



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.01.2022

CORAM

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Crl.O.P.Nos.28291 & 28292 of 2015

and

M.P.No.1 , 1, 2 & 2 of 2015

The Managing Director,
Skoda Auto India Pvt. Ltd.,
A-1/1, MIDC, Five Star Industrial Area,
Shendra,
Aurangabad - 431 201 ...Petitioner in O.P.28291/2015

The Managing Director,
Gurudev Motors,
559, Anna Salai, Teynampet,
Chennai 600 018 ...Petitioner in O.P.28292/2015

Vs

T.S.Shrawan ...Respondent in both O.Ps.

Both the Criminal Original Petitions are filed under Section 482 of Cr.P.C. to call for the records culminated in C.C.2082 of 2015 pending on the file of the XVIII Metropolitan Magistrate, Saidapete, Chennai and quash the same.

For petitioner ... Mr. P.V.Balasubramaniam
in both O.Ps.

For respondent ... Mr. G. Vrinda Ramesh,
in both O.Ps. Legal Aid Counsel

C O M M O N O R D E R

Both the Criminal Original Petitions have been filed to quash the private complaint, filed by the respondent for the offences under Sections 420 and 406 of IPC r/w 109 and 120(b) of IPC. A1, the Managing Director of one Gurudev Motors, Chennai, has filed a petition in Crl.O.P.No.28292 of 2015 and A2, the Managing Director of Skoda Auto India Pvt Ltd., Aurangabad, has filed a petition in Crl.O.P.No.28291 of 2015.

2.Even though notice was served on the respondent, and a counsel entered appearance, none appeared for the respondent on several hearings. In the said circumstances, Ms. G. Vrinda



Ramesh, Advocate is appointed as Legal Aid Counsel for the respondent.

3.The case of the respondent/complainant is that he has purchased a Skoda Fabia car bearing registration No.TN 22 BR 8253, which was manufactured by A2, through his dealer/A1, in the year 2014. Thereafter, the vehicle developed some mechanical problem. Hence, he left the vehicle with A1, to carry out the repairs at that time the car was in a running condition. However, the complainant was informed that, the car was not in running condition, as the piston of the car was broken. When the complainant approached A1 to get the car repaired, so far, they have not get the car repaired, thereby, both A1 & A2 have cheated the complainant and therefore, the private complaint has been filed. The learned Judicial Magistrate taken cognizance of the offence and issued process. To quash the proceedings , the present quash petitions have been filed.

4.The learned counsel for the petitioners would submit that admittedly, the petitioners are only Managing directors of the companies and the Company, which alleged to have committed the offence was not made an accused. That apart, absolutely, there is no allegation against the Managing Directors of the Company. In the said circumstances, the petitioners cannot be made vicariously liable for the offence alleged to have been committed by the company in the absence of any legal fiction created by the statute. Hence, the complaint against the Managing Directors is not maintainable.

5.The learned counsel further submitted that the car was purchased in the year 2011, it has run more than one lakh kilometer and piston of the car was broken and hence, he was informed that the replacement of the piston is necessary. But, he has not come forward to get the vehicle repaired by changing the piston, on the other hand, he has lodged a complaint as if the Company has committed default and cheated the defacto complainant. On facts also, absolutely, there is no allegation of cheating, and no offence has been made out against the petitioners. Without considering the same, the learned Judicial Magistrate has mechanically taken cognizance. Apart from that, while taking cognizance , the learned Judicial Magistrate did not apply his mind and mechanically passed the order, as prima facie case has been made out and issued summons, which is not maintainable in the eye of law.

6.Per contra, the learned Legal Aid Counsel, appearing for the respondent submitted that the complainant purchased the car manufactured by A2 Company. A1 is an authorized dealer of A2. Since there was a strange clutter noise in the vehicle, he left the car with the A1-Company. At that time, the car was in



running condition and a minor repair was only found by A1 Company. Subsequently, he was informed that the piston was broken and the piston has to be changed and asked him to pay the cost, and further informed that unless the piston is replaced, the car will not move. The accused had sold a defected car to the defacto complainant and A1, being the authorized dealer, in conspiracy with A1, has cheated him and hence, the complaint has been filed. The learned Judicial Magistrate, after considering the entire materials, on finding prima facie case against the accused, has taken cognizance and issued process and there is no illegality in it.

7. This Court considered the rival submissions made on either side and perused the materials available on records, carefully.

8. Admittedly, the complaint has been filed only against the Managing Directors of the manufacturer of the car and the dealer Companies. Both are private limited Companies registered under the Companies Act. Now, the allegation is that the defacto complainant entrusted the car to A1, who was the dealer and service centre for repair, however, A1 and A2 conspired together and cheated the petitioner. From the averments found in the complaint, absolutely, there is no allegations against the petitioners, who are Managing Directors. There is also no materials to show that they hatched a conspiracy and in furtherance of the same, they have committed illegal act.

9. It is settled law that any individual, who has committed an offence on behalf of the company, can be made as accused along with the company, provided there are sufficient materials available to show that the individual also actively played role with criminal intention. Then alone along with the company, they can also be implicated as accused and no vicarious liability can be fixed on the Managing Directors or others, in the absence of any specific allegations against them. A vicarious liability can be fastened only by reason of a provision of a statute. For the said purpose, a legal fiction has to be created. Even under a special statute when the various criminal liability can be fastened on a person on the premise that he was in charge of and responsible for the affairs of the Company. The Hon'ble Supreme Court in the case of R. Kalyani /vs/ V. Janak C. Mehta reported in 2009(1) SCC 516, has 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



WEB COPY

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."

10. In the instant case, admittedly, the company is not made as an accused and the Managing Directors alone made as accused. There are no materials available to show that they have acted with criminal intention. Merely because they hold the post of Managing Directors, they cannot be made as an accused in the absence of any specific allegation against them. That apart, from the materials available on records, it could be seen that the learned Judicial Magistrate has not even given any reason for taking cognizance of the offence. The learned Magistrate has simply stated that prima facie case has been made out against the accused and taken cognizance and issued summons. The learned Judicial Magistrate, in total non-application of mind has taken cognizance against the petitioners, on that ground also, the same is liable to be quashed.

11. Accordingly, both the Criminal Original Petitions are allowed and the criminal proceedings against the petitioners in C.C.No.2082 of 2015 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The XVIII Metropolitan Magistrate,
Saidapet, Chennai,
2. The Chief Judicial Magistrate,
Egmore, Chennai.
3. The Public Prosecutor,
High Court, Madras.

+2cc to M/s.BFS Legal, Advocate, S.R.No.5923

CrI.O.P.Nos.28291 & 28292 of 2015

SS(CO)

RGA(18/03/2022)