

## RAJIV GUPTA V/S STATE OF HARYANA AND ANOTHER

Present: Mr. Amit Jhanji, Senior Advocate with  
Mr. Abhilaksh Gaiind, Mr. Siddhesh Pradhan, Advocate and  
Mr. Arun Sharma, Advocate for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

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The present petition has been filed *inter alia* praying for quashing of FIR No. 0059 dated 19.01.2023 under Sections 120-B, 420 and 406 of the Indian Penal Code, 1860 registered at Police Station Sector 8, Faridabad, Haryana (Annexure P-1) and all consequential proceedings arising therefrom.

Learned counsel for the petitioner has submitted that a purely civil dispute or at the best, a dispute relating to defects with regard to certain functions of a car, an FIR has been lodged against the petitioner, who is the Director of the Company which manufactures the car.

After taking through the FIR, learned counsel for the petitioner has opened his arguments by relying upon Annexure P-2 which is an agreement between the Company of which the petitioner is the Director and its retailer/dealer namely M/s Shiva Motorcorp and has relied on Clause 1.4 which reads as under:

*1.4 The parties agree that the relationship between them is that of independent contractors and this Agreement has been entered on a principal to principal basis. Neither party is appointed nor is authorized to act as the legal or commercial agent of the other and neither shall make any commitments or representations on behalf of the other. Neither party is the partner of the other and no partnership or agency is created by this Agreement.*

Taking his arguments further, he emphasized on the clause that the relationship between the manufacturing company and the retailer/dealer is that of “principal to principal” and no principal-Agent relationship exists qua the parties and any defect in the product sold/deficiency found in the service will be the responsibility of the authorized dealers and the complaints made by the purchaser of the car will be addressed to and redressed by the dealer only

Learned counsel for the petitioner further submits that, in fact, subsequently, the complainant executed an MOU with the dealer on 10.03.2023, in which he specifically agreed to withdraw all the complaints including the present FIR. He further submits that, in fact, a release of liability agreement was also executed by the complainant on 06.04.2023 in which he reiterated that the complainant has *settled each and every issue, claim, allegation, grievance and complaint against Authorized Dealer as well as the original distributor of the subject vehicle being Jaguar Land Rover India Limited and has no claims, issues, allegations, complaints, grievances of whatsoever nature against the Authorized Dealer and Jaguar Land Rover India Limited.* It is further submitted that as per the clause 5 of the release of liability agreement, the complainant has to withdraw the present FIR but has failed to do so.

Learned counsel for the petitioner also relied upon Annexure P-11, which is a **satisfaction note**, wherein, the complainant has confirmed that he is fully satisfied with the vehicle and the same was done after undertaking a joint road test in the presence of the representatives of the Authorized Dealer.

To summarize, learned counsel for the petitioner has submitted that there was no role attributed to the petitioner or his Company and he has

been unnecessarily dragged into this criminal litigation which is apparently a civil dispute, by the respondent-authorities.

Learned counsel for the petitioner further submits that the ingredients of Sections 406, 420 and 120-B IPC are also not met out as there is not even a single averment in the FIR as to how the petitioner deceived the complainant by fraudulently or dishonesty inducing him to deliver any property to the petitioner, hence, the basic requirements of Section 415 IPC which forms the edifice of Section 420 IPC are not fulfilled. Therefore, the entire action taken by the authorities is nothing but an abuse of the process of law.

*Per contra*, learned State counsel submits that the petitioner is the director of the company which manufactures the car and he is vicariously responsible and has been charged on the strength of Section 120-B of IPC. He further submits that the dealer from the very inception knew that there were defects in the car and therefore, the FIR was lodged. He further submits that in fact, the complainant in the FIR has specifically stated that he noticed the anomaly in the vehicle on the date of delivery itself and hence, the car was defective before the possession was delivered to the complainant and the defects were in the knowledge of the petitioner as well as the representative of the official dealer. It was due to the act and conduct of the accused that they knowingly sold a defective vehicle to the complainant, therefore, an FIR was lodged against them.

Heard learned counsel for the parties.

The learned State counsel could not deny the fact that respondent No. 2 took the delivery of the vehicle but did not raise any such objection on the date of taking possession. More so, the present petitioner had no role with regard to the said delivery of the vehicle which was given

on 24.06.2022 and also the present complaint which was lodged on 16.09.2022 i.e. after a lapse of more than 03 months. It is an apparent case of misuse and abuse of the powers by the authorities at the behest of respondent No. 2 and this Court *prima facie* finds this to be a fit case to impose exemplary cost on respondent No. 2 and the State Authorities.

Although, as per the office report, respondent No. 2 has been duly served but is not being represented and the counsel for the State has also pointed out that there is no representation on behalf of respondent No. 2.

Let fresh notice be issued for respondent No. 2 for the date fixed, granting him an opportunity as to why an exemplary cost may not imposed upon him for abusing the process of law.

Adjourned to 14.05.2024.

Interim order to continue.

**(ALOK JAIN)**  
**JUDGE**

**April 01, 2024**  
*parul*