

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

CRR 413 of 2020

CRAN 3 of 2022

CRAN 4 of 2022

CRAN 5 of 2023

In the matter of :- M/s Mercedes Benz India Pvt. Ltd.

Vs.

The State of West Bengal & Anr.

For the petitioner : Mr. Anshuman Sinha,
Mr. Udayan Sinha,
Mr. Basabraj Chakraborty,
Mr. Satyaki Chaudhuri
Mr. Indrajit Roy
.....Advocates

For the OP No.2 : Mr. Ankit Agarwal,
Mr. Nilay Sengupta,
Mr. Sujit Banerjee.
.....Advocates

Heard lastly on : 28.03.2025

Judgment on : 23.07.2025

Jay Sengupta, J:

1. This is application praying for quashing of the proceeding in Complaint Case No. 74 of 2019 under Section 420 read with Section 120B IPC pending

before the learned Judicial Magistrate, 4th Court, Purulia including the order dated 6th December, 2019 passed therein.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. The respondent No. 2 filed Complaint Petitioner No. 74 of 2019 under Section 200 Cr.P.C. in the month of July, 2019 before learned Chief Judicial Magistrate, Purulia alleging, inter alia, that the accused persons sold a second-hand car instead of a new car in conspiracy with others and thereby, cheated the respondent. Altogether nine persons were named as accused including petitioner herein who had been arrayed as accused No. 2. The statement of Saurav Dokania, DGM of the Complaint Company was recorded on S/A under Section 200 Cr.P.C. on 07.09.2019. The statement of Naresh Kumar Agarwal Managing Director of Complainant Company was recorded. The statement of Manjit Kumar Singh, Manager Legal of Complainant Company was also recorded. Learned Trial Court vide order dated 30.10.2019 directed In-charge, Purulia Mufassil PS to investigate or cause to investigate the matter by some other competent police officer subordinate to him. Learned Trial Court upon receipt of report from In-charge, Purulia Mufassil PS and upon going through the statements of complainant and witnesses, vide order dated 06.12.2019 took cognizance of the offences punishable under Section 420 read with Section 120B IPC and issued summons to eight accused persons including the present petitioner. The petitioner Company received the aforesaid summons dated 03.01.2020 for appearance on 10.01.2020. The petitioner filed the present CRR No. 413 of 2020 seeking relief as prayed for in the prayer clause. The respondent

No.2/Complainant was a company registered under Companies Act 1956 having its office and manufacturing unit at Bongabari, PS Purulia, District Purulia. The Respondent Company was engaged in manufacturing of port land slag cement at Purulia. The respondent No.2 through its AR approached Accused No.1 "Benchmark Intercrafts" the authorized dealer of Petitioner Mercedes-Benz India Pvt. Ltd. which was the manufacturer of Mercedes Benz passenger vehicle for purchase of a car. The representative of Respondent No.2 was explained about model/price and features of cars present with the dealer i.e., full cooperation was extended to the Complainant Company in purchasing the vehicle. The representative of Respondent No.2 decided to purchase Model B-200D Sports Vehicle (Diesel) and placed the order by paying down payment of Rs.3 Lacs in favour of the dealer by way of cheque on 14.06.2017. That the dealer issued proforma invoice in favour of Respondent No.2 quoting the rate of desired vehicle. Subsequently, an amount of Rs. 29,11,500 was also released in favour of the dealer by the Complainant's banker. An additional Rs. 1,81,896 was also paid towards the registration cost. The Complainant took possession of the B-200D Sports Car from the dealer on 18.12.2017. It was alleged that the Complainant came to know through a close acquaintance that he was boarding a second hand vehicle, which originally belonged to one Shanti Kumar Surana. Upon instructions from the Managing Director. Witness No. 4. Manjit Singh enquired into the matter and came to know that the said vehicle stood registered in the name of Shanti Kumar Surana and the same continued till 12.02.2018. On 07.02.2019 the respondent No.2 wrote an email to the

Petitioner stating its grievances which was forwarded by the Petitioner company to the dealer. That Respondent No.2 filed Complaint Petition No.74 of 2019 in the month of July 2019, alleging inter alia that the Complainant was sold a second-hand car instead of a new car by the dealer in conspiracy with other accused persons including the present Petitioner who has been arrayed as Accused No.2. It was alleged that on 20.12.2008 the Complainant came to know that the aforesaid car originally belonged to one Shanti Kumar Surana. It has further been alleged that all the accused persons in conspiracy with each other sold and delivered a second-hand used vehicle to the complainant and thereby committed the offence of criminal conspiracy and cheating. The name of the Petitioner Company figured in Para 4 and Para 13 of the Complaint which read as follows: Para 4 - passenger "Accused No.2 is the manufacturer of Mercedes Benz vehicle." Para 13 - "Accused No. 3, 4, 5, 6, 7 and 8 representing accused No. 1 and 2 met the complainant in early part of June 2017 and assured to deliver a brand-new vehicle." In addition to the aforesaid the name of the Petitioner figured in the statements of Witness No.1 and Witness No.4, which read as under. Witness No.4 in his email dated 07.02.2019 communicated in detail all about the vehicle and deception caused to the complainant company in respect of vehicle bearing no. WB-02AL-4646 to the Managing Director of Mercedes Benz India Pvt. Ltd. Save and except the aforesaid there was no reference about the Petitioner either in the complaint or in the statements of witnesses. The Petitioner M/s Mercedes Benz India Pvt Ltd was a company involved in the business of manufacturing luxury automobiles and was considered as one of the world

leaders in the automobile industry. It was a world-renowned brand and had been established in India by a German Multinational company namely, Daimler AG. M/s Landmark Cars (East) Pvt Ltd was an authorized dealer of the Petitioner company for the sale and after sale service of its car at Kolkata. At the time of appointment of dealers, an agreement was signed between the manufacturer and the authorized dealer which contained all the terms and conditions including the liabilities and responsibilities of each of the parties against each other and against the customer/purchaser. The petitioner company had given dealership on principle-to-principal basis. The vehicles were billed to the dealer and the dealer used to sell it to the customers. Hence, there was no role of Petitioner company with respect to sale of vehicles to customers. This arrangement held the dealer solely responsible from the dealings with the buyers. The manufacturers under no circumstances could be made liable in any manner for a transaction between the Dealer and the Customer. During the relevant period there was a software called "E-Vendor" which contained the details of vehicle sold by each vendor/dealership, meaning thereby when any vehicle was sold it got updated in the software. The IT team of Petitioner Company was having access to the aforesaid software. However, no pop-up or intimation message got generated when any sale was updated in the software. The aforesaid process was merely for keeping records. The officials did not check the details of each and every sale of vehicle as there was no requirement. As regards re-sale of the vehicle the same got updated vehicle first time went to the service center. Unless and company was appraised about any such

discrepancy in the mechanism by which the aforesaid fact would have come to the knowledge of the company. There was no material available either in the complaint or in the statement of witnesses to show that the present petitioner was having knowledge about the alleged second hand sale of the vehicle. The petitioner company was not involved in the alleged offence in any manner whatsoever. There was no communication between the Petitioner and the Complainant/ Respondent No.2 prior to or during the sale of the concerned vehicle. Hence, the question of representation of the Petitioner did not arise at all and in absence of any representation question of having any knowledge about the falsity of representation did not arise. The Hon'ble Supreme Court in *Tata Motors Ltd. v. Antonio Paulo Vaz and Ors* 2021 SCC Online SC 125 held as under: *"30.....Unless the manufacturer's knowledge is proved, a decision fastening liability upon the manufacturer would be untenable, given that its relationship with the dealer, in the facts of this case, were on principal-to-principal basis."* The Hon'ble Supreme Court in the case of *Honda Cars India Limited v. Sudesh Berry* 2021 SCC Online SC 1313 held as under: *"5. The matter was considered by the District Forum and insofar as the liability of the present appellant is concerned, it was observed thus: "So far as OP-II is concerned, we find no material on record to fasten any liability for the conduct of the O.P.-I and O.P.-III with whom O.P.-II have allegedly only principal relationship."* The Hon'ble Supreme Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate* (1998) 5 SCC 749, *Fakhruddin Ahmad v. State of Uttaranchal* (2008) 17 SCC 157, *Mehmood Ul Rehman v. Khazir Mohammad Tunda* (2015) 12 SCC 420, *Sunil Bharti Mittal v. CBI*

(2015) 4 SCC 609 and Ravindranatha Bajpe v. Bangalore Special Economic Zone Ltd. Criminal Appeal Nos. 1047-1048/2021 made a distinction on application of mind by the judge for the purpose of taking cognizance based on a police report on the one hand and a private complaint under Section 200 Cr.P.C. on the other, and that the requirement of a demonstrable application of mind in the latter case was higher as was held by Hon'ble Supreme Court in Bhushan Kumar v. State (NCT of Delhi) and State of Gujarat v. Afroz Mohammed Hasanafatta. The Hon'ble Supreme Court in Pepsi Foods Ltd. v. Special Judicial Magistrate having noticed that proceeding had been initiated on the basis of a complaint, held that "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. 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." The Hon'ble Supreme Court vide order dated 27.11.2011 passed in Criminal Appeal No. 1868 of 2011 in a matter titled as M/s Thermax Ltd. & Ors. Vs K.M.Johny & Ors. while dealing with the issue of vicarious liability in a criminal proceeding held that vicarious liability was unknown to criminal law. The Hon'ble Supreme Court laid down the principle regarding invoking of inherent power under Section 482 Cr.P.C. in State of Haryana & Ors. Vs Bhajanlal Citation AIR 1992 SC 604 and the instant case fell under the 1st

and 3rd category of cases. The Hon'ble Supreme Court in the matter titled as *Lovely Salhotra & Ors. Vs State of NCT of Delhi & Ors.* Citation (2018) 12 SCC 391 allowed even partial quashing of FIR. The Hon'ble High Court of Punjab & Haryana at Chandigarh in the matter titled as *Anguri Devi etc. Vs State of Punjab etc* Citation 2011 (2) RCR (Criminal) 431 allowed partial quashing of FIR. The Hon'ble Supreme Court in yet another case titled as *Surendra Kumar Bhatia Vs Kanhaiya Lal & Ors.* Citation (2009) 12 SCC 184 upheld partial quashing of FIR.

3. Learned counsel appearing on behalf of the complainant/opposite party submitted as follows. The complainant had ordered a "new" car, manufactured by the petitioner, through its dealer. Subsequent to its purchase, it was revealed that said car was a not a new one, but a second hand car. It was first registered in the name of one Shanti Surana. Thereafter, the petitioner and the dealer and their officers had committed fraud with the Motor vehicle department and had re-registered the same in the name of defacto complainant and managed to destroy the file lying with the Govt department. However, from a RTI application all that mischief had been detected and the defacto complainant lodged its grievances not only with the dealer, but also the petitioner herein who was the manufacturer of the car. The petitioner, initially assured the defacto to redress the grievances, but save and except one meeting with the defacto, no steps had been taken. Assurance was given to refund the entire amount of money remitted, but the same was never refunded. Being aggrieved with the aforesaid illegal activities of the Petitioner as well as the dealer, the defacto

filed a criminal complaint against the petitioner as well as against the dealers and its officers, in the Court of the learned 4th Judicial Magistrate, Purulia and Complaint Case No: 74/2019, under Section 420 read with Section 1208 of the IPC. In spite of notice, the Petitioner did not appear before said Learned Court, and filed the present revisional application before this Court. The only defence, as argued by the petitioner, was that, they were manufacturers of the goods and had no responsibility in sale of a car. It was the responsibility of the dealer, who ultimately sold the car. Mischief, if any done by the dealer and as such no case could be made against the manufacturers of the car and the cognizance of the case, against them was not permissible and the complaint against them should be quashed. The evidence of the defacto was clear that after having knowledge of the fraud committed against them, the defacto had filed a complaint with the petitioner. In the recorded evidence all emails sent to the petitioner/accused no.2 had been lodged before the learned Court below and the trial court should be given chance to assess the evidences adduced against the petitioner/accused no.2, not only to extent of their responsibility but also their role in present facts and circumstances of the case. After having the complaint from the defacto complaint, at no point of time, the petitioner/accused no.2 took this point that, being the manufacturer, they had no responsibility, rather, they assured to take step in the matter, to redress the grievance of the defacto. So, it was very early stage of the case to quash the same against the petitioner/accused no.2. It was well settled principle of law, that, no complaint should be quashed at preliminary stage

of hearing. In the petitioner, it was completely suppressed that in their official website, the dealer was shown as their "Partner". The petitioner further suppressed their agreement with the dealer, in other countries contained a clause of sales reporting which make it mandatory for a dealer to report a sale of motor vehicle to the manufacturers by the end of the day. It was absurd to suggest that the manufacturer of vehicle had no responsibility towards the purchaser of the vehicle. In the present case, the manufacturer should held responsible for each and every car, which were going to be sold to the customer and that's why they were keeping informed of each car sold worldwide. In the present, admittedly the car was first sold to Shanti Surana and same was ought to be recorded with the petitioner. But, when the complaint was made to them, the petitioner send their representative in the office of the defacto complainant along with the dealer's representatives. Clear assurances were given that said car will be replaced. But, thereafter nothing done to replace the old car sold to the petitioner. In the similar circumstances, the Hon'ble Apex Court held, inter alia, that supply of second hand car by declaring and directed the Company to pay compensation of Rs.50.00 lacs only. Reliance was placed on the State of Andhra Pradesh vs BMW India Private Limited (2024) SCC Online SC 1740. The judgements referred to by the petitioner in its written arguments were distinguishable on facts and law. None of the cases referred to deal with the issue of a car manufacturer for being responsible for commission of an offence as alleged. The court issuing process under Section 202 of the Code should not at that stage look into the adequacy of sufficiency of

material/evidence. The level of satisfaction at the stage of Section 202 of the Code was limited to that of a prima facie case to proceed for trial. 1992 2 SCC 213 (Mohinder Singh vs. Gulwant Singh and Ors.)

4. I heard the learned counsels for the parties and perused the revision petition, the affidavits and the written notes of submissions.

5. In the course of the proceedings, a few attempts were made by the parties to settle their disputes. Sufficient time was granted. But, no settlement could be arrived at.

6. First, it is trite law that like a partial acquittal or a partial discharge, a partial quashing of proceeding may also take place in an appropriate case. In fact, this proposition has also not been seriously disputed by the complainant.

7. The crux of the criminal complaint is that while the accused dealer sold a second hand Mercedes car to the petitioner passing it off as a first hand one, the present petitioner being the manufacturer of the car, aided and abetted the same and was in conspiracy with the accused dealer in this. But, the complainant has relied on several documents, like invoices, car registration documents to show that the prime accused, being the car dealer, indeed tried to make out that it was selling a brand new car to the petitioner. However, till the delivery of the car, apparently there was no direct communication made between the complainant and the car manufacturer/petitioner.

8. Learned counsel for the complainant/opposite party had taken pains to show that the present petitioner was aware of such fraud, at least of the transaction in question. It was even submitted that once a new car is sold, automatically an intimation is given to the car manufacturer/petitioner as per their own mechanism. However, there is no material on record to substantiate the same, especially in the event it was a second sale. The complainant/opposite party also provided an explanation about the same claiming that there was no pop-up mechanism and the petitioner would know about any discrepancy only if pointed out.

9. Even if such intimation is scheduled to be given as per the mechanism, the petitioner/manufacture could hardly do anything if the dealer perpetrated the fraud by not placing on record such subsequent sale of a second hand car, allegedly trying to pass it off as a first hand car.

10. When asked about the apparent reduced price for the sale of such Mercedes Benz car, it was submitted on behalf of the complainant that high value cars often have to be sold with huge discounts.

11. The complainant has also tried to make out a case from subsequent communications between the petitioner and the complainant that the petitioner was either aware of the deal or was owning up the responsibility.

12. First, it is quite dubitable about whether such subsequent documents would amount to admissible evidence in showing that there was an initial deception for committing an offence of cheating, that too in conspiracy with one another.

13. Secondly, even the communication/e-mails relied upon do not indicate that the petitioner either owned up any responsibility or admitted of any prior knowledge about such fraud. The only thing that was done was giving an assurance that the matter would be looked into in due course.

14. In order to rope in the present petitioner/manufacture of cars as an accused in such a case of alleged fraudulent sale of car by a dealer, there has to be something more which would, at the least, show that the manufacturer had such knowledge of such fraudulent act, even if there is no proof available for its active participation.

15. However, no such material is even prima facie available about the petitioner's prior knowledge about the alleged fraud.

16. Afterall, the petitioner cannot be made vicariously liable for anything that the dealer or any other agent might do in excess and beyond the arrangement entered into with the petitioner.

17. Therefore, from a plain reading of the petition of complaint, the initial depositions and the materials relied upon on behalf of the complainant/opposite party, this Court finds that no prima facie case is made out against the present petitioner.

18. In view of above discussions and as no prima facie case is made out against the present petitioner, the impugned proceeding is quashed so far as the present petitioner is concerned.

19. However, during trial if any evidence appears against the present petitioner, it shall be open to the trial Court to consider addition of the present petitioner as an accused in the proceeding.

20. With these observations, the revision application and the connected applications are disposed of.

21. Urgent certified copy of this order be supplied to the learned counsels for the parties upon compliance of usual formalities.

(Jay Sengupta, J.)