

02.12.2025
Item No.3
Ct. No. 34
nb

CRR 1253 of 2025

In the matter of: **Subir Kumar Bhadury.**

..... Petitioner.

Mr. Rishav Singh,
Mr. Soumalya Dutta,
.... For the Petitioner.

1. This revisional application has been filed by the petitioner for quashing of the proceeding pending before the learned Metropolitan Magistrate, 12th Court, Calcutta under Sections 418/420/34/120B of the IPC.

Brief resume of the case

2. It is the specific case of the petitioner that he is the Chief Operating Officer of Audi Kolkata and the duties as the Chief Operating Officer are limited. However, he has been falsely arraigned and implicated in the instant proceeding instituted on the basis of the petition of complaint filed by the opposite party no.2 before the Court of Learned Chief Metropolitan Magistrate at Calcutta therein alleging commission of offence by the petitioner and others punishable under the aforesaid Sections.
3. It was alleged in the said complaint that the complainant, M/s. Patton International Limited, on the basis of the world wide advertisements, published both in print and electronic media promoted the “rosy and colourful pictures of their world class cares” manufactured by German based company ‘Volkswagen’ under the brand name of “Audi” using German

Technology and also assured full guarantee of their genuine parts and world class and world class service both before and after sale, he purchased one, Audi Q5 PI 2.0 TDI (Navigational Model) car after following all the procedure .

4. On June 19, 2014 a letter was issued by the complainant company to M/s. Mohan Motors Distributors Pvt. Ltd. enclosing a cheque dated 17.06.2014 drawn on State Bank of Mysore, Mysore, for Rs.3, 00,000/- towards advance for purchasing the said car and subsequently, transferred a sum of Rs.50, 66,520/- in favour of M/s. Mohan Motors Pvt. Ltd. through RTGS and the balance consideration amount was duly credited to their account on 18.08.2014.
5. The said car was delivered to the complainant company on the same date, which was registered in the name of the complainant company. It has been alleged by the defacto complainant that the Chairman of the complainant company on 29.11.2015 at around 10 a.m., while travelling to Balasore by the said car on NH-6 at Ulluberia the car suffered a sudden brake failure when it was running within the permissible speed .However, no major accident was caused and ultimately, the driver of the car slowed down the car for 1 Km till it came to a complete halt. It was found after testing that the unfortunate incident was caused because of brake failure, inspite of the car being regularly put into servicing at the authorized Service Centre/Workshop.
6. It was further alleged that the defective car was taken to the authorized workshop of the accused persons on November 30, 2015 and the faulty brake system was shown and same was

admitted and acknowledged by the technical staff at the workshop and in furtherance of that, a job sheet was issued, wherein the defect of the vehicle was duly noted as “Vehicle Brakes were not working at the speed of 100 Km”.

7. On December 1, 2015 to accused no.3/the petitioner herein narrating him the entire facts and circumstances and specifically the brake failure of the car was caused due to the non-fulfillment of the obligations on the part of the accused persons, which was in complete violation of the terms and conditions of the Sales Contract. Thereafter, on December 5, 2015, it was returned to the complainant with a remark “brake fluid replaced”. On the basis of the complaint, the case was registered.

Submissions

8. It is the contention of the learned advocate appearing on behalf of the petitioner that the petitioner cannot be made liable for the act or omission on the part of the company. There was no allegation on the petition of complaint that any investigation was made to the opposite parties in their individual capacity. No allegation has been levelled against the present petitioner by the opposite party or that he never connected with the petitioner during the course of transaction.
9. It is further argued that the petitioner is not the Director or Officer in the Company, which manufactured the vehicle. He is only the Chief Operating Officer (Service) of the company, which sold the vehicle.

10. It is further argued that there is no vicarious liability committed under Sections 418 and 420 of the IPC. Therefore, unless specific averment attributing an individual overt act directly commutes the specific inducing exercise by an individual Officer of Company, which established such officer cannot be subjected to a prosecution in an indirect manner, in this regard.

11. The petitioner relied upon the decision of **S. K. Alagh Vs. State of Uttar Pradesh & Ors.** reported in **(2008) 5 SCC 662** para 12 to 20. and in the case of **Sunil Bharti Mittal Vs. CBI** reported in **(2015) 4 SCC 609** (para 40 and 45).

12. It is the further contention of the petitioner that the allegation in the impugned complaint and the face value did not fall under Sections 418/420/34/120B of the IPC. That apart, the order of taking cognizance and the order of issuing process is completely devoid of any reasoning.

13. In course of argument the learned counsel submits that the other accused persons being the Audi India as also Co-ordinate Bench has quashed the proceeding in CRR 2320 of 2016 on March 19, 2025.

Analysis

14. Heard the submission of the learned counsel. No one appears to represent of the opposite party no.2 despite receiving service of notice.

15. In the decision as relied upon in **Sharad Kumar Sanghi Vs. Sangita Rane (2015) 12 SCC 781** it was held by the Hon'ble Supreme Court that where the jurisdiction is exercised on a complaint petition filed in terms of Section 156 Clause 3 or

Section 200 of the Code of Criminal Procedure learned Magistrate is required to apply his mind in deciding the case. The Penal Code does not contain any provision for vicarious liability on the part of the Managing Director or Directors of the Company without against of the company. That the ratio of the decision of Supreme Court in the case of **S.K Singh (2008) 5 SCC 662** would manifest that a Director of a company or an employee thereof cannot be held liable for any offence committed by the company itself.

16. It was also observed by a co-ordinate Bench while passing the order of quashing against the head of Audi India and the head of customer service who were arraigned as accused persons in the complaint in C.R.R 2320 of 2016 Joe King ,Head ,Audi India vs Patton International Limited taking note of **Sharad Kumar Sanghi (Supra) (2003) 8 SCC 89** that it is necessary to specifically aver in the complaint that at the time offence was constituted, the person/accused was in-charge and responsible for the conduct of the business of the company. Secondly the company should have been arrayed as an accused.

17. In this case, it appears that the principal allegation was against the company .After that the authorized distributor of Audi car in India is M/S Mohan Motors Distributors Ltd and the complainant company made a query with them about the price and safety features and after being satisfied purchased the car. The Managing Director of the said company Gaurav Bajaj was also arraigned as an accused and the proceeding is quashed by a co-ordinate Bench. The head of Audi India and

the head of customer service were also arrayed as accused and the said proceeding has also been quashed. No specific allegation can be found so far as the petitioner is concerned, who is only Chief Operating Officer of Audi Calcutta Service. In absence of any further role attributed to the petitioner or in absence of any material attributed to him in order to register the case within the time, Section 120B of the IPC, which will be very difficult to hold that proceeding should continue and there is no other materials to hold that he was in the garb with the other accused. The Co-ordinate Bench while passing such order whereby proceeding was quashed in respect of two other accused persons.

18. The decision of **Sunil Bharti Mittal (*supra*)** where it was held that a company is liable to be prosecuted and punished for criminal offence. The knowledge and intention if any of the errant company must be imputed to the body corporate itself and while deciding the question, whether a Company could be prosecuted for offence, which required mens rea, the Court has held that a body corporate is a 'person' to whom amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention. Similarly, while quashing the proceeding, the Co-ordinate Bench in CRR 3068 of 2017 in Gaurav Bajaj vs The State of West Bengal where the Managing Director of M/S Mohan Motor Distributor was arrayed as an accused also discussed the decision of **Pepsi Foods Vs. Special Judicial Magistrate** (1998) 5 SCC 749 in para 28 .

19. On the contrary it is admitted in the complaint that after the payment for purchase of car it was duly delivered and also serviced so culpable intention cannot be found. That apart after 1 year of taking such delivery of car because of alleged incident of break failure the criminal intention to cheating cannot arise unless fraudulent and dishonest intentions are established.

20. Therefore, in this case, in absence of any material to attract the charges and or any role attributed by the petitioner in order to constitute an offence for commission of the offences as alleged this Court is also of the view that if this proceeding is allowed to be continued, it would amount to gross abuse of the process of court.

Conclusion

21. Hence the revisional application being, CRR 1253 of 2025 stands allowed. The criminal proceeding pending before the Learned Magistrate 12th Court and all orders passed thereby are hereby quashed.

22. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(CHAITALI CHATTERJEE (DAS), J.)