

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

Crl.Rev.Pet.No. 1740 of 2014

AGAINST THE ORDER/JUDGMENT IN CMP 3276/2014 of J.M.F.C.,
PAYYANNUR DATED 14-07-2014

REVISION PETITIONER(S)/COMPLAINANT:

LAKSHMANA BHATKA, AGED 36 YEARS,
S/O.M.V.BHAKTA, ADVOCATE, ENROLL.NO.1800/2009,
BHAKTH MUTT, CAR STREET, MANJESHWAR,
MANGALORE-575001 (FOR AND ON BEHALF OF FALAH A'YED
MUJUWALO AL DIHANI OF KUWAIT NATIONALITY).

BY ADV. SRI.P.B.AJOY

RESPONDENT(S)/ACCUSED/STATE:

1. IBRAHIM MOOSA ARAYA PURATH,
ISMALILI HOUSE, BEHIND K.M.M.SCHOOL, KAVVAYI P.O.,
PAYYANNUR, KANNUR-670307.

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

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 19-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.1740 of 2014

Dated this the 19th day of August, 2015

ORDER

The revision petitioner is the complainant in C.M.P. No.3276/14 of the Judicial First Class Magistrate's Court, Payyannur. The said petition was filed under Sec.190(1)(a) of the Code of Criminal Procedure, 1973 alleging the offences under Sec.403, 405, 408, 450 and 420 of the Indian Penal Code.

2. The case of the complainant is as follows: The complainant is a Power-of-Attorney holder of Falah A'yed Mujuwalo Al-Dihani of Kuwait nationality. The 1st respondent, who is an Indian, has availed a loan of a sum of KD (Kuwait Dinar) 19000, for which the 1st respondent had issued promissory notes two in

number, one for KD 14000 and another for KD 5000. A case No.1673/12 initiated in the Kuwait Court of First Instance by the complainant. The said court found that the accused herein is guilty and issued a judgment dated 25/6/2012 in favour of the complainant. The accused was ordered to pay the aforesaid amount along with the expenses; but the accused refused to pay the amount. Later, the accused escaped from Kuwait and now he is residing in an address as stated in the complaint which is within the jurisdiction of the Magistrate's Court. It is due to the deception and fraud, the complainant has sustained heavy wrongful loss and thereby the accused is guilty of breach of trust and cheating. Falah A'yed Mujuwalo Al-Dihani being a Kuwait national has no scope for appearing before the Courts in India personally and his absence is not intentional. So, the petitioner filed the complaint under the Power-of-Attorney executed in his favour by the original complainant. The accused has committed the above referred offences alleged against him and he is liable

to be prosecuted and punished accordingly.

3. The sworn statement of the complainant/the petitioner was taken and he deposed in terms of the complaint. A copy of the judgment of Court of First Instance of State of Kuwait and a copy of special power of attorney were produced along with the complaint. The trial court thereafter rejected the complaint for want of proper sanction as provided under Sec.188 of the Cr.P.C. The legality and correctness of the dismissal of the complaint on the above ground is challenged in this revision petition.

4. The learned counsel for the revision petitioner advanced arguments challenging the rejection of the complaint for want of sanction. The learned counsel submits that the Magistrate could not have rejected the complaint; but should have ordered an investigation by the police under Sec.202 of the Cr.P.C. According to the learned counsel, sanction as required by proviso to Sec.188 of the Cr.P.C. need only be produced prior to the start of trial/enquiry. There is no bar for ordering investigation of the case and

taking cognizance of the offence thereunder. It is also submitted that the petitioner has already applied for sanction from the Ministry of Home Affairs, Government of India, for prosecuting the 1st respondent and awaiting for sanction.

5. Per contra, the learned Public Prosecutor advanced arguments to justify the impugned order under challenge. According to him, enquiry under Sec.202 of the Cr.P.C. also could not have commenced, unless sanction under Sec.188 of the Cr.P.C. is produced before the court.

6. In view of the rival submissions, the short question to be considered is whether sanction under Sec.188 of the Cr.P.C. is required to be produced before the commencement of enquiry on a private complaint. On a bare reading of the proviso under Sec.188 of the Cr.P.C. itself, it could be seen that no offence committed out side India shall be enquired into or tried in India except with the previous sanction of the Central Government. Obviously, enquiry is also included under the said proviso. Admittedly, the

complainant has not obtained sanction under Sec.188 of the Cr.P.C. and he is awaiting for sanction on Annexure-A application filed by him before the Ministry. In view of the statutory mandate, the trial court is justified in finding that the court cannot proceed with the enquiry at this stage in the absence of sanction under Sec.188 of the Cr.P.C.

7. I do not find any illegality or impropriety in the above said finding. It is made clear that the petitioner/complainant has right to file the complaint afresh, after getting sanction under Sec.188 of the Cr.P.C., if the cause of action subsists at that time and this order will not stand in the way of filing a fresh complaint.

This revision petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge