

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

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Rai Chattopadhyay**

**C.R.R. 2320 of 2016**

*With*

**CRAN 6 of 2017 (Old CRAN 3997 of 2017)  
CRAN 13 of 2019 (Old CRAN 4166 of 2019)  
CRAN 14 of 2020 (Old CRAN 1214 of 2020)**

**Joe King, Head, Audi India & Anr.**

**Vs.**

**Patton International Limited.**

**For the Petitioner**

*:Mr. Sandipan Ganguly, Id. Senior Advocate  
: Mr. Somopriyo Chowdhury  
: Mr. Pratik Shanu*

**For the Opposite Party**

*: Mr. Satadru Lahiri  
: Mr. Vinay Joshi*

**Judgment on**

**: 19/03/2025**

**Rai Chattopadhyay, J.**

**(1)** In the present revision the petitioners have prayed for quashing of the proceedings in Case No **C/00062851/2016** now pending before the learned Metropolitan Magistrate, 12<sup>th</sup> Court at Kolkata. The said complaint case has been lodged by the complainant company, under **Sections 34, 120B, 418 and 420** of The Indian Penal Code, 1860. The petitioners/accused persons have also challenged the orders of the learned Metropolitan Magistrate, 12<sup>th</sup> Court at Kolkata, passed in the

said case, including the orders dated **2<sup>nd</sup> March, 2016 and 29<sup>th</sup> March 2016** respectively.

- (2) For the time being, without going into the details of the complaint as above, it may be mentioned here that on **16<sup>th</sup> June, 2014**, the accused persons have issued a proforma invoice notifying the onroad price of AUDI Q5 PI 2.0 TDI Navigation model to be Rs. 53,66,522/-. On **18<sup>th</sup> June 2014**, a sales contract was forwarded to the complainant company by the said accused persons. On **19<sup>th</sup> June, 2014**, a cheque bearing No.052326 dated 17<sup>th</sup> June, 2014 drawn on State Bank of Mysore of an amount of Rs.3,00,000/- was handed over by the complainant company to the 4<sup>th</sup> petitioner/the authorized distributor of Audi India based in Kolkata, towards advance amount for purchase of the said model of car. The complainant was issued an acknowledgement receipt dated 24<sup>th</sup> June, 2014, for the same. Thereafter, on **11<sup>th</sup> August, 2014**, the complainant company has transferred a sum of Rs.50,66,520/- in favour of the 4<sup>th</sup> petitioner/the authorized distributor towards balance consideration amount to purchase the car, which has been admittedly duly credited in the account of the said petitioner. Ultimately on **18<sup>th</sup> August, 2014**, the car was delivered to the complainant company. On the said date of delivery, the car was registered in the name of the complainant company with the **manufacturer's warranty of 2 years**. Within the said warranty service period, the said car was put into servicing to the authorised workshop of the petitioners/accused persons and servicing was done on **29<sup>th</sup> June 2015**, in lieu of the charge of Rs. 25, 041.71/-.

(3) The incident has happened on **29<sup>th</sup> November 2015**, when the chairman of the complainant company, Mr. H.P. Budhia, along with the two other eminent industrialists were travelling from Kolkata to Balasore in Odissa in the said car. On the route at around 10 am, the said car suffered a brake failure while being driven at a permissible speed. It is stated that somehow a major accident was avoided but the chauffeur could stop the car only by gradually slowing it down after driving it for 1 km more, before the car has come to a complete stop. The complainant is aggrieved that the serious life-threatening incident happened due to the brake failure in the car in spite of the regular servicing of the car at the authorised service centre within the valid warranty period of the same. This has been termed to be a complete breach of one of the most important and basic safety and security feature provided by the automobile company which is represented by the petitioners/accused persons. The complainant has stated in his written complaint that the incident of brake failure is the proof of the said car being miserably lacking the basic safety features as have been mentioned at the time of promotion of sale and the advertisement, by the company represented by the petitioners/accused persons. It is alleged that the said car was sold by the petitioners/accused persons, to the complainant company, by dishonestly inducing the same with the false promise and advertisement, manipulated to be represented as such kind of a car bearing high value, elite class and topnotch safety features and by promoting the car in such a way, the complainant company has been made to part with a huge amount of money in the form of consideration amount for the said car.

(4) On the said date of incident as alleged, the complainant company lodged docket immediately with the *Road Side Assistance Service Department* of the petitioners/accused persons being case No. 2515186792 and the defective car was taken to the authorised workshop of the petitioners/accused persons, on **30<sup>th</sup> November 2015**. The said workshop has reported as follows: “*Vehicle Brakes were not working at the speed of 100 km*” and that “*to check the brake system*”. A letter of the complainant dated **1<sup>st</sup> December 2015** followed, being addressed to the 3<sup>rd</sup> petitioner/Chief Operating Officer, Audi Kolkata to seek return of the allegedly defective car to the company again, in lieu of refund of the price thereof. Letter with similar claim and claim of compensation has also been sent to the 1<sup>st</sup> petitioner/the Head of company Audi India, but allegedly in vain. **5<sup>th</sup> December 2015** is the date on which the said vehicle was returned to the complainant with a remark “*brake fluid replaced*”, though nothing was charged as a cost of such replacement of the brake fluid. According to the complainant, the lineage of incidents have sufficiently brought on record the fundamental deficiency in the entire mechanics of the said vehicle and after the servicing was done, the said vehicle has never become usable but instead the faulty brake system in the vehicle, as also certified to be the same, has rendered the said vehicle not at par with the promises held out as regards its features including safety features. According to the complainant, this has amounted to ‘*cheating*’ in accordance with law. Hence, the said complaint was lodged.

(5) The petitioners are the accused persons in the case. The 1<sup>st</sup> petitioner is the Head of Audi, India, whereas the 2<sup>nd</sup> petitioner is the Head of Customer Services, Audi, India. There are other

two accused persons, that is, the Chief Operating Officer, Audi, Kolkata and the Managing Director, of the authorised distributorship company of Audi, in Kolkata. The said first two accused persons have filed the instant revision. The petitioners have been represented by Mr. Sandipan Ganguly, learned senior counsel. At the threshold, Mr. Ganguly has argued on the aspect of non-maintainability of the criminal proceeding as above, against the present petitioners. He says that the petitioners are the designated officers of the manufacturing company. He has specifically relied on the doctrine of “alter ego” as enumerated by the Supreme Court, in the case reported in **(2015) 4 SCC 609 [Sunil Bharti Mittal vs CBI]**. He has also stated that in the said case the Court has held that an individual can be held to be an offender along with the company and only when his active role coupled with the criminal intent is on record and the statute has provided for application of the doctrine of vicarious liability, only in that case and not otherwise. He states that generally in criminal law, the concept of vicarious liability is an unknown phenomena unless the statute itself creates such legal fiction. Therefore, such liability could not have been ladened on the director or the official of the company who is not charged directly with the affairs of the company resulting into commission of an offence, without making the company itself as an accused person. In this regard a judgment of the Supreme Court reported in **(2008) 5 SCC 662 [S.K.Alagh vs State of Uttarpradesh & Others]** has been relied on by the petitioners. According to Mr. Ganguly, the complaint would not disclose any cognizable case against the present petitioners individually and on their personal capacity. He says that the complaint would be devoid of any specific averment as to the involvement and role of the petitioners in charge and responsible for the conduct of the

business of the company and also be devoid of any merit due to the company having not been arrayed as an accused person therein. He has also referred to the judgment reported in **(2015) 12 SCC 781 [Sharad Kumar Sanghi vs Sangita Rane]**. Two other decisions have also been referred to of the Delhi High Court and this Court, those are reported in **2008 SCC Online Del 764 [Ford India Limited & Anr. Vs Sunbeam Ancilliary P.Ltd]** and **2018 SCC Online Cal 9583 [Honda Cars India Ltd and Another vs Dilip Kumar Basak]**, respectively, in which similar propositions have been relied on.

- (6) Mr. Lahiri has represented the complainant/opposite party in this case. He has supported the complaint and the subsequent orders of the Magistrate and has raised strong objections to the contentions and prayer of the petitioners here. He says that the Court's jurisdiction under section 482 of the Cr.P.C is an extraordinary jurisdiction, which is not to be invoked on every drop of a hat. In this regard he has relied on the judgments of the Supreme Court in which the Court has held that on rare occasions and exceptional circumstances such inherent power of the Court has to be invoked, to prevent abuse of process of the Court. According to Mr. Lahiri, the case in hand cannot be categorised to be such an exceptional case. His other contention is that, had not been the sales promotion advertisements were published, the petitioners would not have come to know about the quality and features of the car. Firstly, that the complainant was misled by such uncredited source information as provided by the petitioners for which it has been ultimately forced to part with a huge amount of money as consideration while purchasing the car. Secondly, that at the time of first servicing, no defect of the said car has been disclosed. However, immediately thereafter

the car has suffered a brake failure, which could not have occurred, had the car been in a proper mechanical condition. Thus, allegedly there was suppression also. The complainant has heavily relied on the report given by workshop, that vehicle brakes were not working at a particular speed and the brake system of the car is faulty. He has also relied on judgment of the Apex Court to say that making out a case in the complaint against the accused persons even without mention of all the detailed facts which are present and constitutes the ingredients of the offence as alleged, would suffice for the said offence to be taken cognizance of by the Magistrate and setting the ball rolling so far as investigation as to those offences are concerned. According to the said complainant/opposite party, the complaint has sufficiently made out a case against the accused person, therefore not warranting such a circumstance, in which investigation and collection of evidence becomes unnecessary and an abuse of the process. At this early stage therefore, the Court may not interfere by espousing its extraordinary power, he submits. He says that after the Magistrate being satisfied about the complaint having made out a case against the accused persons, he would be eligible to take cognizance thereof as per the statutory provisions. The statutory dictum is that a Magistrate must take cognizance of an alleged offence based on whether or not the complaint has made out a case, not on who has been named as a party in the complaint. According to such perspective the current case is not in default in the eye of law, he submits. Lastly, Mr. Lahiri says that for further ascertainment the Court may also direct for the mechanical tests of the car to see whether the claim of manufacturing mechanical defects therein as made by the complainant is justified or not.

During his arguments, Mr. Lahiri has relied on the following judgments :

- (i) Medchl Chemicals & Pharma (P) Ltd vs Biological E. Ltd & Others (2000) 3 SCC 269;*
- (ii) Trisuns Chemical Industry vs Rajesh Agarwal & Others (1999) 8 SCC 686;*
- (iii) Rajesh Bajaj vs State NCT of Delhi & Others (1999) 3 SCC 529;*
- (iv) Bhushan Kumar and Another vs State NCT of Delhi & Another (2012) 5 SCC 424;*
- (v) Raghubans Dubey vs State of Bihar 1967 SCC Online SC 3;*
- (vi) State of Bihar and Another vs K.J.D.Singh 1994 SCC (Cri) 63*  
*and*
- (vii) order dated May 5, 2022, in CRR 2471 of 2019 in the matter of VE Commercial Vehicles Limited & Others.*

**(7)** Purchase of a luxury segment car by the complainant but break down of the same within such a period of time covered by the warrantee assured by the seller, has given rise to the instant criminal case. On June 19, 2014, a part payment in advance has been made by the complainant towards purchase of the said car whereas the bulk balance consideration amount was transferred on August 11, 2014, towards purchase of the same. On August 18, 2014, the car was delivered, with warrantee service period of 2 years. In the next year on June 29, 2015, the 1<sup>st</sup> servicing of the car was done, in lieu of a service charge of Rs. 25,041.71/-. The breakdown of the car happened thereafter on November 29, 2015. Hence, from August 11, 2014 till the day before the break down on November 29, 2015, that is for a period slightly for more than one year, the said car ran smoothly and there has been no complaint of any malfunction of the same during this period. At the time of 1<sup>st</sup> servicing and thereafter, there has not been any complaint by the purchaser regarding any mechanical fault in the car. However, the undisputed fact is that on November 29, 2015, the said car has suffered a

breakdown, that is within the 2 years of warrantee service period.

(8) Warranties are promises made by manufacturers or retailers about their products and services and are good for a specified period, like in the present case, where it is for 2 years. Generally, the product is covered in case of any problem due to a defective part or workmanship. Even if a product is within the timeframe designated by a warranty, the company may require multiple proof points to show that the product failed in normal use. If the product failed due to any other reason rather than a fault in the design or manufacturing, the warranty is not likely to be honoured. Be that as it may, the complainant's allegation is not with regard to the deficiency in service or defective part or workmanship, but of deception and cheating. It is the criminal intent and act of the petitioners/accused persons, that has been alleged about and a criminal case is sought to have been initiated. Who are these petitioners and accused persons? They are the head of company Audi India which is a division of Volkswagen Group Sales India Private Limited, and the head of customer services in the said company respectively. The 1<sup>st</sup> and the 2<sup>nd</sup> petitioners are seated in offices in different State, beyond jurisdiction of the said Magistrate. Against these persons the complainant has intended to lodge a case under sections 34, 120B, 418 and 420 of The Indian Penal Code, 1860. Let us understand what sections 418 and 420 have provided for, by quoting the said provisions:

***“418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.—***

***Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be***

*punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

**420. Cheating and dishonestly inducing delivery of property.—**

*Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

(9) What is ‘cheating’ as per the Code is mentioned in section 415 thereof. That is also required to be seen:

**“415. Cheating.—**

*Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.*

**Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.”**

(10) It is not mere lodging of a complaint in the Court, but making out a case therein against the accused persons is what should justify the said case to be proceeded into investigation and trial, by dint of an order of the Court or even for taking cognizance of the said offences by the Court. The golden rules are that the allegations being taken at face value and its entirety should prima-facie constitute an offence against the accused persons, materials in the complaint against the accused persons should disclose a cognizable offence justifying an investigation and allegations made in the complaint when remain uncontroverted should disclose commission of that offence by the accused person and make out a case against him. The

allegations should not be so absurd and inherently improbable that on the basis of the same, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused person. An express legal bar or a remedy under the statute should prevent further proceedings pursuant to a complaint. Similarly, if a proceeding is manifestly attended with mala fide and/or instituted maliciously with an ulterior motive for wreaking vengeance on the accused or with a view to spite him due to private or personal grudge makes that proceeding impermissible in the eye of law. **[Ref. to the judgment of the Supreme Court in State of Haryana & Ors vs Chowdhury Bhajanlal & Ors 1990 Suppl (3) SCR 259].**

- (11) Looking to the factual background of the case, one can see that the complainant desired to have in possession a luxury car packed with high-end safety features. What have driven it towards purchase of the particular car are said to be the advertisements published “worldwide”, about the car. Publishing advertisements for sales promotion is a company policy, which help the intended buyers to understand the features of the car and if that suits to their individual needs. The “worldwide” published advertisements of the company target to promote the company’s sale and are about the car’s features in general. A set standard of the car, applicable to the individual unit of the said product has been advertised for the intending customers to get knowledge about the same. It is not a case of the complainant that, excepting the features of the car which have been advertised widely, the petitioners have ever tried to convince them with some other extraordinary characteristics. As the company portfolio holders, and having office at a different place, the petitioners might not have come into contact with the

complainant and finalisation of the deal on the basis of the declared features of the car has only been done in Kolkata involving the other officers of the company here. Admittedly after delivery, the car has plied for near about one and half years and there has not been any complaint about its condition. It is only unconceivable that in this one and half years, the car has never crossed 100 km speed. In that case, defect if any, would have been detected much earlier. That is not so, even at the time of 1<sup>st</sup> servicing, on June 29, 2015. Suddenly the car breaks down a few days after the first servicing, that is on November 29, 2015, and by filing the present case, the complainant has sought to allege fraudulent and dishonest inducement by the petitioners in order to persuade the same to purchase a car which according to the complainant, is a defective one. Though it is pertinent to note that for more than a year, the complainant has used the said car without any complaint about the same. Therefore, from the complaint or the other materials in this case, the petitioner's intention to fraudulently induce the person to purchase a defective car for valuable considerations, appears to be an improbable proposition, so absurd and inherently improbable that on the basis of the same no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused persons. The Court therefore finds that the complaint lacks the foundational base, regarding making out therein a cognizable case against the accused persons.

- (12)** The other thing in the said complaint is that the complainant has not made the company an accused in the present case. The petitioners have been made accused as the portfolio holders of their respective companies, without however impleading the said companies as an accused in the case. In the

case of **Sunil Bharti Mittal (supra)** the Supreme Court has held that a company is liable to be prosecuted and punished for criminal offences. The knowledge and intention, if any, of the errant company personnel must be imputed to the body corporate itself. That, while deciding the question whether a company could be prosecuted for an offence which require 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. The Court has held that the criminal intent of the “alter ego” of the company that is the personal group of persons that guide the business of the company, would be imputed to the company. That, if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company, whereas they are “*alter ego*” of the company. That the Court has declined to accept to be correct, a principle that the company personnel represent the directing mind and will of company or that their state of mind is the state of mind of the company and therefore acts of the company are attributed and imputed to its personnel. The Court has stated that, in that case the proposition would run contrary to the principle of vicarious liability detailing a circumstance under which a director or other official of the company can be held liable. The Court has also held that an individual can be held to be an offender along with the company and only when his active role coupled with the criminal intent is on record and that the statute has provided for application of the doctrine of vicarious liability only in that case and not otherwise.

(13) The counter argument of the complainant/ opposite party is that there would not be any bar to take cognizance by the Magistrate of an offence, had it found an offence being made out in the complaint itself. However as held in the case of **Sharad Kumar Sanghi (supra)**, the specific averment is necessary in the complaint that at the time of offence, the petitioners were in charge and responsible for the conduct of the business of the company. Secondly, that the company should have been arrayed as an accused person in the said complaint. According to the petitioners, neither of the conditions are fulfilled in the present complaint against them. It is evidently so and the said complaint is not in form and cannot be maintainable. In this way, not impleading the company in the complaint and not making it in the array of the accused persons would turn the entire fulcrum of allegations against the present petitioners as nugatory. The submissions made by Mr. Lahiri, in this regard, appears to be unsustainable.

(14) The ratio of the decision of Supreme Court in the case of **S.K. Alagh (supra)** may also be mentioned here that a director of a company or an employee thereof cannot be held to be vicariously liable for any offence committed by the company itself. The allegation of inducement, fraud or cheating by way of alleged false misrepresentation through the sales promotion and advertisement are the company's policies implemented through the offices of the respective petitioners. The sale proceeds have also been credited with the company itself. That since in the criminal law the concept of vicarious liability is an unknown phenomena unless the statute itself creates such legal fiction, therefore, such liability could not have been laded on the director or the official of the company who is not charged directly

for commission of an offence, without making the company itself as an accused person.

**(15)** Therefore, in the present case the Court is of considered opinion on perusal of the complaint and other materials in the case that the allegations levelled in the complaint, on the face of it, do not constitute or disclose any offence as alleged. Also, that the ingredients of the offence under sections 418 or 420 of The Indian Penal Code or the others as mentioned in the said complaint, are not made out against the petitioners in the said complaint. The Court is constrained to hold that the offence ought to have appeared ex-facie on the complaint, in order to justify further proceeding against the present petitioners/accused persons. The Court without even going into the questions of truth or falsity of the allegations made, is unable to be satisfied that the complainant has been able to make out any case against the accused persons who are respectively, the Head of office of the said company in India and the Head of customer services, having their offices at Mumbai and having never been related directly with the transaction which took place at Kolkata.

**(16)** The complainant/opposite party has tried to make out that quashing of FIR or complaint in exercise of the inherent power of the High Court should be limited only to very extreme exceptions. In this regard, judgments of the Apex Court has been relied on. There cannot be any quarrel with the said proposition which is now absolutely well settled to govern the field. However, in an appropriate case, to restrain abuse of process of the Court, there would not be any bar for the High Court, to exercise its such inherent, plenary and extra-ordinary

power, since the statute has provided for the same to be exercised in case there appears to be an abuse of Court's process. The Court has found in the present case a gross abuse of the Court's process, in case the criminal case as lodged against the petitioners, proceeds any further. That is for the reasons as discussed above and the allegations against the petitioners being so absurd and inherently improbable that on the basis of the same no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused person. In that view of the fact, the Court finds the complaint to be manifestly attended with mala fide and malice, to turn the grievance of a dissatisfied consumer may be, towards baseless charges of criminal offence against the present petitioners.

**(17)** In such view of the fact, the Court finds that further proceedings against the petitioners, pursuant to the instant complaint would amount to gross abuse of the process of the Court and the same is liable to be quashed by the Court in exercise of its inherent power under section 482 of the CrPC.

**(18)** Hence the present revision is allowed and the criminal proceeding pending before learned Metropolitan Magistrate, 12<sup>th</sup> Court at Kolkata against the present petitioners, under sections 34, 120B, 418 and 420 of the Indian Penal Code being Case No. C/00062851/2016 and all the orders passed in the same are quashed.

**(19)** CRR No. 2320 of 2016 is allowed and disposed of along with all pending applications, if any.

**(20)** Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Rai Chattopadhyay, J.)**