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Nazeer vs State

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Court : Kerala Orders

Decided On : Oct-18-2019

Judge : Honourable Mr. Justice R. Narayana Pisharadi

Appeal No. : Crl.MC/3289/2019

Appellant : Nazeer

Respondent : STATE

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI FRIDAY, THE 18TH DAY OF OCTOBER 2019 / 26TH ASWINA, 1941 CRIME NO.78/2019 OF Yeroor Police Station , Kollam PETITIONER/ACCUSED: NAZEER AGED 44 YEARS S/O.ABUBAKER, M.S.MANZIL, BHARATHEEPURAM P.O., ANCHAL, PUNALUR, KOLLAM BY ADV. SRI.B.MOHANLAL RESPONDENTS/COMPLAINANT:

1 STATE REPRESENTED BY THE STATION HOUSE OFFICER, YEROOR POLICE STATION, KOLLAM DISTRICT, THROUGH THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ENRAKULAM 2

MUHAMMED SALIM, S/O. ISMAIL PILLA, ASMAS VILLA, PATHADAY,YEROOR VILLAGE, ANCHAL, PUNALUR, KOLLAM R2 BY ADV. SRI.ANIL K.MOHAMMED R2 BY ADV. SRI.V.S.MANSOOR R2 BY ADV. SRI.P.G.GOKULNATH R2 BY ADV. SMT.BINU K.B. R1 BY SRI E C BINEESH-PP THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON

16.10.2019, THE COURT ON 18.10.2019 PASSED THE FOLLOWING: R. NARAYANA PISHARADI, J ---------- Crl.M.C No.3289 of 2019 ---------- Dated this the 18th day of October, 2019

ORDER

This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') for quashing Annexure-A1 first information report in Crime No. 78/2019 of Yeroor Police Station, which is registered against the petitioner under Section 420 IPC.

2. The case against the petitioner has been registered on the

basis of the first information statement given to the police by the second respondent. The material averments in his statement are as follows: The petitioner/accused came to his house and told him that he is working in gulf country. He made the second respondent to believe that he was ready to conduct business in partnership with the son of the second respondent who was in Oman. He told the second respondent that he would purchase goods from the shop of his son in Oman and give him the profit. Thereafter, the petitioner went to Oman

and met the son of the second respondent. He took goods worth about Rs.30,00,000/- from the fruit shop of the son of the second respondent and sold them but he did not pay him the money.

3. Heard the learned counsel for the petitioner and the second respondent and the learned Public Prosecutor.

4. Learned counsel for the petitioner submitted that the case

against the petitioner is not maintainable for two reasons: (1) The allegations in the first information statement do not constitute the ingredients of an offence punishable under Section 420 IPC. (2) The offence allegedly committed by the petitioner outside India cannot be investigated without the sanction of the Central Government in view of the bar contained in the proviso to Section 188 of the Code.

5. There is no merit in the contention that the averments in the first information statement do not constitute the ingredients of an offence punishable under Section 420 IPC. The averments in the complaint have to be considered as a whole to find out whether they

disclose commission of any offence. The son of the de facto complainant would not have entered into any transaction with the petitioner, if the petitioner had not made him and also the second respondent to believe that he would take the goods from the shop and sell them and pay them the money. The first information statement is given by the father of the victim. It may not contain all details with regard to the transaction. The case is at the investigation stage. Only a detailed investigation can reveal the nature of the transaction

between the parties. Prima facie, the averments in the first information statement reveal that the petitioner had deceived the son of the second respondent and cheated him.

6. There is also no merit in the contention of the learned

counsel for the petitioner that sanction of the Central Government is required for conducting the investigation of the case. The proviso to Section 188 of the Code states that when an offence is committed outside India, by a citizen of India, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government. What is prohibited under the proviso to Section 188 of the Code is inquiry or trial without the previous sanction of the Central Government. Investigation of an offence punishable under the Indian Penal Code and alleged to have been committed outside India by an Indian citizen

does not require sanction of the Central Government under Section 188 of the Code (See Muhammad Rafi v. State of Kerala: 2009(1) KLT 943).

7. No other ground to quash Annexure-A1 first information

report has been urged by the learned counsel for the petitioner. Consequently, the petition is dismissed. Sd/- R. NARAYANA PISHARADI JUDGE lsn APPENDIX PETITIONER'S/S EXHIBITS: ANNEXURE-A1 THE TRUE CERTIFIED COPY OF THE FIR AND FIS IN CRIME NO.78/2019 OF YEROOR POLICE STATION IN KOLLAM DISTRICT ANNEXURE-A2 THE TRUE COPY OF THE EMIGRATION AND VISA DETAILS OF THE PETITIONER RESPONDENTS EXHIBITS: NIL TRUE COPY P.A TO JUDGE LSN

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