

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 9223 of 2020

Petitioner :- Skoda Auto Volkswagen India Pvt. Ltd.

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Syed Imran Ibrahim, Anurag Vajpeyi, Manish Tiwary (Senior Adv.)

Counsel for Respondent :- G.A., Aditya Singh, Gopal Swarup Chaturvedi (Senior Adv.), Samarth Sinha

Hon'ble B. Amit Sthalekar, J.

Hon'ble Shekhar Kumar Yadav, J.

Heard Sri Naveen Sinha, learned Senior Counsel assisted by Sri Anurag Vajpeyi and Sri Vishwajeet Dubey for the petitioner, Sri Gopal Swarup Chaturvedi, learned Senior Counsel assisted by Sri Samarth Sinha and Sri Aditya Singh for the respondents no.3 and Sri A.N. Mulla, learned Standing Counsel for the State respondents.

The petitioners in the present writ petition are seeking quashing of the First Information Report dated 10.07.2020 registered as Case Crime no. 0613 of 2020 under Sections 34, 471, 468, 467, 420, 419 and 406 I.P.C., P.S.-Noida Sector 20, District- Gautam Budh Nagar with a further prayer to stay the entire proceeding of the aforesaid case.

The allegation in the FIR is that the complainant had purchased seven Audi Brand Cars, namely, 1) Audi Q7 45 TDI Quattro (Chassis no. WAUZHG4M0HY000046); 2) Audi Q3 30 TFSI (Chassis no. WAUZH8U8JY001207); 3) Audi Q3 35 TDI (Chassis No. WAUZHH8U7JY000258); 4) Audi A4 30 TFSI (Chassis no. WAUZHGF4XHY700072); 5) Audi A8 Quattro 3.0 TDI (Chassis no. WAUZEE4HSEN015903); 6) Audi A6 35 TDI (Chassis no. WAUZMF4G3GY001223); and 7) Audi A6 35 TDI (Chassis no. WAUZHG4G1HY000101) from the petitioners through their authorised dealer worth several crores of rupees and he was assured that emission norms in India were not as strict as in other countries and India being a growing market for Audi

Brand vehicles, the company has not installed any cheat device in its vehicles meant to be sold in India. However, from an order of the National Green Tribunal dated 7.03.2019, the complainant/respondent no.3 came to know that a certain cheat device had been installed by the company during laboratory tests to show lower emission norms and, therefore, the contention of the complainant is that he felt cheated and hence, the FIR.

Sri Naveen Sinha, learned Senior Counsel appearing for the petitioner submitted that the National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal) had passed an order on 07.03.2019 imposing damages and enhanced amount of compensation amounting to Rs. 500 crores against the petitioner company on a finding that a 'cheat device' had been installed by the company during laboratory tests in its vehicles which showed lower emissions. The submission further is that the Tribunal had also left it open to the Central Pollution Control Board (in short 'CPCB') to consider initiation of prosecution in light of the applicable statutory regime. The submission of the learned Senior Counsel is that aggrieved by the order of the Tribunal dated 07.03.2019, the petitioners filed an appeal before the Supreme Court being Civil Appeal Diary No. 12697 of 2019 in which the Supreme Court passed the following order on 06.05.2019.

"Issue notice.

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

The submission of the learned Senior Counsel is that in view of this interim protection granted by the Supreme Court, the FIR which is impugned in the present writ petition is nothing but malicious prosecution and could not have been lodged at all and the same is liable to be quashed.

Sri Gopal Swarup Chaturvedi, learned Senior Counsel for the

complainant on the other hand, referring to the judgement of the Tribunal submitted that when the issue regarding vehicles of the petitioner Company which had failed to satisfy the emission norms world wide exploded on the world stage, questions were raised in the Lok Sabha and in the order of the Tribunal dated 16.11.2018, which finds reference in paragraph 5 of the Tribunal's order dated 07.03.2019, it has been mentioned that details of the vehicles recalled by the manufacturers were placed before the Lok Sabha on 11.04.2017 which showed that 2.75 lakh vehicles of Volkswagen, Skoda and Audi were recalled on ground of software updation and repair. The learned Senior counsel further submitted that the stand of the manufacturers in reply to the show cause notice issued by the Automotive Research Association of India (in short 'ARAI') was that the emission in these vehicles was found to be 1.1 times to 2.6 times of BS-IV norms. The submission is that whether the emission norms in India were the same as in the US or in any other country or were 5 or 9 times only in India or 1.1 times to 2.6 times of the BS-IV norms and whether the cause of faulty emission was due to a 'cheat device' or some other software chip or otherwise, is a matter of investigation.

Sri A.N. Mulla, learned AGA opposing the writ petition submitted that the Tribunal had left it open for the CPCB to initiate prosecution as per the prescribed statutory regime and therefore, the order of the Supreme Court directing no coercive action would be confined to any action which may be contemplated by the CPCB which was a party before the Tribunal and would not operate as a blanket embargo against private individual/individuals who may have lodged FIR on allegation that they felt cheated by the faulty emission standards declared by the company which may later on have come to his/their knowledge that the same did not satisfy the BS-IV norms.

We have considered the submissions of the learned counsel for the parties and we are of the opinion that the question as to whether a 'cheat device' was installed in the vehicles purchased by the respondent no.3 and whether they satisfy the BS-IV norms or not, is a matter of investigation and the investigation cannot be interfered with by this Court on an erroneous interpretation of the interim order of the Supreme Court. The prayer for quashing the FIR is refused.

The writ petition lacks merit and is accordingly, **dismissed**.

However, in the facts and circumstances of the case and the submissions advanced on behalf of the petitioner, it is directed that the petitioner shall not be arrested in the aforesaid case till the submission of police report under Section 173 (2) Cr.P.C., subject to the restraint that he shall co-operate with the investigation and shall appear as and when called upon to assist in the investigation.

Order Date :- 1.10.2020

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