

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-15937-2021
Date of Decision : 22.08.2024

SUMIT GUMBER AND OTHERSPetitioners

VERSUS

STATE OF PUNJAB AND ANOTHERRespondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Harsh Manocha, Advocate,
for the petitioners with
Mr. Sumit Gumber.

Mr. Pardeep Bajaj, DAG, Punjab.

Mr. Vipul Aggarwal, Advocate for
Mr. Paras M. Goyal, Advocate
for respondent no.2 with
Mr. Jaya Raghwan, Manager, MRF.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, prayer is made for quashing of FIR No.96, dated 14.10.2020 (Annexure P-1), under Sections 406 and 120-B of the IPC, registered at Police Station Phase-11, SAS Nagar, Mohali, alongwith all other consequential proceedings arising therefrom.
2. The instant FIR has been registered at the behest of respondent no.2-M/s MRF Ltd. The relevant extract of the FIR reads as under:-

“Subject: Complaint for registration of F.I.R. U/S 406 of the Indian Penal Code for criminal breach of trust against (a) M/s Shiva Tyres, Mohali, having its principal place of business at SCO-12, Phase-11, SEC- 65A, Mohali, Distt. Mohali, Punjab and its Partners (b) Sh. Sumit

Gumber, H.NO. 2009/20, Baldev Nagar, Narayan Chowk, Chandigarh Road, Ambala 134 007, (c) Mr. Tarun Bishnoi, Kurushetra Tryes, National Highway, Opposite Bus Stand, Pipli (Kurukshetra) - 136 131, (d) Mr. J.S. Dhesi, H.No. 2104, Sector 38-C, Chandigarh 160 036. (1) That the Complainant (M/s MRF Limited) is a Public Limited Company having its Registered Office at 114, Breems Road, Chennai 600 006 and Branch Office at Chandigarh an is one of the most acclaimed manufacturer of rubber products, such as automotive tyres, tubes, flaps, tread rubber and conveyor belts etc. MRF Ltd. has 10 factories and Sales Offices across India and supplies to OE manufacturers, Defence Sector, exports etc. and has a large sales network through its dealership and has a reputation of being a principled and ethical company. MRF has won JD Power Award for 12 consecutive years and it has also on TNS and Capexil Award being voted as the most trusted tyre company in India. The present complaint is being filed by Sh. Shibu Abraham S/o Sh. Abraham K.J. who is well versed with the facts and circumstances of the present case and is also authorized by virtue of Power of Attorney dated 08.07.2020. Copy of the said Power of Attorney is annexed as Annexure C-1. (2) That MRF Ltd. has dealership network in the form of composite/ exclusive dealers and franchisees. The franchisees includes Tyres & Service, ABC License, Tiretok etc., where a license is granted on a fixed fee to operate the franchisee outlets using the reputed MRF brands and trademarks. The dealer/ franchisee are also provided with training and necessary technical support for running the said franchise outlets. As on date, MRF has a network of 98 ABC Licensees across India apart from 900 plus Tyres and Service franchisees. (3) That the ABC License Agreement (MRF EXCLUSIVE DEALER WITH ALIGNMENT AND BALANCING CENTRE LICENSING AGREEMENT) is granted with respect to its full range of products together with provision of connected services for which machinery, accessories, tools, technical assistance and guidance are provided to the Licensees by the Licensor (Complainant Company) under the ABC License Agreement entered into by the Complainant with such Licensee. (4) The accused No. 1 is M/s Shiva Tyres, Mohali, SCO-12, Phase 11, Sec.-65A, Mohali 160 062 (Punjab), which was appointed as a Licensee of the Complainant and the accused No. 2 Mr. Sumit Gumbar son of Mr. Krishan Gumbar, Accused No. 3. Mr. Tarun Bishnoi son of late Kimti Lal Bishnoi and accused No. 4, Mr. J.S. Dhessi son of late Harcharan Singh Dhessi are the partners of M/s Shiva Tyre Mohali and in their individual capacity being responsible for the activities of the accused No. 1 including day to day management, conduct of business, decision relating to financial matters of accused No. 1. (5) The accused 2, 3 and 4 had approached the Complainant MRF Ltd. for grant of the ABC License Agreement and M/s Shiva Tyres, Mohali (Accused No. 1) was appointed as the Licensee of the Complainant with effect from 29.12.2016 (date of inauguration). The ABC License Agreement was executed on 18.11.2016 for a period of 6 years from the date of inauguration (29.12.2016). As per the Clause 4 of the ABC License Agreement entered into between the Complainant and the Accused's: "4) The LICENSOR agrees to make available for the use of the LICENSEE for the machinery, equipment as listed out in Annexure (B) hereto (which machinery, equipment hereinafter referred to as the ANNEXURE (B) MACHINERY & EQUIPMENT and accessories and tools as list out in ANNEXURE (B1) (which accessories, tools are hereinafter referred to as the ANNEXURE (B1) ACCESSORIES & TOOLS. The LICENSEE agrees and confirms that the ownership of the ANNEXURE (B) MACHINERY & EQUIPMENT is and shall always remain with the LICENSOR and that the LICENSEE is only permitted to use the ANNEXURE (B) MACHINERY & EQUIPMENT subject to the

condition that the LICENSOR shall have the right, at any time, for whatsoever reasons, notwithstanding any other clause, to take back all or any of the ANNEXURE (B) MACHINERY & EQUIPMENT and the LICENSEE shall not refuse to part with or delay/ obstruct the taking back of the ANNEXURE (B) MACHINERY & EQUIPMENT by the LICENSOR whenever so felt necessary by the LICENSOR to be used for the MRF EXCLUSIVE DEALER WITH ALIGNMENT & BALANCING CENTRE. (5) The LICENSOR agrees that upon the LICENSOR receiving full LICENSE GRANT FEE-cum-INSTALLATION SUPPORT FEE mentioned in Clause-2 above within the times specified therein the LICENSOR shall grant a limited non-exclusive License to the LICENSEE to operate and run a Showroom-cum-Service Centre under the name of MRF Exclusive Dealer with Alignment and Balancing Centre". (6) The LICENSEE agrees that the LICENSEE shall not hypothecate, pledge, transfer, part with the possession off or put to any sort of risk the ANNEXURE (B) MACHINERY & EQUIPMENT. (7) The LICENSEE agrees that all the ANNEXURE (B) MACHINERY & EQUIPMENT handed over by the LICENSOR to the LICENSEE for use under this agreement, shall be kept safely and returned by the LICENSEE to the LICENSOR in the same condition as originally handed over, subject to normal wear and tear whenever so required by the LICENSOR or upon the expiry or earlier termination of this Agreement. The LICENSEE agrees that, apart from normal wear and tear, if the ANNEXURE (B) MACHINERY & EQUIPMENT is damaged in any manner, the LICENSEE shall be liable to pay to the LICENSOR the amount required to repair such damaged item of the ANNEXURE (B) MACHINERY & EQUIPMENT and if any item of the ANNEXURE (B) MACHINERY & EQUIPMENT is damaged beyond repair, the LICENSEE shall be liable to compensate the LICENSOR for the value of the said item of the ANNEXURE (B) MACHINERY & EQUIPMENT. The LICENSEE agrees that the decision of the LICENSOR regarding the above-said damage, the cost of repair and the value of such machinery and equipment shall be final and binding on the LICENSEE." This clause was duly accepted by the Accused's under the ABC License Agreement. The copy of the ABC License Agreement is attached as Annexure C-2. (6) That the Complainant, under the said ABC License Agreement had supplied the aforesaid machinery, equipment to the Accused and had an estimated value of Rs.13,15,392/- (Rupees Thirteen Lakhs Fifteen Thousand Three Hundred and Ninety Two only) and Furniture, Fixtures, Stands and other promotional items provided as spelt out in ANNEXURE- 'C' to the said ABC License Agreement and had an estimated value of Rs.2,04,211/-, which continues to be owned by the Complainant-Company. (7) That the Complainant-Company charges Rs.8,50,000/- (Rupees Eight Lakhs Fifty Thousand) towards Non-Refundable One Time License Grant Fees-cum- Installation Support Fees plus applicable taxes; and the Licensee/ Accused has to pay the Licensor/ Complainant periodical/ Monthly License Fees of Rs.7,000/- (Rupees Seven Thousand) from the date of inauguration during the existence of the ABC License Agreement. (8) That the above non- refundable one time license grant fee-cum-installation support fees and monthly license fees is in consideration of the Licensor's grant of a limited non-exclusive license to the Licensee to operate and run a showroom-cum-service centre under the name of "MRF EXCLUSIVE DEALER WITH ALIGNMENT AND BALANCING CENTRE" to provide wheel balancing, wheel alignment, tyre fitment and any other services that may be introduced from time to time by the Licensor/ Complainant- Company to use/ display selected trademarks, artistic works and designs of the Licensor/ Complainant Company; and also been permitted to use ANNEXURE 'B' - Machinery &

Equipment in connection with the arrangement. (9) That the Complainant had provided to the Accused's herein the following machineries & equipment viz., Wheel Aligner, Wheel Balancer and Scissor Lift (ANNEXURE 'B'-Machinery & Equipment) in connection with the arrangement. (9) That the Complainant had provided to the Accused's herein the following machineries & equipment viz. Wheel Aligner, Wheel Balancer and Scissor Lift (ANNEXURE 'B'- Machinery & Equipment) valued as follows:- Sr.No. Particulars, Value (Rs.) (1) John Bean Wheel Aligner - V3D EL 4,98,576/-, (2) John Bean Wheel Balancer - b9750 2,65,000/- (3) John Bean Alignment Scissor Lift 481098 5,51,616/- with Roll Back kit and one lifting Jack and jacking beam, Total value: Rs.13,15,392/-. Similarly, the Complainant had provided the Accused herein the following list of Furnitures/ Fixtures/ Stands and other Promotional items in Annexure - which are owned by the Complainant/ Licensor Company; ITEM DESCRIPTION QTY. (NOS.) TYRE STANDS RADIAL STANDS, (2) PASSENGER STAND, (2) TUBE STAND (1) SPECIALITY TYRE STAND (1) TOW AND THREE WHEELER STAND (1) LCV/ TRUCK STAND (1) BLOW UPS DISPLAY RADIAL BLOW UPS (2) RACING BLOW UPS (1) SPECIALITY BLOW UP (1) DO'S AND DON'T'S (1) TREAD PATTERN (1) DEALER BOARD BLOW SIGN FLEX (1) which was duly acknowledged by them in the ABC License Agreement. So the entrustment of the machinery and equipment was given to the Accused and they were to use the same as per the Agreement and return it was per the directions of the Complainant-Company. (10) That the ANNEXURE 'B' Machinery & Equipment of the ABC License Agreement were entrusted by the Complainant to the Accused under the aforesaid ABC License Agreement, with a clear understanding that the ownership thereof would always remain with the Complainant-Company and the Accused's would only be permitted to use the same during the tenure of the arrangement between the parties and that the Complainant would have all the right to take back the ANNEXURE 'B' machinery and equipment so entrusted to the Accused's. The aforesaid machineries and equipment were delivered by the Complainant to the Accused at Mohali under a delivery memo No. 759750 dated 07.12.2016 annexed as Annexure C-3. The delivery memo was duly acknowledged by the Accused No. 4 on behalf of other accused. (11) The ANNEXURE 'B' machinery and equipment was installed at Licensee/ Accused's shop on 27.12.2016 as reflected in Machinery Installation Report annexed as Annexure C-4 which was duly acknowledged by the Accused No. 3 for himself and other accused. (12) Similarly, the Complainant-Company have also provided the Licensee/ Accused with promotional/ display items namely, Tyre Stands, Blow Ups Display and Dealer Board as listed out in ANNEXURE 'C' of the ABC License Agreement (ANNEXURE 'C' - DISPLAY MATERIALS). As per Clause 11 of the ABC Agreement the ownership of the ANNEXURE 'C' - Materials always remains with the Complainant' Licensor and the Accused/ Licensee is only permitted to use the same and shall return back upon expiry or earlier termination of the ABC License Agreement. (13) It is stated that there was no billing to Licensee from April 2019 onwards as they have not placed any orders citing personal reasons. In spite of Complainant- Company's various discussions with the Licensee/ Accused's they were not able to revive their business prospects and continued to be non-cooperative. The Complainant believes that this was a ploy to close the business and misappropriate the machinery, equipment and materials which is owned by MRF Ltd., but given in the custody of the Accused. (14) In the backdrop of the above, when the Complainant-Company's officials namely Mr. Gaurav Kaushal visited the accused's shop at SCO No. 12, Phase-11, Sector 65-A, Mohali on 31.03.2019 in order to further discuss on their

plans, if any, to Complainant's utter shock and surprise, the Accused's have winded up their shop. Business; and their entire shop set up had been dismantled without informing the Complainant. The Accused's have in the process dishonestly misappropriated the Complainant's ANNEXURE 'B' - Machinery and Equipment and ANNEXURE 'C' - Display Materials and committed breach of trust. This shows that the accused were acting with a malafide intention to cause the termination of the dealership and misappropriate the machinery and display material belonging to the Complainant-Company. (15) The ownership of the ANNEXURE 'B' - Machinery and Equipment and ANNEXURE 'C' Display Materials always lies with the Complainant-Company and when the Accused's were only entrusted with possession of the same for the limited purpose of using them for the ABC License Agreement/ Arrangement entered with the Complainant-Company, however, contrary to the express terms of the Agreement, the Accused in a concerted action have illegally and unauthorizedly removed the said ANNEXURE 'B' - Machinery and Equipment and ANNEXURE 'C' - Display Materials without the Complainant-Company's knowledge and consent. (16) That the Complainant in this regard had sent a demand notice dated 11.09.2019 (annexed as Annexure C-5) to the Accused persons calling upon them to return the ANNEXURE 'B' - Machinery and Equipment and ANNEXURE 'C' Display Materials and thereby with a criminal and mischievous intention had misappropriated the Complainant-Company's said machinery and equipment and display materials, in violation of a legal contract. (17) That the Accused's were duty bound to return the machinery and equipment/ display materials mentioned in the ABC License Agreement and as per the agreement terms, however, they have committed criminal breach of trust and have misappropriated the machinery and equipment/ display materials for their own use. The Accused No. 1 always gave an impression that he is going to respect the commitments of the Agreement but his recent conduct shows that he had fraudulently with the intention to cheat the Complainant had misappropriated the property along with his Partners. The Complainant was hoping that the Accused Number 2 shall be arranging to get the machinery back till recently unless his true colours were revealed. The Accused Partners have conspired between them to cheat this Complainant-Company of its valuable property and convert the property for their benefit as such, there is a clear cut commission of offence of criminal breach of trust which is in violation of the legal contract. The documents above clearly shows that the machinery and display material were entrusted to the accused persons which were the property of the Complainant and the same has been dishonestly misappropriated and there are no whereabouts of the said property and either it is being used for the benefit of the accused person at some other place which is neither within the knowledge, consent or authority rather the same is detrimental to the interest of the Complainant-Company. There is also a possibility that the accused persons have disposed of the said machinery owned by the Complainant-Company in order to cause wrongful loss to the Complainant-Company and in the process the accused person have committed breach of trust besides violating the legal contract. (18) That the Complainant- Company has been regularly following up with the accused persons and in the process has also written letter dated 11.09.2019. The accused persons have failed to respond to the said letter and/or returned the machinery rather now they are evading the phone calls of the Complainant-Company as such the present Complaint. (19) That the accused person have committed offence of Criminal Brach of trust, and cheating as such an F.I.R. be registered against the accused persons under relevant provisions of the Indian Penal Code and the guilty be brought to book. Mohali, dated 14.07.2020. sd/- Sh. Shibu

Abraham, S/O Sh. Abraham K.J., R/O SCO 42, First Floor, Pocket No. 1, Mani Majra, Mobile No. 82838-3198, 98724-77223.”

3. Upon notice of motion issued in the instant petition, respondents caused appearance, and respondent no.1-State filed reply.

4. During the pendency of the instant petition, the matter was amicably settled between the parties concerned, and most of the articles which were the cause of dispute, and was in the possession of petitioners, has now been returned to respondent no.2, and a full and final settlement has been arrived between the parties.

5. Today, both, learned counsel for the petitioners and respondent no.2 in the presence of the parties concerned, made a specific statement that they are ready and willing to withdraw their respective civil suit filed against each other before the competent court at Sirsa as well as competent court at Chennai, within a period of one month from today, and in future also they will not file any civil or criminal litigation against each other, with regard to the present controversy.

6. In view of the above settlement as well as the undertaking given by both the parties, the present petition for quashing the FIR (*supra*) is hereby **allowed**.

7. Resultantly, instant FIR No.96, dated 14.10.2020 (Annexure P-1), under Sections 406 and 120-B of the IPC, registered at Police Station Phase-11, SAS Nagar, Mohali, alongwith all other consequential proceedings arising therefrom, is hereby **quashed qua** the present petitioners.

8. All pending application(s) stand disposed of accordingly.

August 22, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No