IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 21ST DAY OF MAY 2024 / 31ST VAISAKHA, 1946

CRL.MC NO. 5290 OF 2019

(FIR NO.31/2008 OF NEDUMBASSERY POLICE STATION, ERNAKULAM)

PETITIONER/ACCUSED:

M.AMANULLA KHAN
S/O.MOHAMMAD MAKKAR SAHIB,339,
KANJIRAMVILA,KUNDAYAM.P.O,PATHANAPURAM,
KOLLAM DISTRICT-689695.

BY ADVS.C.UNNIKRISHNAN (KOLLAM)
VIVEK NAIR P.
UTHARA A.S
VIJAYKRISHNAN S. MENON

RESPONDENTS/STATE & COMPLAINANT:

1 SAJEENA VAHAB, W/O.LATE C.M.ABDUL VAHAB,
LAILA MANZIL, NEDUMBAIKULAM,KUNDARA.P.O,
KOLLAM, PIN-691501.

2 SUB INSPECTOR OF POLICE,
AIRPORT POLICE STATION, NEDUMBASSERY,ALUVA,
ERNAKULAM DISTRICT,683585.

3 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA,ERNAKULAM-682031.

BY G SUDHEER,PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21.05.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioner originally filed the Crl.M.C seeking to quash FIR No.31/2008 of Airport Police Station, Nedumbassery and all further proceedings pursuant to it. During the pendency of the proceedings, the Police submitted final report before the jurisdictional Court. The petitioner thereafter incorporated the relief to quash the final report by way of amendment in the Crl.M.C.

2. The prosecution was initiated based on a complaint filed by respondent No.1 before the Judicial First Class Magistrate Court-I, Aluva. The learned Magistrate directed registration of the FIR under Section 156(3) of Cr.P.C.

3. The allegations in the complaint filed by respondent No.1 are as follows:-

The complainant/respondent No.1 is the investor, authorized Manager and Signatory of a company by the name and style "Labib Trading and Contracting L.L.C" having its office in the Sultanate of Oman. Sri.Muhammad Abdul Vahab, her husband, started the company in 2002. Her husband died on 3.2.2005 due to cardiac arrest. After the death of her husband, the complainant became the shareholder of the company and took charge of the affairs of it. The petitioner/accused is the brother-in-law of her husband. He is an Electrical Engineer by profession. He was working in Dubai at the time of the death of her husband. As nobody was there to look after and manage the affairs of the company, respondent No.1 appointed the petitioner/accused as Manager of the company on a monthly remuneration of 1000 Riyals. She executed a power of attorney No.190/2005 dated 3.5.2005 in favour of the accused authorising him to represent her in connection with all affairs of the company. The accused was managing the day-today affairs of the company, including the bank transactions, from 3.5.2005. He managed the affairs of the Company till 18.8.2008. The accused was a full time employee of the Company. He unauthorisedly withdrew a total sum of Rs.8,78,00,000/- during the period from 3.5.2005 to 18.8.2008 from the account of the company by misusing the power given by the petitioner. The amount so misappropriated has been transferred to his personal account and the account of his wife in various banks in Kollam District. The accused intentionally misappropriated the assets of the company and thereby defrauded the complainant and obtained wrongful gain causing wrongful loss to the complainant. At the commencement of the employment in the company the accused had the intention to misappropriate funds owned by the complainant. When he realized that the complainant's son came to know of the misappropriation committed by him he terminated his employment and left Oman. The complainant came to know that the accused purchased properties in various parts of Kerala using the money misappropriated from the account of the company and he is keeping the balance sum in his accounts and the accounts of his wife in different banks. The accused forged the signature of the complainant for submitting certain applications before the departments concerned for the purpose of obtaining illegal gain. He is alleged to have committed the offences punishable under Sections 406, 408, 420 and 467 of the Indian Penal Code.

4. The case of the petitioner/accused is as follows:-

M/s.Labib Trading and Contracting L.L.C , Sultanate of Oman is owned and managed by an Omani National namely Mr.Masoud Bin Muhammed Bin Nasser Al Mahrani. The husband of respondent No.1/complainant late C.M.Abdul Wahab was an employee of the company in April, 2002. Abdul Wahab acquired shares in the company. Sri.Abdul Wahab died on 3.2.2005. The petitioner had been working as an Electrical Engineer and Engineering Consultant in Dubai. After the death of Sri.Abdul Wahab, respondent No.1 requested the service of the petitioner to manage the affairs of the company. As per Annexure III order of appointment, he joined duty in July, 2005. As per the relevant clause in Annexure III order of appointment, the petitioner was given full freedom to take, withdraw on his own will, any additional assets or an equivalent amount created during his services as General Manager. In June 2008, the son of respondent No.1 joined the company as an employee and thereupon, the petitioner expressed his desire to wind up his services and business in the company. The son of respondent No.1 insisted on handing over the services of the management of the company and settling the accounts as on date. As decided by respondent No.1 and her son, on 10.8.2008 the petitioner handed over his services as per Annexure IV memorandum of understanding. At the time of executing Annexure IV memorandum of understanding neither respondent No.1 nor her son raised any complaint or allegation against the petitioner. With effect from 15.8.2008, the petitioner was relieved of the responsibilities in the company and he came back to Kerala. He has not misappropriated any assets as alleged by respondent No.1.

5. The Police conducted investigation in the matter. The Investigating Agency examined 23 witnesses, seized various documents and submitted final report concluding that the petitioner committed

offences under Sections 406, 408, 420 and 467 of IPC.

6. I have heard Sri.C.Unnikrishnan, the learned counsel appearing for the petitioner and Sri.G.Sudheer, the learned Public Prosecutor.

7. The learned counsel for the petitioner submitted that the complaint as well as the final report do not disclose any offences as alleged. The prosecution failed to establish that the petitioner at the very inception of his service had any intention to cheat the company and respondent No.1. It is submitted that the allegations at the most reveal only a civil wrong. The learned counsel for the petitioner further contended that Annexure III order of appointment and Annexure IV memorandum of understanding would rule out the entire allegations raised by the prosecution. The learned counsel further canvassed that as the offences were committed outside India the Investigating Agency was not competent to enquire into the allegations except with the previous sanction of the Central Government as provided in Section 188 of the Code of Criminal Procedure.

8. The learned Public Prosecutor submitted that the complaint and the final report reveal the offences alleged. The learned Public Prosecutor submitted that there are sufficient materials to hold that the petitioner had the intention to cheat the company and

respondent No.1 at the very inception of his services in the company. The learned public prosecutor also submitted that the genuineness of Annexures III and IV documents relied on by the petitioner are doubtful and it is a matter of evidence. The learned public prosecutor further submitted that the original power of attorney executed by the defacto complainant has been suppressed by the petitioner/accused.

9. A copy of the final report has been placed before this Court. The Investigating Agency has concluded that during the period from 3.5.2005 to 18.8.2008, the petitioner misappropriated a sum of Rs.8,78,000/- from the company unauthorisedly and deposited in various banks in Kollam District. The Investigating Agency further concluded that the petitioner had an intention to commit cheating and breach of trust at the very commencement of his employment in the company.

10. The Investigating Officer submitted an affidavit narrating the overt acts alleged against the petitioner. The conclusions of the Investigating Agency are as follows:-

a) Respondent No.1 appointed the petitioner as the Manager of the company as per Power of Attorney No.190/2005 dated 3.5.2005 for three years.

b) During the period from 3.5.2005 to 18.8.2008 the petitioner misappropriated a sum of Rs.8,78,00,000/-, the details of which are the following:-

The petitioner deposited Rs.3,01,33,310/- in Canara Bank Pidavoor Branch in his name and Rs.1,11,74,509/- in the name of Fousi Begum, wife of the accused. He deposited a sum of Rs.2,58,98,892/- in his name in the South Indian Bank, Pathanapuram Branch. He also deposited another sum of Rs.1,88,39,277/- in his name in the Federal Bank, Pathanapuram Branch and Rs.51,15,015/- in Citi Bank, Ernakulam Branch. He also acquired 9 acres and 28 cents of land in the joint names of himself and his wife in Pathanapuram Taluk and 10.67 cents of land at Kilikollur in his name.

(c) The monthly salary of the petitioner was 1000 Riyals which was subsequently increased to 1400 Riyals, which is evident from the salary vouchers seized. The petitioner misused the Power of Attorney given to him by respondent No.1. The petitioner did not produce the original Power of Attorney dated 2.5.2005 to the Investigating Agency. The Power of Attorney No.190/2005 dated 3.5.2005 relied on by the petitioner is a general power of attorney. The defacto complainant gave evidence that she did not sign any document to be produced before the Ministry of Oman. The complicity and genuineness of the

Power of Attorney dated 2.5.2005 has to be considered only at the stage of evidence. Sri.Sebastian K.Jose, the official lawyer of the Sultanate of Oman stated that he had registered the power of attorney at the instance of the defacto complainant in favour of the petitioner and registered as No.190/2005 on 3.5.2005 and a copy of the same is available in the Ministry of Oman. The lawyer stated that the defacto complainant never gave any direction to hand over the share of the company to the accused.

11. The petitioner relies on Annexure III order of appointment and Annexure IV memorandum of understanding in support of his contentions.

12. The learned Public Prosecutor submitted that the genuineness of Annexures III and IV is doubtful. The veracity of the same can be assessed only at the stage of the trial.

13. The learned counsel for the petitioner relied on **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Others** v. **Nimra Cerglass Technics (P) Ltd. And Another** (2015 KHC 4633) and **Hira Lal Hari Lal Bhagwati** v. **CBI, New Delhi** (2003 KHC 1022) and a series of other precedents to contend that to attract the offence of cheating as provided under Section 420 IPC, the prosecution has to establish that

the petitioner at the very inception had a dishonest intention to commit the alleged acts. The learned counsel submitted that if it is not established that the petitioner had dishonest intention at the commencement of the transaction, no criminal prosecution will lie. It is submitted that a mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent and dishonest intention is shown at the time of the transaction.

14. The prosecution specifically alleges that the petitioner had fraudulent or dishonest intention at the beginning itself. The prosecution materials disclose the offence of cheating and other offences.

15. The learned counsel for the petitioner, relying on **Rajiv Thapar and Others** v. **Madan Lal Kapoor** [(2013) 3 SCC 330] and **Prashant Bharti** v. **State (NCT of Delhi)** [(2013) 9 SCC 293] contended that the materials relied on by the petitioner can be considered to reject the factual basis of the accusations. In **Prashant Bharti** following **Rajiv Thapar** the Supreme Court held thus:-

> "20. In *Rajiv Thapar & Ors.* v. *Madan Lal Kapoor* (2013 (2) KLT Suppl.5 (SC) = (2013) 3 SCC 330)), the Apex Court delineated the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of Cr.P.C.:-
>
> "*Step one*: Whether the material relied upon by the

> accused is sound, reasonable, and indubitable i.e., the materials is of sterling and impeccable quality?
>
> *Step two*: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e., the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?
>
> *Step three*: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?
>
> *Step four*: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?
>
> If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) especially when it is clear that the same would not conclude in the conviction of the accused."

16. I have gone through the materials placed before me. It is pertinent to note that the prosecution challenges the genuineness of the documents relied on by the petitioner. Those materials are not of sterling and impeccable quality. I am of the view that the documents relied on by the petitioner do not persuade to dismiss and condemn the factual basis of the accusations.

17. The next contention of the learned counsel for the petitioner is that as the offences were committed outside India the enquiry, investigation and prosecution are barred in view of the proviso to Section 188 Cr.P.C.

18. As per Section 188 Cr.P.C., when an offence is committed outside India- (a) by a citizen of India, whether on the high seas or elsewhere; or (b) by a person, not being the citizen, on any ship or aircraft registered in India, the offender may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found. The proviso to Section 188 Cr.P.C. says that no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

19. The section gets attracted when the entirety of the offence is committed outside India and the grant of sanction would enable such offence to be enquired into or tried in India. A Three Judge Bench of the Supreme Court in **Sartaj Khan** v. **State of Uttarakhand** (2022 LiveLaw (SC) 321) held that if the offence was not committed in its entirety, outside India, the matter would not come within the scope of Section 188 Cr.P.C. and there is no necessity of any sanction as mandated by the proviso to Section 188. In view of the settled law, the contention of the petitioner relying on Section 188 Cr.P.C. fails.

20. It is settled by a long course of decisions of the Apex Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash criminal proceedings, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has been further held that the High Court has no jurisdiction to examine the correctness or otherwise of the allegations (Vide: **State of West Bengal** v. **Swapan Kumar Guha** (1982 KLT OnLine 1031 (SC) = (1982) 1 SCC 561), **Pratibha Rani** v. **Suraj Kumar** (1985 KLT OnLine 1239 (SC) = (1985) 2 SCC 370)).

21. In **State of Kerala** v. **O.C.Kuttan** (1999 (1) KLT 747 (SC) = (1999) 2 SCC 651), the Apex Court held that while exercising the power, it is not possible for the Court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. In **State of U.P** v. **O.P.Sharma** (1996 (1) KLT OnLine 997 (SC) = (1996) 7 SCC 705) a Three Judge Bench of the Apex Court observed that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 Cr.P.C. or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. This view was reiterated by another Three Judge Bench of the Apex Court in

Rashmi Kumar v. **Mahesh Kumar Bhada** (1996 (2) KLT OnLine 1211 (SC) = (1997) 2 SCC 397), wherein the Apex Court held that such power should be sparingly and cautiously exercised only when the Court is of the opinion that otherwise there will be gross miscarriage of justice. It is trite that the power of quashing criminal proceedings should be exercised with circumspection and that too, in the rarest of rare cases and it was not justified for this Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the final report or the complaint. A finding on the veracity of a material relied on by the prosecution in a case where the allegations levelled by the prosecution disclose a cognizable offence, is not a consideration for the High Court while exercising its power under Section 482 Cr.P.C. This view is fortified by the decision of the Apex Court in **Mahendra K.C.** v. **State of Karnataka and Ors.** (2021 (6) KLT OnLine 1128 (SC) = AIR 2021 SC 5711).

22. While dealing with the power under Section 482 Cr.P.C. to quash the criminal proceedings the Apex Court in **M/s.Neeharika Infrastructure Pvt.Ltd.** v. **State of Maharashtra & Ors.** (2021 (3) KLT SN 4 (C.No.3) SC = 2021 (2) KLT OnLine 1039 (SC) = AIR 2021 SC 1918) concluded thus in paragraph 23 of the judgment:

“23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the Accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed Under Section 173 Code of Criminal Procedure, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India, our final conclusions are as under:

(i) xxx xxx xxx xxx xxx xxx

(xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

(xiii) xxx xxx xxx

(xiv) xxx xxx xxx

(xv) When a prayer for quashing the FIR is made by the alleged Accused and the court when it exercises the power Under Section 482 Code of Criminal Procedure, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;”

23. In the present case, the petitioner failed to convince this Court that the allegations levelled against him in the prosecution records made available do not disclose the ingredients of the offences alleged. The correctness or otherwise of the allegations levelled in Annexure I FIR and final report is a matter to be tested during the course of the trial. It is made clear that this Court has not made any observation on the merits or otherwise of the allegations levelled by the prosecution.

The Crl.M.C. lacks merits. It stands dismissed.

Sd/-
K.BABU
Judge

TKS

APPENDIX OF CRL.MC 5290/2019

PETITIONER's ANNEXURES

ANNEXURE I	**CERTIFIED COPY OF THE COMPLAINT DATED 17.10.2008 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE NO.1,ALUVA.**
ANNEXURE II	**CERTIFIED COPY OF THE F.I.R.IN CRIME NO.31/2008 OF NEDUMBASSERY POLICE STATION.**
ANNEXURE III	**TRUE COPY 0F THE APPOINTMENT ORDER OF THE PETITIONER.**
ANNEXURE IV	**TRUE COPY OF THE HANDING OVER CERTIFICATE SIGNED ON 10.4.2008**
ANNEXURE V	**TRUE COPY OF THE MEMORANDUM OF UNDERSTANDING AND THE AFFIDAVIT FILED BY THE CHAIRMAN.**
ANNEXURE VI	**TRUE COPY OF THE JUDGMENT IN CRL.M.C.4666/2008 OF THIS HON'BLE COURT DATED 1.8.2013.**
ANNEXURE VII	**TRUE COPY OF THE ORDER IN C.M.P.1673/2013 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I,ALUVA.**
ANNEXURE VIII	**TRUE COPIES OF THE CHEQUES IN NRE SB A/C.N0.2498 IN THE FEDERAL BANK LTD.,PATHANAPURAM, A/C.NO.6777 IN CANARA BANK,PIDAVOOR,KERALA AND A/C.NO.0741093464 IN CITY BANK,ERNAKULAM,KOCHI.**
ANNEXURE IX	**TRUE COPY OF THE INTERIM ORDER IN CRL.M.C.NO.4666/08 DATED 1.4.2009.**
ANNEXURE X	**TRUE COPY OF THE STATMENT PETITION DATED 11.10.2014 SUBMITTED BEFORE THE C.I.,NEDUMBASSERY POLICE STATION.**
ANNEXURE XI	**TRUE COPY OF THE MALAYALA MANORAMA DAILY DATED 6.7.2009.**
ANNEXURE XII	**TRUE COPY OF THE CERTIFICATE OF EMPLOYMENT DATED 29.01.14 WHICH HAS BEEN UPDATED AND RENEWED UP TO JANUARY 14TH 2016.**

Annexure XIII	**A TRUE COPY OF THE ORDER DATED 17.08.2013 IN CRL.M.P. NO. 1673/2013 IN CRIME NO.31/2008 ON THE FILE OF JFMC-I, ALUVA.**
Annexure XIV	**A TRUE COPY OF THE INTERIM REPORT FILED BY THE INVESTIGATING OFFICER IN OCTOBER 2013 BEFORE THE JFCM-I, ALUVA IN CRL.M.P. NO. 1673/2013.**
Annexure XV	**A TRUE COPY OF THE REPORT DATED 18.09.2015 FILED BY THE SHO IN CRL.M.P. NO. 1673/2013 IN CRIME NO.31/2008.**
Annexure XVI	**A TRUE COPY OF THE FINAL REPORT FILED BY THE POLICE IN CRIME 31/2008.**

TKS