IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2017

DELIVERED ON : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.636 of 2016

T.T.Paranthaman
S/o.T.P.Thangaraj …. Petitioner/Complainant

vs.

1.The Inspector of Police,
District Crime Branch,
Namakkal.
Crime No.1 of 2008

2.The Inspector of Police,
CBCID, Coimbatore.

3.S.Periyasamy
(R3 has been impleaded by this Court
under orders dated 21.02.2017) …. Respondents/Respondents

Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. against the order of learned Judicial Magistrate, Namakkal, passed in C.M.P.No.3120 of 2015 dated 15.02.2016.

For Petitioner : Mr.S.R.Rajagopal

For Respondents: Mr.M.Mohammed Riyaz,
Government Advocate [Crl.side]
[R1 & R2]
Mr.P.Kumaresan [R3]

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O R D E R

This revision arises against the order of learned Judicial Magistrate, Namakkal, passed in C.M.P.No.3120 of 2015 on 15.02.2016 dismissing the protest petition moved by petitioner.

2. Petitioner had preferred a complaint against four persons accusing them of offences u/s.120-B, 420, 406, 468, 471 and 506(ii) IPC. Petitioner, his wife and father are partners of M/s.Paranthaman Exporters engaged in the business of

manufacturing and selling of drilling rigs. Petitioner informed of forming a company under name M/s.Paranthaman Overseas Drillers Pvt. Ltd. on misrepresentation of great expertise in the field and promise of obtaining huge orders from Government of Omen made by first accused Periyasamy and 3 others. 50% of the holding was that of petitioner's party while the other 50% was that of Periyasamy and 3 other accused. Petitioner's further allegations were that believing the words of Periyasamy, petitioner invested a sum of Rs.1 crore in the company 'M/s.Power Engineering Services Company LLC' Oman Sultanate, that 70% of the stakes was held by Indian entity Paranthaman Overseas Drillers Pvt. Ltd. and 30% was held by Sulaiman Musallam, who was a local resident and citizen of Oman. A1 was entrusted with the entire administration of the company in Oman in the capacity of General Manager and he appointed V.Rajendran and V.Vinayagam as Senior Managers. Petitioner and his father had never participated in the day-to-day activities of the entity at Muscat and as requested by A1, drilling machines, accessories, equipments etc, were supplied towards completion of contract work of Power Engineering Services, Oman and necessary bills/invoices were also raised. A sum of Rs.5.86 crores is due and payable by A1. Petitioner was given to understand that Power Engineering Services, Oman, was functioning smoothly. There was delay in payment in spite of repeated reminders. Upon verification, petitioner came to know that A1 along with others had formed another company under the name and style of M/s.Power Tech Engineering Services LLC and used the materials supplied by petitioner for such company. After having had knowledge of the fraud played by A1, petitioner's father enquired him when he visited Coimbatore and demanded that he settle all the dues. As A1 refused and threatened petitioner's father with dire consequences, a complaint has been lodged. Case was registered in Crime No.1 of 2008 on the file of first respondent and on completion of investigation, a final report informing the case to be one of 'mistake of fact' was filed. Petitioner preferred a protest petition in C.M.P.No.1024 of 2010 on the file of learned Judicial Magistrate, Tiruchengode, which was allowed under orders dated 20.04.2010. Such order unsuccessfully was challenged by first accused upto the Supreme Court. Pursuant to transfer of investigation to the Deputy Superintendent of Police, Crime Branch, CID, under orders of this Court in Crl.O.P.No.10190 of 2010 dated 28.06.2010 and upon completion of investigation, a final report informing dropping of further proceedings on the ground of mistake of fact was filed. Challenging the same, petitioner moved a protest petition in C.M.P.No.3120 of 2015 which was dismissed by learned Judicial Magistrate, Namakkal, under orders dated 15.02.2016. Aggrieved, petitioner has preferred the present petition.

3. A1 has moved Crl.M.P.No.10233 of 2016 to implead himself. The thrust of learned counsel for petitioner's

submission more was that such petition to implead the accused ought not to be allowed than on the merits of the main revision case. On the merits of the main revision case, the submission of learned counsel for petitioner was that the final report informed that there was no Formal Mutual Legal Assistance Treaty between Sultanate of Oman and the Republic of India and such submission was wrong as learned Public Prosecutor at the Court below has admitted to the existence of such Treaty. The submission of learned counsel for petitioner was that acting in keeping with such treaty, documents, which according to petitioner, were forged by the accused could have been obtained and the absence to do so has rendered the investigation improper.

4. The statement in the final report regarding that there was no Formal Mutual Legal Assistance Treaty cannot be read out of context. Such statement is to be found in paragraph No.10 of the final report which reads as follows:

> '10) The allegation of forging the signature of defacto complainant's father Tr.T.T.Thangaraj in the minutes of meetings of Board of directors of M/s.Power Engineering Services was not made in the first information/complaint and also during subsequent investigations. This question of fact was raised by the defacto complainant only in the protest petition. Though it appears to be an afterthought of the defacto complainant, as per this Hon'ble Court's direction all the steps were taken to secure the disputed documents from the Sultanate of Oman. Investigation revealed that the alleged accused Tr.S.Periasamy as per Oman Law, filed the concerned disputed minutes of meetings with the Ministry of Commerce and Industry, Sultanate of Oman. There is no formal Mutual Legal Assistance Treaty between the Sultanate of Oman and the Republic of India to formally request the Oman authorities to send the disputed documents to this Hon'ble Court for subjecting them to forensic examination.'

In the light of what is above reproduced, it can be seen that petitioner's allegations of forgery were only an afterthought.

5. Learned counsel for petitioner strenuously contended that the decision of the Apex Court in Manharibhai Muljibhai Kakadia and another v. Shaileshbhai Mohanbhai Patel and others [2012 (10) SCC 517] to the effect that the accused/suspect arraigned in the complaint gets a right of hearing before revisional Court as is expressly provided in Section 401(2) Cr.P.C. notwithstanding the order impugned in revision is passed without his participation, would not apply in respect of cases arising out of a final report. Learned counsel referred to much

case law and took great pains to impress upon this Court that the decision in Manharibhai's case must be understood as relating only to complaint cases.

6. It is not for this Court to enter upon a hair splitting exercise. Rather, this Court is to follow the rationale of the decision of the Apex Court in Manharibhai Muljibhai Kakadia and another v. Shaileshbhai Mohanbhai Patel and others [2012 (10) SCC 517]. Section 401 Cr.P.C. reads as follows:

> "401. High Court's Powers of revision.- (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.
>
> (2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.
>
> (3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.
>
> (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.
>
> (5) Where under this Code tan appeal lies but an application for revision has been made to the High Court by any person and the High Court Is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

7. In the instant case, by virtue of the acceptance of the final report submitted by the investigating agency and dismissal of the protest petition, the accused in the case have obtained a right not to be proceeded against. If this Court is to interfere with the finding of Court below dismissing the protest petition, the effect would be that the right of being not proceeded against, which has accrued to the accused, would stand withdrawn. While so viewed, it abundantly would be clear that sub-section 2 of Section 401 Cr.P.C. which requires that 'No

order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence' will apply.

8. It is the contention of learned counsel for impleading petitioner/third respondent that a false case has been foisted against the impleading petitioner towards defaming him and to extort money. Learned counsel submits that in addition to submitting an explanation to the respondents, documents certified by Statutory Authority of the Government of Sultanate of Oman has also been produced. It is only the complainant and his father who approached the impleading petitioner and induced him to invest in the company 'Paranthaman Overseas Drillers Pvt. Ltd.' where he and his son hold 50%. Complainant and his father wanted to start a business at Oman, had gone over to Oman and started a company viz., Power Engineering Services LLC, in which Paranthaman Overseas Drillers Pvt. Ltd was 70% share holder and local partners held 30% share. Complainant and his father transferred the money of Paranthaman Overseas Drillers Pvt. Ltd to Power Engineering Services LLC as capital and immediately, within two days, complainant took an invoice for supply of machinery on behalf of Power Engineering Services LLC. Having done so, complainant and his father supplied second hand machineries to Power Engineering Services LLC and raised invoices for huge amounts and transferred all the amount to Paranthaman Exports. After swindling all the money, the complainant and his son stopped coming to Oman and thereby caused huge loss to Power Engineering Services LLC. However, when Power Engineering Services LLC again started its work, complainant and his father again intervened and promised to supply machineries for high profits but they failed to do so and thereby again caused huge loss. Since the petitioner's father is the major share holder in the Power Engineering Services LLC, he held meetings at Oman which were recorded and approved by Statutory Authority in the Sultanate of Oman, wherein it was decided to wind up operations of the company and to sell the same. Complainant's father insisted that all that was salvaged be given to him or to his personal company. Since the local law did not permit such transfer, the purchaser of the business agreed to settle the local dues and transfer money available to Paranthaman Exporters, the personal company of complainant's father. This arrangement was accepted by complainant's father and submitted by him to the statutory authority of the Sultanate of Oman. Even as stated by complainant's father, the entire transaction took place within the territories of Sultanate of Oman and was under the control and supervision of the concerned Ministries of the Government of Sultanate of Oman. Complainant's father has preferred the present complaint towards avoiding his travel to Oman to fulfil obligations. Complainant's father was the Managing Director of the Oman Company and he was

instrumental in closing and selling the same. Suppressing all this, a complaint has been preferred alleging supply and non-payment of dues towards avoiding liability. This apart, some unruly elements have sent e-mail to impleading petitioner's customers stating that they had arrested MD of Powertech Engineering LLC and would also arrest others, for which separate proceedings have been initiated. Learned counsel submits that the complainant's family has to pay huge sums of money to the impleading petitioner and towards avoiding the same, a false case has been preferred.

9. The final report inter alia informs thus:

> 'The Sultanate of Oman, Ministry of Commerce and Industry, Directorate General of Commerce, Muscut, in its letter No.MC1/411/7197/2015 dated 19.01.2015 stated that "The secretariat of the Commercial Register had repeatedly met your request and provided you with a "To whomever it may concern" certificate No.MC1/411/Certificate/2014 dated 19 December 2012 and another reply letter No.MC1/416/6948/2014 dated 17 September 2014. You are also provided with certified copies of the minutes related to both parties to the contract for the sales of activities. Therefore, we would like to inform you that it is no longer possible to provide you with any further details. At the same time, we would like to confirm that the Ministry approved commercial registration certificate and computer excerpts of the company constitute official substantive and final legal evidence as they are issued by a competent Government Authority in accordance with the applicable procedures and they may on no account be subject of an investigation by any authority whatsoever outside the Sultanate, as stated in yours previous letter dated 14 September 2014 in accordance with the internationally accepted norms. You are therefore required to comply with the applicable regulations"
>
> The board of partners of Power engineering services vide the dispute resolution dated 10.08.2007 consented to sell M/s.Power Engineering Services for RO 254,457 to M/s.PowerTech Engineering services and out of the sale proceeds consented to pay the amount due to M/s.PowerTech Engineering services i.e RO 205, 148/- and consented to utilize remaining sale proceeds for settling the debts with in Oman and they consented not to settle the liabilities due to creditors outside Oman including the amount

due to the defacto complainants firm i.e., Rs.5.86 Crore which at the conversion rate of 1 RO = Rs.120 works out to RO 488,333/- thus the contents of the deputed resolution dated 10.08.2007 or without any reason and thus unjustified. However the right of the defacto complainants partnership firm Paranthaman Exporters to recover their dues from M/s.Power Tech Engineering services would only be exercised by filing a commercial civil suit in Oman.

10. It is brought to notice by learned counsel for impleading petitioner and the position is not disputed by learned counsel for petitioner that the petitioner had filed a suit before the Council of Administration for Judiciary, The Primary Court, Seeb, Triple Panel in Commercial Case No.29/2011 praying as follows:

The plaintiff pleads to rule for her against the defendants and to commit them with the following:

1. To collectively or individually pay the value of the plaintiff's machineries and equipment of Al Quwa Engineering Services LLC, worth of RO 482,389.230.

2. To collectively or individually pay the plaintiff her share in the company worth of RO 104, 901.900.

3. To collectively or individually pay the plaintiff the value of the bank interest worth RO 204, 409 which accumulated due to purchasing machinery from India.

4. To collectively or individually pay the plaintiff a compensation of RO 5 million against profits missed or losses incurred due to their disposal of the company's assets without her consent.

The suit was dismissed by the Court of Sultanate of Oman under judgment No.29/2011 on 16.11.2015. Subsequently, appeal preferred before the Court of Appeal, Seeb, Sultanate of Oman in Appeal No.198/2015 also was dismissed under judgment No.112/2016 on 31.05.2016.

11. The failure of petitioner to inform his recourse to civil action throws the petitioner in poor light.

Finding no merits, the Criminal Revision Case shall stand dismissed.

-s/d-
Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate,
Namakkal.

2.Do-Thro The Chief Judicial Magistrate
Namakkal

3.The Inspector of Police,
District Crime Branch,
Namakkal.

4.The Inspector of Police,
CBCID, Coimbatore.

5.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.S.R.Rajagopal Advocate sr 25814
+1 cc to Mr.P.Kamaresan Advocate sr 26007

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