

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3068 of 2017

Gaurav Bajaj

Versus

The State of West Bengal & Another

For the Petitioner : Mr. Rishav Kumar Singh, Adv.
Mr. Soumalya Dutta, Adv.

Heard on : 11.12.2024

Judgment on : 26.02.2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner seeking for quashing of the proceedings being Case No.

C/0062851/2016 under Sections 418/420/34/120B of the Indian Penal Code, 1860 pending before the Court of the Learned Metropolitan Magistrate, 12th Court at Calcutta.

2. The background facts, which led to filing of this Criminal Revisional application, may be adumbrated as under:

3. The de-facto complainant/opposite party no. 2 instituted a complaint case by filing petition of complaint before the Learned Chief Metropolitan Magistrate at Calcutta against the petitioner alleging commission of offences punishable under Sections 418/420/34/120B of the Indian Penal Code, 1860. The said petition of complaint was registered as Case No. C/0062851/2016. The accusation made against the present petitioner and others is, *inter alia*, as follows: -

3a. The accused nos. 1, 2 and 3 through their worldwide advertisements, both in print and electronic media promoted "*the rosy and colourful pictures of their world class cars*" manufactured by German based company Volkswagen under the brand name "Audi" using German Technology and assured full guarantee of their genuine parts and world class service both before and after sale and that the accused nos. 1, 2 and 3 through such advertisements

represented before the public at large the safety and security features of Audi cars.

3b. It is the contention of the complainant that the leaflets and advertisements published by the accused persons regarding the new features of **Audi Q5 Model**, demonstrate that it is the most reliable and advanced car in its segment, imbued with German Technology and is the epitome of comfort and safety which comes with Alloy wheels and Ceramic brakes to provide extra security and safety to its customers and for optimal performance in rough conditions.

3c. It is alleged that the Management of the complainant company being induced by such enchanting advertisements, promoted by the accused persons in India decided to purchase one **Audi Q5 PI 2.0 TDI (Navigational Model) Car** and, accordingly, the complainant company made a query with M/s Mohan Motors Distributors Private Limited, the authorized distributor of Audi Car in India about the price and other safety features of the vehicle. In response to such query made by the complainant, 'M/s Mohan Motors Distributors Private Limited' apprised the management of the complainant company of various safety and security features and also assured to provide prompt and efficient service after sale of their cars.

3d. On 11.08.2014, the complainant company transferred a sum of Rs 50,66,520/- in favour of 'M/s Mohan Motors Distributors Private Limited' through RTGS towards balance consideration amount for purchasing the said car and the said amount was duly credited to the account of 'M/s Mohan Motors Distributors Private Limited'. On 18.08.2014, the said **Audi Q5 PI 2.0 TDI bearing registration no. WB 02AF 8383** was delivered to the complainant company and on the same date the said car was registered in the name of the complainant company under the manufacturer's warranty of 2 years.

3e. The car being within the warranty of 2 years was put into servicing on 29.06.2015 to the authorized workshop of the accused persons in Kolkata and the same was delivered back to the complainant company after servicing after complying all technical formalities and procedures and in lieu of such servicing a charge of Rs 25,041.71/- was duly paid.

3f. It is further alleged that after such service, on 29.11.2015 when the Chairman of the complainant company, Mr. H.P Budhia along with 2 other industrialists were travelling to Balasore by the said car at around 10 am, enroute to Balasore, the car suffered a sudden brake failure at permissible speed while it was on NH-6 at

Uluberia. However, no major accident was caused and the chauffer gradually slowed down the car for about 1 Km till it came to a complete halt. The driver of the car and other occupants after testing the car found that the unfortunate incident was caused because of brake failure, in spite of the car being regularly put into servicing at the authorized Service Centre/ Workshop and which is well within the Warranty Service Period.

3g. On 01.12.2015, the complainant company through its President (Operations) wrote a letter dated 01.12.2015 to the accused No.3 narrating him the entire facts and circumstances and asked them to take back the said defective car and return the money paid.

3h. It is the contention of the complainant that the brake failure of the car was caused due to the non-fulfilment 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 5.12.2015, the vehicle was returned to the complainant with a remark "brake fluid replaced" and no charge was levied for such service.

3i. In summation, it is the allegation of the complainant that the complainant company being induced by colourful and alluring advertisements and false and fake representations about the world

class safety and security measures, manufacturer's warranty and comprehensive service plan of "Audi" Brand, purchased an Audi Q5 PI 2.0 TDI (Navigational Model) Car by making payment of Rs 53,66,522/-, but in reality the accused persons supplied a defective car with defective breaking system which could have paved the way for a fatal car accident and therefore the accused persons in consortium by deceiving the complainant company have committed offences punishable under sections 418/420/34/120B of the Indian Penal Code.

3j. The case of the petitioner herein is that there is no specific role attributed against the present petitioner in the said complaint with regard to the allegation. There is no allegation regarding any inducement caused by the petitioner herein. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONER:

4. Learned counsel appearing on behalf of the petitioner filed written notes of arguments and further submitted that there is no allegation that the petitioner had personally interacted or induced the opposite party to purchase the subject vehicle. According to the allegation, the opposite party was induced to buy the vehicle from

Audi India, based on advertisement in electronic and print media from them.

5. Apart from such a generalised averment that it was induced by such advertisements; which by itself is an absurd allegation; there is no allegation regarding any inducement caused by the petitioner herein individually.

6. An advertisement published by a company for sale and promotion of its products cannot fall under dishonest inducement within the meaning of Section 415 of the Penal Code; promotional activities being natural part of business of any concern.

7. Moreover, the said company which has allegedly advertised promoting its vehicles i.e. Audi India Division of Volkswagen Group Sales India Pvt. Ltd. (presently known as Skoda Auto Volkswagen India Pvt. Ltd.) is not arraigned in the array of accused to the complaint and is also not the company of the Petitioner.

8. The company is not even a party in the complaint and on that score alone the complaint cannot be proceeded against the petitioner.

9. Learned counsel appearing on behalf of the petitioner relied judgments to support of his contention that the allegation

against the petitioner is out and out false and no specific role attributed against the petitioner. Therefore, the case may be quashed on the basis of observations made by the Hon'ble Courts in view of the following judgments: -

1. *State of Haryana & Ors. vs Bhajan Lal & Ors.*¹;

2. *Sarad Kumar Sanghi Vs. Sangeeta Rana*²;

3. *Chandi Charan Garani & Ors vs. State of West Bengal*³;

4. *Birla Corporation Limited Vs. Advents Investments and Holdings Limited*⁴;

5. *Maksud Sayed Vs. State of Uttar Pradesh & Ors*⁵;

6. *Honda Cars India Limited & Ors Vs. Dilip Kumar Basak*⁶;

7. *Ford India Limited & Anr. Vs. Sunbeam Ancillary Private Limited*⁷.

¹ 1992 SCC (Cri) 426;

² 2015 (12) SCC 781;

³ 2021 SCCOnline Cal 3788;

⁴ 2019 (16) SCC 610;

⁵ (2008) 5 SCC 668;

⁶ 2008 SCC Online Cal 9583;

⁷ 2008 SCC Online Del 764.

10. On the other hand, no one appeared on behalf of the opposite party no. 2/de-facto complainant in spite of service of summons. No accommodation has been sought for. Thus, matter was heard in absence of opposite party no.2.

DISCUSSION AND FINDINGS BY THIS COURT:

11. Heard the arguments and submissions of the learned counsel appearing on behalf of the petitioner and on perusal of the entire records, this Court finds on the basis of examination under Section 200 of CrPC, cognizance was taken by the Learned Court below against the accused persons including the present petitioner under Sections 418/420/34/120B of the IPC and the case was transferred to the file of the Learned Metropolitan Magistrate, 12th Court at Calcutta for enquiry and disposal.

12. Thereafter, the Learned Magistrate examined the witnesses on solemn affirmation and on perusal of the complaint and statements, it was found that a prima facie case was established under Sections 418/420/34/120B of the IPC against the accused persons.

13. Vehicle was extensively and continuously used for a period of one year 3 months before any complaint regarding brakes and other fault as raised.

14. From perusal of the petition of complaint, it is found that the vehicle was delivered to the opposite party on 18th August, 2014. Since 18th August, 2014 till 29 November 2015, the opposite party admittedly had no difficulty with the vehicle in question. Therefore, for a period of more than 15 months, there was no complaint about the quality of the vehicle, which was delivered to the opposite party no. 2.

15. The vehicle, which functions properly for a considerable period of time since its sales and services, cannot be said to be defective or supplied defective car. In the case herein, the inherent defect is alleged in reference to the brakes of the vehicle, a component (brakes) which is used constantly every time the vehicle run. In this case, at the time of the purported malfunction of brakes, the vehicle must have already plied several kilo meters.

16. Therefore, the allegation that a defective vehicle was supplied to the opposite party also stands defeated in the light of its own admission. Although the opposite party has tried to depict that after putting the vehicle into service on 29 June 2015, the alleged incident of brake failure took place on 29 November, 2015, he has intentionally by-passed the fact that since June, 2015 till November, 2015 there was no difficulty with the vehicle. If after service of the

vehicle, the brake of such vehicle is affected in any manner, the vehicle cannot run normally for five long months.

17. Now, question arises whether the proceeding is liable to be continued or required to be quashed on the basis of allegations and examinations under Section 200 of the CrPC?

18. At the very outset, it is relevant to note here that the Petitioner herein was Managing Director, M/S Mohan Motor Distributors Pvt. Ltd (Accused No.4). The allegation against the Petitioner is that accused nos. 1, 2, 3, and 4 jointly and/or severally transacted with the complainant company under the banner and corporate veil of their respective Divisions and/or companies during the entire material time.

19. However, it is admitted facts that car was under warranty service period of 2 years. First service was made on 29.06.2015 by an authorised workshop of the accused persons in Kolkata situated at Arupota, Off EM Bypass, Opposite Science City, Kolkata-700 105 and was delivered back.

20. When the complaint made regarding car suffered a sudden break failure at permissible speed while it was on NH-6 at Uluberia on 29.11.2015 after expiry of almost five months of its first service.

21. On 18.08.2014, the said Audi Q5 PI 2.0 TDI bearing registration no. WB 02AF 8383 was delivered to the complainant company and on the same date the said car was registered in the name of the complainant company under the manufacturer's warranty of 2 years. Therefore, expiry date of warranty was 07.08.2016. But prior to expiry of the warranty period, the complainant's company wrote a letter on 01.12.2015 narrating him the entire facts and circumstances and asked them to take back the said defective car on the basis report of technician at the workshop and issued the Job Sheet vide No. ROS150878, wherein the defect of the vehicle found as brake failure and duly noted in the Job sheets as "Vehicles Brakes were not working at the speed of 100 km". However, it was noted and remarked "to check the brake system" and they promised to investigate the same and to revert on immediate basis.

22. Despite of the above facts, the complainant asked to return the money back. It is not a case of the Petitioner that they have not fix the problem of the car. The workshop fixes the problem and the vehicle was returned vehicle on 05.12.2015 with a remark "brake fluid replaces". No any charge was asked for payment under their Tax invoice No. SIS150658.

23. Without further use of the said car, the complainant directly alleged that the accused persons supplied a defective car with defective breaking system which almost paved the way for a fatal road accident and subsequently, washed off their hands in respect of the said defective car causing wrongful gain to themselves and wrongful huge loss financially and mentally to the complainant company and thereby cheated and further deceived the complainant company and committed offence as alleged.

24. But, such contention of the complainant is not acceptable due to following reasons stipulated herein below:

Firstly, the company has fixed the problem of brake failure. Despite the complainant was asking for return of the money, which was paid at the time of delivery of the Audi Car without verifying the car in use.

Secondly, car was initially used for more than 1 year but no complaint was made with regard to any defective car allegedly supplied.

Thirdly, first service was done by the workshop of the accused's company on 29.06.2015 and, thereafter, the car was used for almost 5 months but there was no defect found.

Fourthly, first time the complainant's company raised dispute for supply of defective car, when it was brake failed during travelling to Balasore by the said car at around 10 am, enroute to Balasaore, the car suffered a sudden brake failure at permissible speed while it was on NH-6 at Uluberia. Such brake failure may occur at any time and same is not uncommon, when machinery is involved. Therefore, Company has given for manufacturer's warranty for 2 years.

Fifthly, without expiry of said warranty for 2 years, the complainant demanded to return money back is matter of civil dispute.

Sixthly, such dispute of supply of defective car or return of money, the remedy for which lay under the Consumer Protection Act, 1986.

Seventhly, careful perusal of the petition of complaint and statement recorded under Section 200 of the CrPC as a whole does not even make out a prima facie case for the offence of cheating. Except by saying that the car suffered a sudden brake failure at permissible speed while it was on NH-6 at Uluberia, there is nothing to indicate the dishonest intention of the Petitioner to cheat the complainant's company right from the inception of the contract of selling the car.

Eighthly, the complainant not even produced any certificate of automobile engineer, who supposed to have opined about the real condition of the Audi car or supplied a defective car.

Ninthly, in ***Pepsi Foods v. Special Judicial Magistrate***⁸, the Hon'ble Supreme Court observed:

“28. Summoning of an accused in a criminal cases 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. 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

⁸ (1998) 5 SCC 749 : AIR 1998 SC 128

allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

Finally, this Court is fully satisfied that the petition of complaint does not disclose any specific role attributed to the Present petitioner, which may constitute offence punishable under Sections 418/420/34/120B of the Indian Penal Code, 1860.

25. The Learned Magistrate has issued summons after examining the complainant and witness under Section 200 of the CrPC signalling that there is enough prima facie evidence to proceed with the case without further delay but this Court does not find such materials and ingredients of the offence punishable under Sections under Sections 418/420/34/120B of the Indian Penal Code, 1860.

26. In the light of above observations together with averments contained in the petition of complaint, this Court finds ingredients of the offences alleged by the opposite party no. 2 are missing. Merely because, the Audi Car supplied defective will not suffice the allegations.

27. The test laid down by the Hon'ble Supreme Court in **Bhajan Lal (Supra)** as relied by the petitioner can be said to be satisfied in the present case.

28. Judgment referred by the learned counsel appearing on behalf of the Petitioner in the case of **Ford India Ltd. & Anr. Vs. Sunbeam Ancillary P. Ltd.** is squarely applicable in the present facts and circumstances of this case. In the said case, the Hon'ble Court held in particular paragraph no. 12 as under:-

*“12. The criminal complaint ‘therefore’ prima facie indicates that this was a case of supply of defective goods, the remedy for which lay under the Consumer Protection Act, 1986 (‘CPA’). This Court was informed during the course of arguments that such a complaint under the CPA is pending adjudication. The essential ingredients of cheating as defined under Section 415, IPC and made punishable under Sections 417 and 420, IPC cannot be said to have been made out in the instant case. This Court is satisfied that “the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused”. The test laid down by the Supreme Court in **Bhajan Lal** can be said to be satisfied in the*

*present case. The Court is also satisfied that given the nature of the averments made in the complaint, it would not serve any purpose to make the accused go through the ordeal of a criminal trial which would be time consuming and not in the interests of justice. As explained in **Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336**, a criminal complaint in a matter of this nature is an abuse of the process of law. The decisions in **Hotline Teletubes and Components v. State of Bihar, (2005) 10 SCC 261**, and **Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228** are also relevant in this context.”*

29. Accordingly, **CRR No. 3068 of 2017** is **allowed**. Connected applications, if any, are also, thus, disposed of.

30. As a result, the criminal proceedings being Case No. C/0062851/2016 under Sections 418/420/34/120B of the Indian Penal Code, 1860 pending before the Court of the Learned Metropolitan Magistrate, 12th Court at Calcutta is quashed and Order thereof is hereby set aside insofar as the petitioner is concerned.

31. Let a copy of this Judgment be sent to the Learned Trial Court for information.

32. Interim order, if any, stands vacated.

33. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)