IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

Crl.MC.No. 1055 of 2010 ( )

PETITIONER(S)/ACCUSED:

MOHAMMED HANEEFA PEERU MOHAMMED,
RESIDING AT RASHEEDA MANZIL, BEEMA PALLI,
THIRUVANANTHAPURAM.

BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN
SRI.BHIMAL ROY.C.V.

RESPONDENT(S):
----

1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. UNION OF INDIA, REPRESENTED BY THE CHIEF SECRETARY, MINISTRY OF EXTERNAL AFFAIRS, NEW DELHI.

*3. SECRETARY, MINISTRY OF HOME AFFAIRS, CENTRAL SECRETARIAT, NEW DELHI.

* ADDL. R3 IS IMPLEADED AS PER ORDER DATED 5.9.2011 IN CRL.MA 5670/2011

R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE
R2 & R3 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 1055 of 2010 ( )

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1:	**TRUE COPY OF THE FIRST INFORMATION REPORT.**
ANNEXURE A2:	**TRUE COPY OF THE COMMUNICATION DATED 21.03.2006 OF THE EMBASSY OF UAE, NEW DELHI.**
ANNEXURE A3:	**TRUE COPY OF THE OFFICE MEMORANDUM OF THE MINISTRY OF EXTERNAL AFFAIRS DATED 3.3.2008.**

RESPONDENTS' EXHIBITS:

ANNEXURE P1(a):	**A COPY OF WARRANT OF ARREST DATED 21.03.06 ISSUED BY THE EMBASSY OF THE UAE, NEW DELHI TO THE MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA.**
ANNEXURE P1(b):	**A COPY OF THE LETTER DATED 3.3.2008 OF THE MINISTRY OF EXTERNAL AFFAIRS TO THE MINISTRY OF HOME AFFAIRS, TO ISSUE SANCTION FOR PROSECUTION.**
ANNEXURE P1(c):	**A COPY OF THE GOVERNMENT LETTER NO.9/10/2008/JUDL. CELL, DATED 23.4.2008 FROM THE MINISTRY OF HOME AFFAIRS TO THE HOME SECRETARY, GOVERNMENT OF INDIA.**
ANNEXURE P1(d):	**A COPY OF GOVERNMENT LETTER NO.35128/M2/2008/HOME DATED 21.05.2008 TO THE STATE POLICE CHIEF.**
ANNEXURE P1(e):	**A COPY OF GOVERNMENT LETTER NO.35128/M2/2008/10/2008 HOME DATED 19.08.2009.**
ANNEXURE P1(f):	**A COPY OF GOVERNMENT LETTER NO.92/106/M2/2014/HOME DATED 27.10.2014**
ANNEXURE P1(g):	**A COPY OF THE REPORT OF THE DEPUTY DIRECTOR OF PROSECUTION, THIRUVANANTHAPURAM, SRI.NAGESH KUMAR.**

//TRUE COPY//

P.A. TO JUDGE

STK

P.D. RAJAN, J.

Crl.M.C. No.1055 of 2010

Dated this the 4th day of August, 2015

ORDER

This petition is filed under Section 482 Cr.P.C. to quash the First Information Report in Crime 18/10 of Valiyathura Police Station for offence punishable under Section 420 IPC. The allegation against the petitoner is that while he was working in Dubai, he purchased a car by availing finance from the Dubai Middle East Finance Company by a monthly instalment of 2731 UAE Dhirham. He gave 12 signed post dated cheques for the company. When cheque was presented for encashment, it was dishonoured for the reason of 'funds insufficient' and there was a debt of Rs.3,27,720/- towards the company. Accordingly, the Finance Company filed a complaint at Bur Dubai Police Station and on prosecution, the Dubai Misdemeanor Court on 25.02.01 sentenced the petitioner to one month imprisonment. Annexure A1 is the FIR, Annexure A2 is the true communication of the Embassy of UAE, New Delhi. Annexure A3 is the office memorandum of the Ministry of External Affairs. The grounds alleged for quashing the charge are absence of necessary ingredients to constitute offence under Section 420 IPC and he had already convicted by Dubai court for the offence of issuing cheque in bad faith. He had no knowledge about the case in Dubai and he was convicted in his absence. Therefore, the Crime 18/2010 registered against him is an abuse of processes of court.

2. Before implementing the above sentence, the petitioner left Dubai and reached in India. In the circumstance, Dubai Senior Prosecutor sent a report to UAE Embassy New Delhi, which was forwarded to the Ministry of External Affairs, India. When an offence is committed outside India, a direction was issued under Section 188 of Code of Criminal Procedure, from the Ministry of External Affairs of Government of India to the Home Department of Kerala, and Valiathura Police registered an FIR. In the circumstance, petitioner approached this court with a request to quash Annexure

A1 invoking the inherent jurisdiction.

3. The learned counsel appearing for the petitioner contended that no offence under Section 420 IPC will attract against the petitioner, since Dubai Government finally decided the matter there. Since the transaction between petitioner and company was a pure business transaction, the dishonor of cheque will not prima facie make out an offence under Section 420 IPC. Petitioner relied the decision of **Chary V. Martin 1982 KLT 427,** it was held as follows;

> "Even if there is a deception, civil wrongs which are to be dealt with by Civil Courts are not crimes to be punished by a Criminal Court. In this case, the cheque was issued for the value of goods already delivered. A post-dated cheque for payment of goods already delivered is only a promise to pay on a future date. If the promise was broken by the dishonour of the cheque the liability being only civil no criminal offence will be there. There is also no averment in the complaint that at the time when the cheque was issued the petitioners were aware that there was no money in the bank to honour the cheque or the

> petitioners did not intend to make sufficient funds available in their account by the time the cheque was to be presented for encashment. A subsequent failure to fulfil a promise by itself is not sufficient to infer a dishonest intention which is an essential ingredient for the offence under S.420 of the Indian Penal Code. A mere deception or a mere dishonest intention by itself is not a criminal offence."

4. In the counter filed by the respondent, State of Kerala submitted that the registration of crime by Valiyathura Police is proper and they are proceeding with the investigation. They could not obtain sufficient evidence in time during the period of the investigation. The de-facto complainant who is the representative of Dubai Middle East Finance Company and Manager of Habeeb Bank AG Zurich have to be questioned and their statement needs to be recorded. The original cheques involved in the case also have to be seized and which is to be identified through the witness. For further details, the investigation has to be conducted in Dubai. They are ready to complete the investigation within 6 months.

Since, the investigation has to be conducted in a foreign country, they have to obtain permission from Government of India. In the circumstance, in the interest of justice, respondents submitted that the petition may be dismissed.

5. The Asst. Solicitor General of India, in their statement contended that a warrant of arrest against the petitioner was forwarded to Ministry of External Affairs, Government of India from the Embassy of UAE, New Delhi as per letter dated 21.03.2006, in which they demanded the necessity of petitioner in their country, Dubai.

6. Section 188 of the Code of Criminal Procedure reads as follows;

> "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 such citizen, on any ship or aircraft registered in India,
>
> he 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:
Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.”

Section 189 of the Code of Criminal Procedure reads as follows;

“Receipt of evidence relating to offences committed outside India.-

When any offence alleged to have been committed in a territory outside India is being inquired into or tried under the provisions of section 188, the Central Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before a judicial officer in or for that territory or before a diplomatic or consular representative of India in or for that territory shall be received as evidence by the Court holding such inquiry or trial in any case in

> which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.”

Therefore, the above Section shows that, when an offence committed by a person outside India as described in Section 188, he can be dealt with at any place on which he is found. In such a situation, it does not matter whether he will come voluntarily or in answer to summons or under illegal arrest. This section mandates for the compliance of procedural formalities mentioned under Section 4 of Indian Penal Code and other penal laws which have extraterritorial application. The object of insisting the sanction of Central Government appears to prevent the accused person being tried over again for the same offence in two different places. This object is secured by refusing to extradite the offender, if he is wanted for being tried in a foreign country, subsequent to his trial in an Indian court, or by refusing to sanction the prosecution against him if he has been already tried in a foreign country in respect of the same offence. If the person has been convicted and sentenced to nominal punishment or has been acquitted after a colourable trial in a foreign court, and if he is afterwards found here in India, the Central Government might give the sanction to prosecute him in an Indian court for the same offence. The rule regarding sanction for the prosecution prevents a person from being tried twice for the commission of the same offence and ensures that person is not able to take advantage of a sham or colourable trial in a foreign country in order to avoid being tried here for that offence. The Central Government before granting sanction under Section 188 would take into account all aspects of the case. A Division Bench of this court in **Mohamed V. State of Kerala (1994)1 KLT 464** held that police can investigate into a crime committed in a foreign country. But in another decision, **Samaruddeen V. Asst. Director of Enforcement 1995 Cri.L.J.2825(Ker)** held that the court had no jurisdiction to direct investigation or trial of a crime committed by person in a foreign country without the sanction of the Central Government. In **Mohammed Sajeed K. V. State of Kerala 1995 Cri.L.J.3313 (Ker)** it was held that, the stage prior to the framing of a charge is an inquiry and the stage after framing charge is trial. The Court further ruled that what is prohibited in the proviso to Section 188 is only inquiry or trial without the previous sanction of the Central Government and not investigation by the police for the purpose of collection of evidence. Section 189 provides special rule of evidence and enables a court dealing with a case under Section 188(2) to give copies of deposition before a Judicial Officer in the concerned foreign country as evident in such a case.

7. India is a signatory to extradition treaty with Government of Dubai. According to the treaty, Ministry of External Affairs published the conditions in Extra ordinary Gazette No.422 dated 8.8.2000 of The Gazette of India. As per extradition treaty, the nationals of the Contracting

States shall not be extradited to the other Contracting State provided that the requested State shall submit the case to its competent authorities for prosecution if the act committed is considered as an offence under the laws of both Contracting States. As per Article 6(2), extradition may also be refused:

a) if the persons sought to be extradited was previously tried for the same offence for which extradition is requested and was acquitted or was convicted and had completed the sentence or is undergoing it;

b) if the criminal proceedings had expired or the sentence lapsed by time, in pursuance of the law of the requesting State, when the request for extradition was received;

c) if the offence was committed outside the territory of the requesting State, by an alien, and if it is not an offence under the law of the requested State.

As per Article 7, where the requested States refuses a request for extradition for the reasons set out under this

Treaty it shall submit the case to its competent authorities for prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a similar nature under the law of that State.

8. Article 5 of Indo - UAE Extradition Treaty excludes extradition of own nationals and at the same time oblige the requested State to prosecute its national in respect of the offence committed in the requesting State, if the act committed is considered as an offence under the law of both countries. Therefore, the Ministry of External Affairs requested the Ministry of Home affairs to examine the request received from UAE authorities. They informed that Ministry of External Affairs have no objection to locally prosecute the petitioner as per letter dated 3.3.08. The original documents have to be obtained for scrutinizing their evidence in India and the State Government has given direction to approach the ministry of Home Affairs for getting sanction under 188 Cr.P.C., if they are satisfied with the conduct of the prosecution of the

accused. Thereafter on 23.04.08, a letter was forwarded to Home Secretary, Government of Kerala to investigate and scrutinize the evidence against the petitioner. The State Government was also directed to furnish the proposal to the Ministry for consideration of grant of sanction as per Section 188 Cr.P.C. Petitioner has also already surrendered his passport pursuant to direction of this court.

9. The Inherent power of this court can be invoked to make such orders necessary to give effect to any order under the code or to prevent abuse of process of any court or otherwise to secure ends of justice. Petitioner was referred to the Dubai Misdemeanor Court on 22.01.2001 and he was sentenced for one month on 25.02.2001 in his absence. Accordingly a warrant of arrest had been issued against the petitioner. As per Annexure A1 report, petitioner availed a car loan from Dubai Middle East Finance Company and agreed to repay the amount by instalments. For that, he issued 12

cheque leaves for a total sum of Rs.3,27,720/-. When the cheque was presented for encashment, it was dishonoured. The matter was reported to Bark Dubai Police Station. On the basis of their report, prosecution was launched. Finally, they sentenced him for one month confinement. Annexure A2 is the report received from the Embassy of UAE to the Ministry of External Affairs, Government of India. The documents are also enclosed. The warrant of arrest, the facts of the case, the copy of the cheque leaves are also furnished along with Annexure A2. On the basis of that report, Government of India intimated the matter to Government of Kerala, and the above crime was registered. The State Government seeks 6 months time for obtaining the original cheque leaves and other relevant documents from Dubai. They need to interrogate the officials of the bank assured that they will complete the investigation within 6 months.

10. As per the treaty between India and UAE Government, they need not send the Nationals on the

basis of Extradition Agreement. Both Government respecting Article 5 of Extradition treaty, where it excludes extradition of own nationals. India need not send the petitioner to that country, if India Government prosecute the petitioner as per their own laws. Here, Government of India informed the Dubai Government about the present Indian law and prosecution initiated in the above matter. The responsibility of the investigating agency in India is to expedite the investigation and file a final report whether prima facie case is made out against the petitioner in India. They are also directed to verify the original records from Dubai and submit a final report at the earliest. When prima facie case is made out against the petitioner as per the FIR, it is not possible to quash Ext.P1 invoking the inherent jurisdiction. The first respondent has to obtain sanction from the Government of India for obtaining documents from Dubai and question the witnesses there. The first respondent assured that he will complete investigation after obtain sanction under

Section 188 Cr.P.C. within 6 months from the date of this order.

Hence I find, there is no merit in this petition and it is disposed of with the above direction.

Sd/-
P.D. RAJAN,
JUDGE

STK

//TRUE COPY//

P.A. TO JUDGE