

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Criminal Appeal No 1044 of 2019

State of Andhra Pradesh

.... Appellant(s)

Versus

BMW India PVT Ltd and Ors

....Respondent(s)

WITH

Criminal Appeal No 1045 of 2019

ORDER

- 1 The appeals arise from an order dated 22 March 2012 of the High Court of Telangana by which a criminal proceeding arising out of FIR No 336 of 2009 registered at Central Crime Station, Hyderabad has been quashed.
- 2 There are two appeals against the judgment of the High Court; the first by the State of Andhra Pradesh and the second by the complainant.
- 3 The complainant had purchased a BMW 7 series vehicle on 25 September 2009. The case of the complainant is that on 29 September 2009, while he was driving the vehicle, a serious defect was noticed and the car was taken to the workshop. The car is alleged to have faced a similar problem on 13 November 2009. On 16 November 2009, a complaint was lodged for alleged offences under Sections 418 and 420 of the Indian Penal Code 1860 which led to the registration of the

- FIR. The manufacturer, Managing Director and other directors were named as the accused.
- 4 The High Court, during the pendency of the proceedings, allowed the investigation to continue, but stayed arrest. By the impugned order dated 22 March 2012, the High Court quashed the proceedings, but, while doing so, directed the manufacturer to deliver a brand new BMW Series vehicle to the complainant in place of the defective one.
 - 5 The order of the High Court was challenged by the State of Andhra Pradesh and by the complainant, but not by the manufacturer or the directors, who are named as accused.
 - 6 We have heard Mr Sowri Dev, counsel appearing for the complainant and Mr Diwakar Maheshwari, counsel appearing for the manufacturer and directors.
 - 7 During the course of the hearing, counsel appearing on behalf of the manufacturer and directors has submitted that the manufacturer was at all times ready and willing to comply with the order of the High Court and, in fact, addressed a communication to the complainant calling for the return of the defective vehicle so that a brand new vehicle could be handed over.
 - 8 It is not in dispute that on 22 June 2012, the Director (Finance & Administration) of BMW India Private Limited addressed a communication to the complainant (GVR India Projects Limited) that in terms of the order of the High Court, inspection and return of the vehicle may be arranged so as to enable the manufacturer “to take further steps to comply with the order”. This was followed by a further communication dated 29 June 2012. On 14 July 2012, the

complainant wrote a letter in response stating that the letters of the manufacturer "have been forwarded to our lawyers to respond". Finally, by a letter dated 25 July 2012, the complainant informed the manufacturer, through his advocate, that he was not interested in taking a new BMW car, but instead was interested in taking an amount equivalent to the value of the car, together with interest.

9 The matter accordingly rests at there.

10 The High Court came to the conclusion that the ingredients of the offence of cheating were not established on the basis of the contents of the FIR. Having come to this conclusion, there was no justification for the High Court thereafter to direct the manufacturer to replace a brand new BMW 7 Series vehicle. The High Court had been moved by the manufacturer for quashing of the complaint under Section 482 of the Code of Criminal Procedure 1973. The High Court was required to address itself to whether a case for quashing was made out.

11 Be that as it may, it now emerges that the order of the High Court directing the replacement of the vehicle with a brand new vehicle was not challenged by the manufacturer and, in fact, the manufacturer had addressed communications to the complainant to return the old vehicle so as to facilitate compliance with the order of the High Court. This Court must, therefore, proceed on that basis.

12 Admittedly, as it emerges during the course of the submission by counsel, the old vehicle has been returned to the erstwhile dealer by the complainant. Bearing in mind the nature of the dispute, which was confined only to a defective vehicle, we are of the view that allowing the prosecution to continue, at this stage, nearly fifteen years after the dispute arose, would not subserve the

ends of justice. Instead, by exercising the jurisdiction of this Court under Article 142 of the Constitution, substantial justice can be done by directing the payment of compensation to the complainant, while sustaining the order quashing the complaint.

- 13 We have taken note of the fact that, as far back as in June-July 2012, the manufacturer had offered to replace the old vehicle with a brand new vehicle in compliance with the order of the High Court. However, this was not acceded to by the complainant. Had the complainant used the vehicle, it would have depreciated in value until date.
- 14 Bearing in mind the facts and circumstances of this case, we are of the considered view that the manufacturer, BMW India Private Limited, should be directed to pay a consolidated amount of Rs 50 lakhs in full and final settlement of all claims in dispute. The manufacturer shall pay this amount to the complainant on or before 10 August 2024 by electronic transfer of funds. The advocate for the complainant shall intimate the requisite bank details to the advocate for the manufacturer within a week.
- 15 Conditional on the aforesaid payment being made by the manufacturer to the complainant, the order of the High Court quashing the complaint shall stand and the direction for the replacement of the old vehicle with a brand new vehicle shall stand set aside. The claims of the complainant shall stand duly satisfied on the payment of compensation quantified at Rs 50 lakhs in terms of the above order.

16 The appeals are accordingly disposed of.

17 Pending application, if any, stands disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
July 10, 2024
-S-

ITEM NO.2

COURT NO.1

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s).1044/2019

THE STATE OF ANDHRA PRADESH

Appellant(s)

VERSUS

BMW INDIA P.LTD.. & ORS.

Respondent(s)

WITH

CrI.A. No. 1045/2019 (II)

(WITH IA No. 82168/2024 - CLARIFICATION/DIRECTION)

Date : 10-07-2024 These appeals were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Appellant(s)
1044/2019

Mr. Rajiv Kumar Choudhry , AOR

1045/2019

Mr. Sowri Dev, Adv.
Mr. Tharini, Adv.
M/S. Sowri Rao & Associates, AOR

For Respondent(s)

Mr. Diwakar Maheshwari, Adv.
Mr. Shreyas Edupuganti, Adv.
Mr. Susmit Pushkar, AOR

Mrs. Aarthi Rajan, AOR

Mr. S. Udaya Kumar Sagar, AOR

UPON hearing the counsel the Court made the following
O R D E R

- 1 The appeals are disposed of in terms of the signed order.
- 2 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
ADDITIONAL REGISTRAR

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR