

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

Cri.MC.No. 2668 of 2012 ()

**CRIME NO. 249/2008 OF POOJAPPURA POLICE STATION,
THIRUVANANDAPURAM**

PETITIONER(S)/ACCUSED :

**RAJESH NARAYANAN, AGED 36 YEARS
AUTHORIZED REPRESENTATIVE & CEO
M/S. RAMA SHIPPING SERVICES, 239, VAKIL GARDEN CITY
KANAKAPURA ROAD, BANGALORE-560 062.**

**BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.S.SANTHOSH KUMAR
SRI.V.A.JOHNSON (VARIKKAPPALLIL)
SRI.S.VINODKUMAR**

RESPONDENT(S)/STATE/COMPLAINANT :

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. M/S. HINDUSTAND LATEX LTD.
(A GOVERNMENT OF INDIA ENTERPRISES), LATEX BHAVAN
POOJAPPURA, THIRUVANANTHAPURAM, KERALA-695 012
REPRESENTED BY ITS COMPANY SECRETARY & ED
MR.V.A.SASIDHARAN NAIR.**

**R2 BY ADV. SRI.E.K.MADHAVAN
R2 BY ADV. SRI.V.KRISHNA MENON
R1 BY ADV. SMT.V.H.JASMINE, PUBLIC PROSECUTOR**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
09-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE-A1-TRUE COPY OF THE AGREEMENT/CONTRACT NO.RSS/HLL/ETA/IOF/01/07, DATED 22.08.2007 EXECUTED BETWEEN THE PETITIONER AND 2ND RESPONDENT WITH M/S.EMIRATES TRADING AGENCY.

ANNEXURE-A2-TRUE COPY OF THE BILATERAL AGREEMENT/CONTRACT DATED 22.08.2007 EXECUTED BETWEEN THE PETITIONER AND 2ND RESPONDENT.

ANNEXURE-A3-TRUE COPY OF THE LETTER DATED 06.02.2008 ISSUED BY THE 2ND RESPONDENT ADDRESSING TO THE BUYER.

ANNEXURE-A4-TRUE COPY OF THE BI-LATERAL AGREEMENT EXECUTED BETWEEN PETITIONER AND THE 1ST RESPONDENT DATED 06.02.2008.

ANNEXURE-A5-TRUE COPY OF THE E-MAIL DATED 25.03.2008 WRITTEN BY THE PETITIONER TO THE 1ST RESPONDENT.

ANNEXURE-A6-TRUE COPY OF THE ANALYSIS CERTIFICATE DATED 02.04.2008 ISSUED BY THE MITRA S.K. PRIVATE LIMITED CONFIRMING THE MATERIAL AT THE PORT YARD.

ANNEXURE-A7-TRUE COPY OF THE LETTER OF CREDIT APPLICATION AND THE AGREEMENT FOR OPENING AN IRREVOCABLE DOCUMENTARY CREDIT MADE BY M/S.EMIRATES TRADING AGENCY LLC, P.O.BOX 5239, DUBAI, UAE DATED 30.03.2008 TO THEIR BANKERS AT DUBAI, IN FAVOUR OF THE COMPLAINANT COMPANY.

ANNEXURE-A8-TRUE COPY OF THE COMPLAINT DATED 29.08.2008 GIVEN BY THE 1ST RESPONDENT.

ANNEXURE-A9-TRUE COPY OF THE FIR IN CRIME NO.249/2008 OF POOJAPPURA POLICE STATION DATED 02.09.2008.

ANNEXURE-A10-TRUE COPY OF THE MINUTES OF THE MEETING (MOM) OR 10.10.2008, SIGNED BY ALL THE RESPONSIBLE OFFICIALS OF THE COMPLAINANT COMPANY AND THE PETITIONER.

ANNEXURE-A11-TRUE COPY OF THE LETTER DATED 15.10.2008 SIGNED AND ISSUED BY MR.GIRISHKUMAR GM (P& CD)

ANNEXURE-A12-TRUE COPY OF THE LETTER DATED 20.10.2008 SIGNED AND ISSUED BY THE 2ND RESPONDENT WRITTEN TO THE BUYER INFORMING THE RECONCILIATIONS.

ANNEXURE-A13-TRUE COPY OF THE E-MAIL COMMUNICATION DATED 19.11.2008 SEND BY VINOD G.PILLAI TO THE PETITIONER'S COMPANY CONFIRMING THE PURPOSE OF VISIT, TIME AND DATE FOR THE SCHEDULED INSPECTION, QUANTITY ETC.

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ANNEXURE-A14-TRUE COPY OF THE LETTER DATED 01.01.2009 SEND BY VINOD G.PILLAI TO THE PETITIONER.

ANNEXURE-A15-TRUE COPY OF THE TEST REPORT DATED 08.12.2008 ISSUED BY THE ITLAB (GOA) PVT.LTD.

RESPONDENT'S EXHIBITS:

NIL

R.AV

//TRUE COPY//

PA TO JUDGE

K.RAMAKRISHNAN, J

CRL.M.C.NO.2668 OF 2012

Dated this the 9th day of April 2015

O R D E R

Accused in Crime No.249/2008 of Poojappura police station of Thiruvananthapuram District has filed this application for quashing the First Information Report under section 482 of the Code of Criminal Procedure (hereinafter called the Code).

2. It is alleged in the petition that the petitioner has been arrayed as a sole accused in Crime No.249/2008 of Poojappura police station alleging offence under section 420 and 406 of the Indian Penal Code.

3. The case of the defacto complainant-second respondent was that the petitioner was the Chief Executive Officer, M/s.Raman Shipping Services, Bangalore and the allegations was that he, in that capacity had received Rs.2,00,00,000/- (Rupees Two Crores) from the defacto complainant on 11.02.2008 as per Annexure-A1 agreement dated 06.02.2008 for conducting Iron Ore Business between the parties. But in violation of the terms and conditions of the agreement, the petitioner had not complied with the terms and conditions and that was done according to the complainant, with an intention to cheat the defacto complainant. According to the petitioner, there was a Tri-partite agreement namely,

Annexure-A2 and in fact certain conditions will have to be fulfilled by the defacto complainant for the purpose of performing the part of the petitioner, which the complainant had not complied with. Further, two cheques were issued as a security for the transaction for Rs.1,00,00,000/- each and it is purely a civil transaction and no criminal offence has been committed and there is an arbitration clause as in the agreement for resolve their dispute on the basis of the complaint given by the second respondent, Annexure-A9 First Information Report was registered as Crime No.249/2008 of Poojappura police station of Thiruvananthapuram District against the petitioner alleging offence under section 420 and 406 of the Indian Penal Code.

4. This court admitted the petition and granted a blanket stay of investigation earlier. Thereafter, a statement was filed by the Sub Inspector of Police stating that detailed investigation is required in this regard, and without going to the documents and the transactions entered into between the parties and examining the persons who involved in the agreement, no final conclusion can be arrived as to whether it is only a pure civil dispute or any criminal offence has been made out. So for that purpose, this court by order dated 11.06.2014 modified the stay order permitting the investigating officer to

proceed with the investigation and directing the petitioner to appear and co-operate with the investigation, if he received notice under section 41A or 160 of the Code and arrest of the petitioner alone was deferred and on that basis directed the investigating officer to file a statement regarding the present stage and they filed a statement dated 30.03.2015 stating that on the basis of the notice issued, the petitioner appeared and he is not having the original documents with him and the original documents are with the defacto complainant and verification of those documents are required for proper investigation and the complainant company has not produce the documents and on 30.03.2015 the counsel appearing for the second respondent submitted that they would co-operate with the investigation and inform the company about the allegations made in the factual report filed by the investigating officer.

5. Today, when the case came up for hearing, the counsel for the petitioner submitted that since the investigation is in progress and he is co-operating with the investigation, the petition can be closed leaving open his right to challenge the final report if any filed against him at a later stage. The counsel for the second respondent also submitted that the documents have been produced on 06.04.2015. Considering the facts mentioned in the statement filed by the investigating officer this

court feels that it is not necessary to stall the investigation as such because it involves the examination of documents, conduct of parties and also who is at fault in executing the terms of the agreement between the parties for which other persons from whom the ore will have to be collected are also to be questioned. Without going to those aspects, now it is not possible to come to the conclusion as to whether it is purely a case of civil nature and that can be possible only by conducting proper investigation by the investigating agency.

6. Considering the fact that the petitioner is co-operating with the investigation and still undertakes through counsel before this court that he will co-operate with the investigation, the court below is directed to release him on bail on such conditions as that court may deem fit to impose for that purpose and procure the presence of the accused for the purpose of trial or investigation. Further, the petitioner is also directed to appear before the investigating officer as and when required, for the purpose of investigation, when he gets notice from them for that purpose and co-operate with the investigation and the second respondent is also directed to co-operate with the investigation to find out as whether any criminal offence has been made out or not. If ultimately final report is filed and it goes against the petitioner, then he is at

liberty to challenge the final report before the appropriate forum in accordance with law.

With the above direction and observation, the petition is disposed of. Office is directed to communicate this order to the jurisdiction Magistrate within whose jurisdiction that Poojappura police station of Thiruvananthapuram District is situated.

Sd/-
K.RAMAKRISHNAN, JUDGE

R.AV

//TRUE COPY//

PA TO JUDGE