REPORTABLE

IN THE SUPEME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO.4931 OF 2020

SKODA AUTO VOLKSWAGEN
INDIA PRIVATE LIMITED ... PETITIONER(S)

VERSUS

THE STATE OF UTTAR PRADESH & ORS. ...RESPONDENT(S)

J U D G M E N T

V. Ramasubramanian, J.

1. Aggrieved by the refusal of the High Court to quash a First Information Report (FIR for short) registered against them for the offences punishable under Sections 34, 471, 468, 467, 420, 419 and 406 IPC, the petitioner has come up with the above Special Leave Petition.

2. We have heard Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the petitioner. Mr. Maninder Singh, learned senior counsel appears for the 3rd Respondent, who is the *de facto* complainant.

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Sanjay Kumar
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Reason:

3. The petitioner is a Company headquartered in Pune and is engaged in the business of manufacture, import and sale of passenger vehicles in India. It is claimed that the petitioner has been formed by the amalgamation of three Companies by name Skoda Auto India Private Limited, Volkswagen India Private Limited and Volkswagen Group Sales India Private Limited. The petitioner claims that they are responsible for the business operations of five automobile brands namely, Skoda, Volkswagen, Audi, Porsche and Lamborgini.

4. The Automotive Research Association of India, which is a research institution of the automotive industry attached to the Ministry of Heavy Industries and Public Enterprises of the Government of India issued a notice dated 04.11.2015 to the Managing Directors of Skoda Auto India Private Limited, Volkswagen India Private Limited and Volkswagen Group Sales India Private Limited, calling upon them to show cause as to why they should not come to the conclusion that the vehicles manufactured and sold by them in India, are in violation of the requirements of the Central Motor Vehicles Rules. It was alleged in

the said notice that the study carried out by them on limited vehicle models fitted with Diesel EA 189 Engines led them to believe that the vehicles manufactured by Volkswagen, when tested on road, indicate 3-9 times more NO_x pollution compared with the tests carried out in the laboratory on Modified Indian Driving Cycle (MIDC). It was also alleged in the said notice that they had reason to believe that Diesel EA 189 Engines fitted in BS-IV vehicles are equipped with what are called 'defeat devices'.

5. At about the same time, two original applications came to be filed before the National Green Tribunal (NGT for short), Principal Bench. Both the applications were primarily against Skoda Auto India Private Limited, Volkswagen India Private Limited and Volkswagen Group Sales India Private Limited. Apart from these three companies, the Union of India (UOI), the Central Pollution Control Board (CPCB) and a few others were also made parties to the original applications.

6. The particulars of these original applications are presented in a tabular column for easy appreciation:-

O.A.No.	Name of the applicant/applicants	Names of Respondents	Reliefs sought
509 /2015	SaloniAilawadi	1. Union of India through its Secretary, Ministry of Heavy Industries & Public Enterprises. 2.Ministry of Environment, Forest and Climate Change, Through Secretary 3.Central Pollution Control Board, Through its Chairman 4. Volkswagen India Pvt; Ltd., Through its Managing Director 5.Skoda Auto India Private Limited, Through its Managing Director 6. Volkswagen Group Sales India Private Limited, Through its Managing Director 7. Volkswagen AG, Through Chairman of the Board of Management	1. Directing Respondents 1-3 to disallow the manufacturing, assembly and sale of the vehicles of Respondents 4-6 in India till it is established that they are not employing any deceit devices or technology; 2. To direct the Respondents 1-3 to inspect and check all the vehicles manufactured and sold in India to ensure that no deceit devices are used; 3.To direct respondents 4-7 to stop production, assembly and sale of those vehicles; and 4. To direct respondents 4-7 to rectify the engines of vehicles already sold in India at their cost.
527/2015	1. Mr. Satvinder Singh Sodhi 2. Mr. Vellore Ramesh Neelakantan 3. Mr. Deepit Singh	1. Volkswagen India Private Limited, Maharashtra 2. Volkswagen Group Sales India Private Limited, Maharashtra	1. To restrain Respondents 1-6 from selling any further automobile with the defeat device which violated the applicable emission norms;

	4. Sara International Limited	3. Volkswagen AG, Germany 4. Skoda Auto India Limited, Maharashtra 5. Skoda Auto AS, Czech Republic 6. Dr.Ing. h.e.F.Porsche AG, Germany 7. Central Pollution Control Board, Delhi. 8. Automotive Research Association of India, Pune 9. Union of India Through Ministry of Heavy Industries and Public Enterprises, New Delhi 10. Government of National Capital Territory of India, Through Delhi Pollution Control Committee, Delhi	2. To direct Respondents 106 to disgorge all the profits made by selling automobiles with cheat devices from the year 2008; and 3. To direct Respondents 1-6 to pay damages for restoration of environment.

7. On 16.11.2018, the NGT recorded a *prima facie* finding that the claim of the manufacturers that they had not caused any damage to the environment, was not acceptable. The Tribunal constituted a joint team to give an expert opinion and in the mean

time directed the manufacturers to deposit Rs. 100 crores with the CPCB.

8. The manufacturers filed appeals before this Court in C.A. Nos. 11928 and 11929 of 2018, against the preliminary finding and the interim direction issued by the NGT. During the pendency of those appeals, the Expert Team filed a Report.

9. Therefore, this Court disposed of the aforesaid Civil Appeals giving liberty to the manufacturers to file objections to the Report of the Expert Team and directed the Tribunal to consider those objections and to pass orders.

10. Pursuant to the said order of this Court, the NGT allowed the manufacturers to file objections and heard both the original applications and disposed of the same by order dated 07.03.2019. Some of the findings and directions by the Tribunal were:-

(i) That the manufacturers had in fact used cheat devices to suppress the laboratory tests;

(ii) That NO_x emission was higher by Portable Emission Measurement System (PEMS);

(iii) That Volkswagen vehicles gave much less NO_x emission under the Warm Test Cycles after recall;

(iv) That the emissions measured on PEMS were higher than BS-IV limit;

(v) That the manufacturers are liable to pay damages to the tune of Rs.500 crores; and

(vi) That the CPCB shall consider initiation of prosecution in the light of applicable statutory regime.

11. Challenging the said order dated 07.03.2019 of the NGT, two Civil Appeals were filed in C.A.Nos. 4069 and 4086 of 2019. On 06.05.2019 these appeals were taken up along with another Civil Appeal filed by the Inter-Continental Association of lawyers and this court ordered the issue of notice in the appeals. In the mean time, this Court directed that no coercive steps shall be taken against Volkswagen India Private Limited.

12. While things stand thus, the 3rd Respondent herein lodged a complaint with the S.H.O., Gautam Budh Nagar, on 10.07.2020, alleging that he had bought 7 Audi Brand cars from the authorised dealers of the manufacturing Companies; that at the time of purchase, he got it clarified from the Company that they had not installed any cheat devices in the vehicles sold in India; that however, the authorities in India found out a higher emission of

NO_x; that even the NGT imposed a fine; that the complainant thereafter realised that he had been duped by the Company; that knowing fully well that their vehicles have been installed with cheat devices, the manufacturer had prepared wrong records and documents; that the manufacturers and the officers of the manufacturers are therefore guilty of various offences under the IPC and that therefore action should be initiated against them.

13. Contending that as per the particulars mentioned in the VAHAN Portal of the Government, the 3rd Respondent herein had purchased only 3 and not 7 vehicles; that the complaint lodged by the 3rd Respondent after more than 2½ years of the purchase of the vehicles, was malicious and full of false particulars; and that the FIR is based entirely upon the order of the NGT, which is the subject matter of two civil appeals before this Court, the petitioner filed a Criminal Miscellaneous Writ Petition No.9233 of 2020 before the High Court of Judicature at Allahabad. In the said Writ Petition, the petitioners sought quashing of the FIR.

14. By an order dated 01.10.2020, the Allahabad High Court rejected the prayer for quashing of the FIR. However, the High

Court protected the officers of the petitioner against arrest till the submission of the Report under Section 173(2) Cr.P.C. subject however to the condition that they shall cooperate in the investigation and also appear as and when called upon to assist in the investigation.

15. Not satisfied with a mere protection against arrest and the refusal of the Allahabad High Court to quash the FIR, the petitioner has come up with the above SLP.

16. The main contentions of the petitioner are:-

(i) That the Police cannot investigate an issue, the substratum of which is sub judice before this Court in the civil appeals arising out of the order of the NGT; and

(ii) That the High Court failed to take note of the long delay on the part of the 3rd Respondent in lodging the complaint and also the fact that the VAHAN Portal of the Government shows the purchase of only 3 vehicles as against the claim of the 3rd Respondent to have purchased 7 vehicles.

17. Let us take up the second contention first, since it is capable of being dealt with, without much ado. The second contention has

two parts namely (i) that there is a long delay in lodging the complaint and (ii) that the 3rd Respondent-complainant, appears to have purchased only 3 vehicles as against his claim to have purchased 7 vehicles.

18. The question whether the 3rd Respondent-complainant purchased 3 vehicles as revealed by the VAHAN Portal of the Government or 7 vehicles as claimed by him in his complaint, is a question of fact which has to be established only in the course of investigation/trial. In a petition for quashing the FIR, the Court cannot go into disputed questions of fact.

19. The mere delay on the part of the 3rd Respondent-complainant in lodging the complaint, cannot by itself be a ground to quash the FIR. The law is too well settled on this aspect to warrant any reference to precedents. Therefore, the second ground on which the petitioner seeks to quash the FIR cannot be countenanced.

20. The first contention revolves around the pendency of the Civil Appeals arising out of the order of the NGT and the interim order passed by this Court in the Civil Appeals.

21. As stated earlier, two original applications came to be filed before the NGT in the year 2015, alleging that the manufacturers of the vehicles in question were employing deceit devices. The filing of the original applications coincided with the issue of notice by the Automotive Research Association of India to the manufacturers. We have already indicated broadly, in paragraphs 5-10 above as to what transpired before the NGT.

22. The applicants before the NGT did not seek any relief for themselves, as purchasers of vehicles. The reliefs sought by the applicants before the NGT were broad and general. This is why the NGT, by its final order dated 07.03.2019 directed only the CPCB to consider the initiation of prosecution in the light of the applicable statutory regime, while ordering the manufacturers to deposit Rs.500 crores as compensation for the damage caused to the environment.

23. Therefore, the order of the NGT, passed on the applications filed by certain individuals not claiming as purchasers of vehicles, cannot be taken as an impediment for an individual who purchased cars from the manufacturers, to lodge a complaint, if he

has actually suffered on account of any representation made by the manufacturers.

24. The interim order passed by this Court on 06.05.2019 in Civil Appeal Nos. 4069 and 4086 of 2019, while issuing notice reads as follows:-

> "In the meantime, no coercive steps shall be taken against the appellant viz., Volkswagen India Private Limited."

25. The aforesaid interim order correlates only to the directions issued by the NGT in paragraphs 29, 30 and 32 of its order dated 07.03.2019. The direction contained in Paragraph 30 of the order of the NGT dated 07.03.2019 reads as follows:-

> "We leave it open to the CPCB to consider initiation of prosecution in the light of applicable statutory regime."

26. In paragraphs 29 and 32 of its order, the NGT directed the manufacturers to deposit compensation to the tune of Rs.500 crores within 2 months.

27. Therefore, the interim order passed by this Court not to take any coercive steps has to be understood only in the context of the aforesaid directions of the NGT which became the subject matter of the Civil Appeals. Hence it is futile to contend that the pendency of the Civil Appeals and the interim order passed by this Court should

be taken as a deterrent for anyone else to lodge a police complaint and seek an investigation.

28. Dr. A.M. Singhvi, learned senior counsel appearing for the petitioner strenuously contended that the contents of the complaint lodged by the 3rd Respondent-complainant with the Police were nothing but a reproduction of the contentions made before the NGT and that actually the substratum of the police complaint, is what is sub judice before this court. Therefore, he contends that the police cannot investigate into the same set of allegations which form the subject matter of proceedings pending adjudication before this court.

29. But we do not think so. A little elaboration is required to show why we cannot agree with the above contention of the learned senior counsel appearing for the petitioner.

30. Section 110(1) of the Motor Vehicles Act, 1988 empowers the Central Government to make rules, regulating the construction, equipment and maintenance of motor vehicles with respect to all or any of the matters enumerated in Clauses (a) to (p). Clause (g) of

Sub-section (1) of Section 110 relates to "***the emission of smoke, visible vapour, sparks, ashes, grit, or oil***".

31. In exercise of powers conferred by Section 110(1), the Central Government issued a set of rules known as The Central Motor Vehicles Rules, 1989.

32. Rules 112 to 114 of those Rules deal in general with "smoke, vapour, spark, ashes, grit and oil". Rules 115 and 116 deal specifically with "emissions of smoke, vapour" etc., from motor vehicles and "test for smoke emission level and Carbon Monoxide (CO) level for motor vehicles". These Rules correspond to Clause (g) of Sub-section (1) of Section 110.

33. Rule 126 mandates every manufacturer or importer of motor vehicles other than trailers and semi-trailers to submit the prototype of the vehicle manufactured or imported by him for testing by the agencies indicated therein. Rule 126A enables the testing agencies referred to in Rule 126 to conduct tests on the vehicles drawn from the production line of the manufacturer to verify whether these vehicles conform to the provisions of the Rules.

34. In order to give effect to the mandate of the statutory prescription, the Ministry of Road Transport and Highways, issued a document bearing No. MoRTH/CMV/TAP-116-116, Issue No.4, which prescribes the test method, testing equipment and other related procedure for the purpose of testing vehicles for verifying compliance with Rules 115 and 126A of the Rules for "Type Approval and Conformity of Production". The document also contains the total procedure for checking of the in-service vehicles for idling CO/HC for vehicles fitted with petrol/CNG/LPG Engines. This document is divided into 15 parts. Part-XIV contains the details of standards for Tailpipe Emissions from vehicles and Test Procedures Effective for Mass Emission Standards.

35. ***Clause No.2.27 of Chapter-1, Part-XIV of the aforesaid document defines what is called a "Defeat Device"***. It reads as follows:-

> "***Defeat Device means any element of design which senses temperature, vehicle speed, engine rotational speed, transmission gear, manifold vacuum or any other parameter for the purpose of activating, modelling, delaying or deactivating the operation of any part of the emission control system, that reduces the effectiveness of the emission control***

> ***system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use***. Such an element of design may not be considered a defeat device if
> 1. The need of the device is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle, or
> 2. The device does not function beyond the requirements of engine starting or,
> 3. Conditions are substantially included in the Type I or Type VI test procedure."

36. The allegations in the complaint lodged by the 3rd respondent herein, are to the following effect:

(i) that "at the time of purchase and taking delivery of the vehicles, the complainant got clarified from the accused persons whether the vehicles in India were also fitted with cheat devices";

(ii) that despite the clarification issued by them that they had not installed any cheat devices, in the vehicles meant to be sold in India, the cars purchased by the complainant were found to contain such defeat devices; and

(iii) that therefore, the manufacturer is guilty of commission of various offences.

37. The question whether such devices are installed in the cars purchased by the 3rd respondent herein and the question whether

there was any representation in this regard to the petitioner, are all questions of fact, peculiar and particular to the 3rd respondent herein. NGT had no occasion to examine the cars purchased by the 3rd respondent herein. At this stage no one can presume whether the defence of the manufacturer to the police complaint will be purely on a question of fact or purely on a question of law or on mixed questions of fact and law. If the petitioner takes a defence that no such devices were installed in the cars purchased by the 3rd respondent or that there was no (mis)representation in this regard, it will be a pure question of fact, which cannot be gone into in a quash petition. If the petitioner takes a defence that the installation of such devices, though true, does not violate any law, then it will be a pure question of law. We may be entitled to go into this question in a quash petition, provided the petitioner comes up with a categorical admission that they had installed such devices and yet there was no violation of the law. We do not expect the petitioner to disclose their defence at this stage nor would we speculate what type of defence the petitioner would have to the prosecution.

38. It may not be out of context to mention here that the European Union woke up way back in 2007 to the reality of car makers installing a software that manipulate exhaust emissions, depending upon whether the car ran on a test stand or on the road. After the European Commission's Joint Research Centre found in 2011 that the levels of harmful NO_x emissions far exceeded the prescribed levels, a study conducted by the International Council on Clean Transportation (ICCT) revealed similar results in the United States. In September-2015, allegations of installation of manipulation devices by car manufacturers emerged from the US Environmental Protection Agency and this triggered investigations in several European Union States. After claims were lodged and legal action initiated, the German Federal Motor Transport Authority appears to have given permission in June-2016 for the recall of about 2 million vehicles across Europe. In the light of these developments, one of the manufacturers entered into an agreement with the US Environmental Protection Agency in December-2016 giving certain options to the customers. These and the subsequent developments, which attained notoriety as the ***diesel-gate***

scandal, led to the German Federal Court of Justice (Bundesgerichtshof-BGH) giving a ruling on May 25, 2020 in favour of the car owners for damages.

39. It is in the backdrop of what transpired in Europe and U.S.A., during the period from 2015 to 2019 that the action initiated by the Automotive Research Association of India in November 2015 and the proceedings that went on before the National Green Tribunal from the year 2015 to the year 2019, have to be seen. All of them were part of the global outrage that actually concerned the damage caused to the environment by the emissions from the cars allegedly fitted with manipulative devices. The proceedings before the NGT were not intended to address issues relating to individuals, such as **(i)** whether any emissions manipulation software, called in common parlance as 'defeat devices' were installed in the vehicles purchased by certain individuals; and **(ii)** whether any representation was made to the purchasers of the cars in which such devices had been installed, about the emission efficiency level of the cars.

40. Therefore, we are unable to agree with the contention of the learned Senior Counsel for the petitioner that the substratum of the

police complaint is something that is already the subject matter of adjudication before this Court in the appeals arising out of the order of the NGT. As a matter of fact, the High Court has been fair to the petitioner, by granting protection against arrest till the filing of the report under section 173(2) of the Code. We do not think that the petitioner can ask for anything more.

41. It is needless to point out that ever since the decision of the Privy Council in **King Emperor vs. Khwaja Nazir Ahmed**[1], the law is well settled that Courts would not thwart any investigation. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on. As cautioned by this Court in **State of Haryana vs. Bhajan Lal**[2], the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint. In **S.M. Datta vs. State of Gujarat**[3], this Court again

1 AIR 1945 PC 18
2 (1992) Supp. (1) SCC 335
3 (2001) 7 SCC 659

cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In **S.M. Datta** (supra), this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

42. In view of what is stated above, the special leave petition is dismissed. There will be no order as to costs.

.....CJI
(S.A. BOBDE)

.....J.
(A.S. BOPANNA)

.....J.
(V. RAMASUBRAMANIAN)

New Delhi
November 26, 2020