Magistrate, Thirumangalam is quashed. The Criminal Original Petitions are allowed accordingly. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To  
The Judicial Magistrate,  
Thirumangalam,  
Madurai District.

+2 CC to M/s.B.RAJESH SARAVANAN, Advocate, SR-78746,78747

+1 cc M/s.ISAAC CHAMBERS ,Advocate, SR.No. 79028

**CrI.O.P. (MD).Nos.12790 and 14815 of 2014**

**30.07.2019**