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BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT CHAVAKKAD

C.C. No. of 2012

Complainant:

Panikkaveetil K. Jabir, Ovungal, Chavakkad, Thrissur District, Kerala State, now residing at 5th Floor, Metro Plaza Building, Market Road, Kochi - 682014.

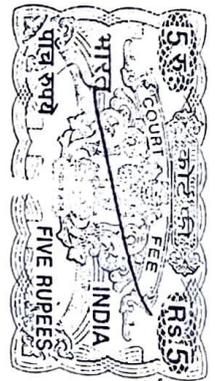
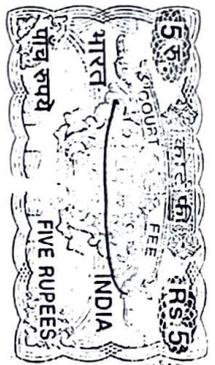
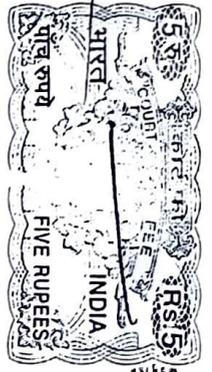
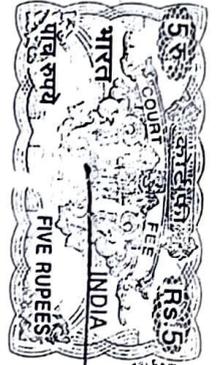
Vs

Accused:

Shri.Panikkaveetil Abdul Jaleel, S/O. MoideenKutty, PanikkaveetilKottukkal, Alumpadi, P.O.Chavakkad, Now residing near Pookalathai Temple Brahmakulam, Thykkad.

COMPLAINT FILED U/S 190 r/v 200 OF THE CODE OF CRIMINAL PROCEDURE

1. The complainant and the accused are brothers. Both are citizens of India. The present complaint is filed for the commission of offences punishable under section 403,406 and 420 of the Indian Penal Code, committed by the accused and thereby obtained an illegal gain of about Thirty Crores of Rupees.
2. The complainant is a qualified Mechanical Engineer, obtained his higher Diploma in Electro-Mechanical Engineering (M.E), from Victoria College of Engineering, Bombay. He had valuable experience in the said field by working in projects of International Repute like Voltas and Lufthansa in India.
3. The complainant on 01.06.1979 proceeded to UAE for starting business there with his expertise in the above said field. Due to his dedication and hard work, he could establish a prosperous engineering establishment under his ownership in Abu Dhabi, U.A.E., in 1982. It was sponsored by Mr. Isa Ahamed Jafar Hasan Jafar, a native of Abu Dhabi from 1985 onwards. (A sponsor is also called as 'sleeping partner') The business carried on under the name and style of 'Ramla Electro- Mechanical Establishment' registered quick prosperity by efficient and satisfactory services rendered by it in various activities connected with Electrical Engineering, sale and installation of HVAC plants, elevators, fire and safety equipments, Oil & Gas, building demolition and other such activities. By his dedication and perseverance, the complainant could acquire the



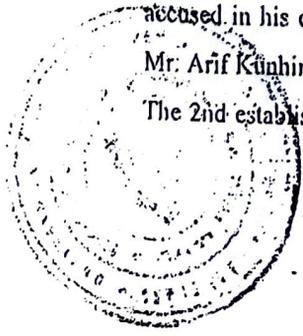
Jabir P.K.

confidence and goodwill of various customers including Royal Families of the UAE.

4. In early 1990, the company has awarded many demolition contracts including the first seven buildings of the ruler of Abu Dhabi. The Establishment which was operational at Shaikh Saif Bin Muhammed Al Nahyan building also had a warehouse block wherein many costly instruments were kept. A mezzanine floor that was fully occupied by Electro Mechanical Equipments, Central Chillers, compressors, elevators, safety equipments, air compressors, scaffolding materials etc. The complainant had also invested a fair amount of money for the construction of two, three bedroom apartments, workers accommodation in the compound. The total estimated value of the aforesaid establishment is calculated worth Rs.15 crores (in the year of 1995), earning an annual income of more than Rs.2.5 crores. The true copy of the trade license is produced as Document No.1

5. The accused has studied only up to S.S.L.C. class. And being jobless he also was intending to go abroad. But due to his lack of technical / academic qualifications, he could not make it by his own. And out of fraternal affection, took various steps to help the accused to better his prospects. Later the complainant issued a work-visa to the accused which enabled him to proceed to U.A.E. The accused was one the Visa holders (Visa No.10469/A/dated: 3-6-1985) of the said 'Ramla Electro-Mechanical Establishment' and was working under the complainant's sponsorship. Initially the accused started functioning as salaried employee receiving about UAD 1500 per month (equivalent to Rs.15,000/-) in addition to free accommodation provided by the complainant.

6. In 1987, the complainant was started his 2nd establishment, a Trading firm under the license of "Summer Pool Building Material Trading Est" which was sponsored by Mr. Isa Ahmed Hasan Jafar. The complainant was the sole investor of the firm, authorized to Mr. Arif Kunhimon, the complainant's brother-in-law to work on his behalf and remunerated for the services rendered. The establishment's showroom was occupying an entire ground floor of a Nine Storey Building, located on the Airport Road; Abu Dhabi. The complainant was greatly affected because of Mr. Arif Kunhimon consented to collude with the accused in his efforts to transfer the assets, that has been placed in their trust. Mr. Arif Kunhimon, thereafter is working along with the accused in Abu Dhabi. The 2nd establishment of the complainant was worth 2.5 million UAE Dirham



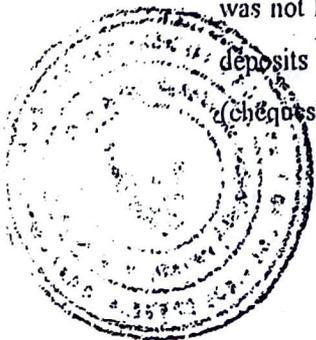
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(in the year of 1995) and the average earnings per year was more than 45 lakhs INR.

7. On 15/05/1990, the petitioner entered in General Contracting Business with own investment in infrastructure, licensing, bond, guarantee etc. The 3rd concern was started for general execution of contracting works namely "M/s. Premier General Contracting & Maintenance Est" under the license to Mr Isa Ahamed Jafar Hasan Jafar. It was registered with Onshore and Offshore; Oil & Gas Sectors, PWD, other Government and Semi-Government Companies in the UAE. The license was 100% local ownership, in view of getting access to the government tenders. The law of the said land restricts foreign nationals participating into the large type of PWD Tenders and other Government/Semi Governmental Tenders and hence the license of 'Premier General Contracting' was registered in the name of the native of UAE. That was under the said circumstance, the license happened to be in the name of the said person and in fact the entire assets of the firm was owned by the complainant. To support this, Isa Ahamed Jafar Hasan Jafar, in the capacity of license holder, had executed a Special Power of Attorney, through the court of Abu Dhabi, authorizing the complainant for the entire activities of the company without holding him responsible for any financial liabilities. He also authorized the complainant, that the complainant can fully or partially transfer this authority to any other person. The Special Power of Attorney is produced herewith as Document No.2

8. The complainant had developed various commercial activities like execution of general contracts, land and marine services for petrol and gas fields etc. The 3rd establishment of the petitioner was worth more than 10 million UAE Dirham (10 crores INR) and average annual earning was more than 2 million UAE Dirham (2 crores INR).

9. The complainant was having bank accounts on company names as in the following. (1) National Bank of Abu Dhabi of Ramla Electro Mechanical Establishment (2) National Bank of Abu Dhabi of Premier General Contracting Est. and (3) The British Bank of the Middle East. There were bid bonds, performance bonds and surety bonds etc., for the benefit of complainant. There was not less than 4.5 lakhs UAE Dirham (45 lakhs INR approx.) as funds and deposits in the bank accounts. There was also cash and cash equivalents (cheques) over 8 lakhs UAE Dirham (80 lakhs INR approx.) in the office locker.



10. A great calamity befell the complainant in 1995. There was a business transaction with a UAE local person covering a building proposed to be leased out for a sum of 5,40,000 UAE Dirhams. When a dispute arose with the said UAE business associate, Hassan Saeed and when the influential UAE person resorted to high handed activities, thought of reckless revenge against the complainant, the complainant, on the basis of legal advice, instituted a Civil Suit on 26-20-1995.

11. Though the complainant had acted only as a law abiding citizen, and in accordance with legal advice secured in that behalf, and had only sought relief from a Court of justice, Hassan Saeed took it as a personal affront and planned and executed illegal and violent activities against the complainant defying, all legal provisions and principles of fair-play. The Police Officials colluded with him. Making a forcible entry into the complainant's place, the complainant was threatened to withdraw the Civil Suit. The complainant could not yield to such illegal and unjust demands and therefore refused to accede to the illegal and unjust demand.

12. Taking advantage of the situation prevailing in that country and securing the help of police even by resort to all unfair means, Hassan Saeed and his men ransacked the entire office of the complainant. He also went to the extreme step of getting the complainant arrested and sadistically tortured. He was subjected to the greatest ordeals by being taken to the jail and illegally kept in prison, in total violation of all Human Rights.

13. The violation of Human Rights continued unabated, as is the general situation in that country. Only after four months of life wrongful arrest and detention, a false case was registered against the complainant. Untold sufferings were inflicted on the complainant as an under-trial prisoner.

14. The innocence of the complainant had been ultimately upheld by the Courts in U.A.E. The Trial Court acquitted the complainant of all the charges leveled against him and even ordered an enquiry about the conduct of the Police Officials. The Appellate Court also upheld the finding of the Trial Court and commended adversely and strongly against the illegal and high-handed acts of the officials.

15. An excerpt from the appellate judgment is as follows:-



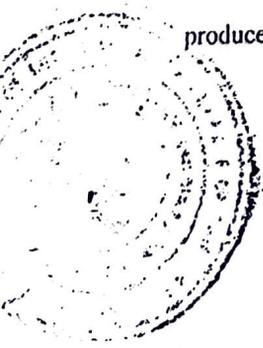
"Verily the Islamic law and the entire positive laws have honoured man and protected his freedom, his honour, his property and his soul. Hence, if man was killed while protecting these, he is considered to be a martyr. And limitation of his freedom without any right is an unforgiving crime and the same is mentioned in the provisions of article 2 and 3 of the penal procedure code. And it is proved in this case that the policemen along with the local went to arrest the accused, without any right and curtailed his freedom".

The detailed judgments pronounced by the Legal Court of First Instance, Abu Dhabi and the Apex Court of Abu Dhabi in the matter. The same is produced herewith as Document No.3

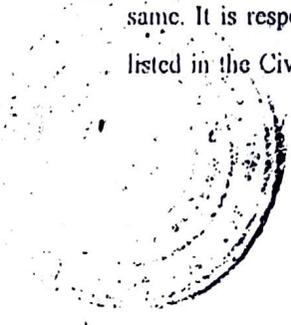
16. In the wake of the concurrent judicial findings of the Court, he should have been restored to his former status and position and adequately compensated for the mental agony and suffering and pecuniary losses suffered by him. Unfortunately, the Police Officials acted in total defiance of the findings and sentiments expressed by the judicial establishments of the country. On 28-9-1986, they resorted to the high handed action of deporting the complainant to India in total negation of Human Rights and principles of law. In the passport, they endorsed 'NO ENTRY'. The complainant was not given an opportunity to make any representation against making such an endorsement which would deprive him of his life and liberty as safeguarded under the domestic law, the international law and other Laws.

17. The complainant endeavoured to seek relief against the high-handed action of the Police Officials and the Government of UAE under which they were functioning. However, the absence of legal mechanism between the States had been obstructing the complainant to obtain justice from the cruel and illegal actions of the officials and Government of UAE.

18. The complainant felt that he could have at least a retrieval of the assets he had left behind in U.A.E. and which had been entrusted with his own brother, the accused. The complainant had placed total confidence and trust in his young brother who was working under his sponsorship. When the complainant was incarcerated in prison, a Power of Attorney was executed in his favour on 03-08-1996. The various powers and authorities which could be exercised by him are referred to in the said Power of Attorney, evidenced by proceedings number 646/1996 of Abu Dhabi Court. The true copy of the Power-of-Attorney is produced as Document No.4



19. The Power of Attorney was given to him by the complainant as he had chosen him as trustworthy. Under the said Power-of-Attorney the accused was authorized by the complainant only as his agent to attend to his business activities including Ramla Electro-Mechanical Establishment and Premier General Contracting Est., at Abu Dhabi, U.A.E. Thus the entire assets and contacts including performance-bonds and guarantees in various banks that belongs to the complainant, were in the possession and control of the accused as the agent of the complainant. The entire properties were entrusted to the accused in trust and the accused was having absolute dominion over the properties of the complainant. And the accused was bound under law to protect the interests of the complainant who was the Principal. The accused doesn't have any Rights to sell or alter the establishments. Having regard to the circumstances, the complainant also had a fiduciary relationship towards the accused. The complainant had done this in trust and confidence to the accused.
20. The complainant was under the bona-fide impression that the accused will perform his duties honestly and legally. Initially, the accused used to communicate with the complainant, making the complainant believe that he was properly managing the establishments of the complainant. Later the accused took his family to UAE and they started a spendthrift way of life there with the assets of the complainant.
21. The complainant has been suffering all through ever since he had been deported without any asset whatever to India. The entire assets and facilities and business contacts have been brought to the personal possession and enjoyment of the accused, despite an obligation to render accounts to the complainant, in proper discharge of the authority he had been given and the trust which had been reposed in him. The accused made a meager payment of Rs.20,000/- per month for a short period without disclosing anything regarding the business and its profits.
22. The complainant came to know that, the accused was diverting the funds involved in the civil suit for his personal gains. That too without proper justification and without due respect to the complainant. The accused has settled the legal-suit involving 5,40,000.00 UAE Dirhams and received the fruits of the same. It is respectfully submitted that, there were many serious complications listed in the Civil Suit against the local as a Landlord. An amount worth UAE



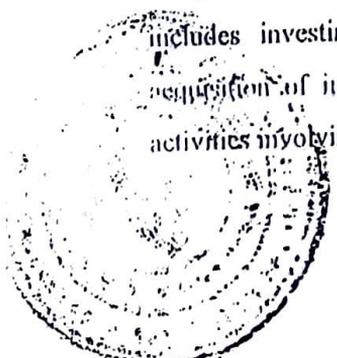
Dirham 3,00,000.00 also was due to the complainant for renovation works on the building leased that includes the cost of material and manpower. The innocence of the complainant and the conspiracy on the part of the local Hassan Saeed were the important and thrusting points in the case. However, the accused misused the power of attorney provided and made an out of court settlement for his own interest. The accused had also withdrawn 74000 UAE Dirham, that was deposited by the complainant in the court of Abu Dhabi, without the knowledge of the complainant.

23. When coming to know about all these misfeasance by the accused, the complainant was constrained to revoke the power of attorney granted to the accused On 06-05-2004, a fresh Power of Attorney was executed in favour of M.Mohammed Sheriff, the father-in-law of the complainant. He went to Abu Dhabi to have his accounts settled and the assets ascertained. In spite of the meetings and discussions between Mohammed Sheriff and the accused, the accused defiantly refused to furnish accounts and resisted the attempts to take stock of the assets of the complainant.

24. In spite of all such steps, the complainant felt that a final attempt should be made to have the matters amicably settled taking into consideration the fraternal relationship. A lawyer's notice was accordingly sent on 12-3-2005 to the accused seeking the restoration of the complainant's assets entrusted with the accused. A true copy of the lawyer's notice is produced as Document No. 5

25. The accused significantly enough, did not respond to the demands contained in the lawyer's notice. He did not even care to send a reply to the lawyer's notice. It is submitted that this conduct on the part of the accused has great significance in the further actions and events which followed.

26. The complainant came to know about the acquisition of assets by the accused in Mammiyoor and Bramakulam having extents of 35 and 31 cents respectively by investing through Document Nos. 1416 /2002 and 1417 / 2002 of SRO Kottapady, within the jurisdiction of the Court of the Judicial Magistrate, Trichur. It was also understood that the accused has purchased landed property at a prime location at Guruvayoor. Known investment of the accused has also includes investing in businesses and commercial concerns in the UAE, acquisition of immovable property on benami names etc. There were other activities involving making fixed deposits and purchasing shares by the accused.



-19-

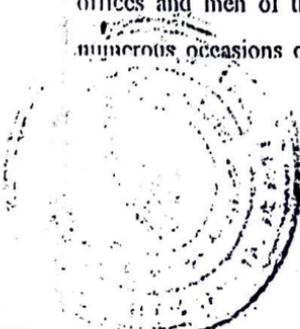
In law, all those assets earned through the deployment of funds, which had come to the accused as an agent.

27. Though the business establishments were entrusted to the accused only for the purpose of managing them, contrary to the terms of agency created under the power of attorney, the accused had diverted the assets of the complainant without due or proper account as obligated under the law. Sale of valuable materials were effected and amounts were withdrawn from banks without any consent or approval from the complainant, who was the real owner of those assets. These were against the specific legal contract between the parties.

28. If the complainant could have by any means realized that the representation was fraudulent and dishonest made by the accused that he will keep the properties in trust to the complainant and will do the business for and on behalf of the complainant, the complainant would not have given the power of attorney to the accused. Thus by playing fraud and deception, the accused had gained unlawfully and the complainant has sustained an unlawful loss, that is estimated about Rs.30 crores by about 1995 with an annual earnings of Rs.5 crores. (other than Work Contracts, Human resources, Brand value & Reputation, including the goodwill of his business establishments, which were solely and exclusively earned and possessed of by the complainant with his untiring efforts, over a period of nearly two decades). Thus the accused had committed criminal misappropriation of the funds and had also committed criminal breach of trust punishable under Section 403 and 406 of the Indian Penal Code.

29. Thus, being aggrieved by the offence the complainant has filed a complaint against the accused before this Honble Court, the Judicial First Class Magistrate, Chavakkad, a Criminal M.P.No.6066 of 2008, that was forwarded to the SHO of police Guruvayoor, for investigation. Accordingly, the police registered Crime No. 437 / 2008 of Guruvayoor Police Station and without having any useful investigations, and with the concurrence and connivance of the accused, it has referred the matter as Mistake of Fact. Nevertheless no notice has been received by the complainant from this Honble Court.

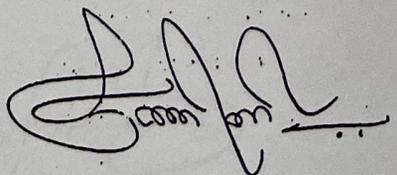
30. There are strong indications of undue illegitimate influence operating over the offices and men of the local Police. Though the complainant appeared on numerous occasions on the direction of the Police officials, & visibly hostile



20

attitude was adopted by them. Virtually, the complainant was treated as if he was the accused and not a complainant.

31. Being totally unsatisfied with the investigation by the police, the complainant moved the Honble High Court of Kerala in WP (C) No. 15905 / 2009 for an effective investigation by another competent agency. But since the police has filed a final report in the matter, the Honble High Court was pleased to close the matter with an observation that the remedy of the complainant lies in filing a complaint U/s 200 of Cr.P.C and hence the complainant is before this Honble Court in the present proceedings.
32. The final report filed by the police is absolutely baseless and is based on frivolous and erroneous considerations. The fraudulent and deceiving character of the accused was clearly visible from the false story narrated before the Sub Inspector of Police, Guruvayoor. He said the complainant was imprisoned in Abu Dhabi for his criminal deeds and was subsequently deported and so, he is an ex-convict; none of the establishments were owned by the complainant, and the complainant was a debtor, so, he was forced to settle all the dues. The accused had also explained about his creation of wealth through real estate investment, that he purchases land mass at INR.7 Lakhs and sell it at afterwards a rate INR.35 Lakhs!
33. Factually, the complainant was an honest and truthful businessman, who was trapped in a criminal case in Abu Dhabi. This was the beginning of the case. The complainant was arrested soon thereafter, put in jail, tortured brutally and ultimately, the lower Court and the Apex Court of Abu Dhabi had declared him innocent of the charges leveled against him. In addition, the UAE authorities were directed to compensate the complainant for all the sufferings, prestige, dignity and other damages. On the contrary, the accused along with his allies could "successfully" paint-brush the complainant as a "criminal, without due respect to his dignity". The accused, thereby defamed the complainant with fault, amounting to defamation for both slander and libel claims.
34. The accused took greater advantage of the unlawful order of deportation, without revealing the factual position of acquittal of the victim by both the Courts, the legal Court of First Instance and the Apex Court of Abu Dhabi vide its order referred to above. Soon after the deportation, the accused started pretending to be the actual owner of the entire business empire that factually



-21-

belonged to the complainant. He started business in a style that he felt correct. Subsequently, he took his entire family members to Abu Dhabi, started a luxurious life there, invest heavily in real estate, properties and other ventures and so on. On being deported to India, the complainant had made very sincere attempt to regain his business in Abu Dhabi, but all these attempts were thwarted by the accused. Company staffs including engineers, sub-contractors and well-wishers who are faithful and loyal to the complainant were harassed by the accused. Ultimately, most of them left the establishments of the complainant. Others were threatened or made to compromise with the accused and continued working under the accused.

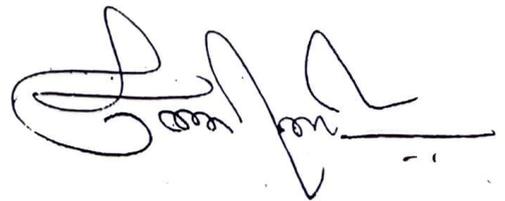
35. The conduct and behavior of the accused did clearly indicate about the evil intentions, and the commission of the grave crimes of criminal breach of trust and cheating. The accused has to answer for his misdeeds and his stonewalling is merely delaying the inevitable. The following criminal actions by the accused are the solid evidences supporting this claim.

a) The accused, by taking wrongful benefit of the General Power of Attorney given by the complainant, sold out the entire properties of the two concerns (1) 'Ramla Electro-Mechanical Est.' (2) 'Summer Pool Building Material Trading Est.' and further its active licensing certifications.

b) Subsequently, the two, the accused and his companion Mr. Arif Kunhimon (the person who was authorized to manage the Summer Pool Trading Est) who was the visa holders of the above concerns respectively, joined in 'Premier General Contracting Est', the 3rd establishment which really belong to the complainant as principal. A true copy of the 'List of workers - Issued by labour dept., Abu Dhabi' is produced as Document No. 6)

c) Later, the accused was changed the style and activities of this major Premier General Contracting Est., to that of a mere maintenance company without due respect or knowledge. (A true copy of the modified license is produced as Document No. 7)

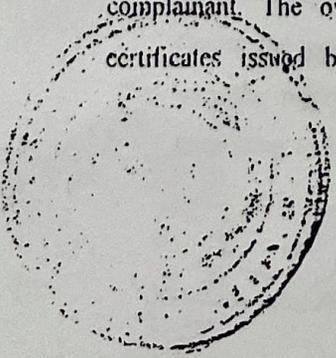
d) Thereafter, the accused has executed a new 'Special Power of Attorney', in order to reflect the above visa-changes. By doing this, the accused was tactfully discarded the previous 'Power of Attorney' given by the complainant. Here the accused was authorized the entire activities and financial liabilities of the said company. It



constitutes as a clear-cut evidence of ownership of the establishment; the way it was transferred to the accused. Moreover, the accused is being enjoyed all rights and freedoms as an absolute authority of the said establishment, although he was only an under educated 'Wiring Electrician' by trade. (The same can be verified with documents Nos.2;4;6&8) (A true copy of the new 'Special Power of Attorney' is produced herewith as Document No. 8)

36. The criminal actions are solid evidence and could be easily established by a perusal of the documents already furnished to the Sub Inspector of Guruvayur Police Station. The S.I. of Police could have easily verified the facts on a scrutiny of the documents presented before him by the complainant. Instead, the two Sub Inspectors of Guruvayoor, Mr.M.Surendren S.I.of Police and Mr.A.Premjiith S.I.of Police, who were in-charge there on two different occasions when the complainant's case against the accused was being investigated, took a false stand camouflaged by the influence of the accused. Resultantly, they were put to heavy loss of complainant's assets, mental torture as well as his dignity.

37. They had recorded statements from the dependents of accused, who allegedly stated that the accused had no intention to cheat the complainant. The aged parents, who made the statements, were under the influence of accused. A brother, who also made a similar statement, works on behalf of the accused, for his real estate dealing in Kerala. (All the three residing together, in same house) The offence of cheating, breach of trust and criminal misappropriation, being a purely inter-party offence, the statement of any other witnesses has no relevance in the matter while considering the ill will of the accused that resulted in unlawful gain to him and unlawful loss to the complainant. The police have not enquired about the unaccountable accumulation of wealth by the accused and had it been done by them, that would have exposed the illegal gain made by him. The police also have come to a conclusion that the complainant has misled them by saying that he owned the business concerns in UAE, by concealing the fact that the establishments were owned by another native of UAE. This also is absolutely baseless since the complainant has already explained to the police that Ramla Electro-Mechanical was fully owned by the complainant. The ownership was clearly mentioned on both the license certificates issued by Municipality of Abu Dhabi and the Chamber of



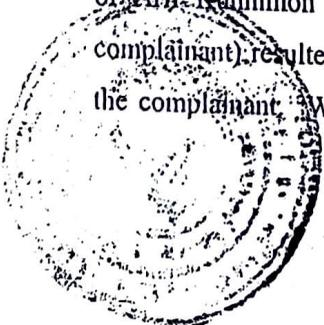
Commerce of Abu Dhabi, UAE (Originals are available along with English translation)

38. A huge amount to the tune of more than Rs 30 crores has been taken by the accused in 1996 from the complainant's establishments in UAE by acting on the basis of a power of attorney given to him bona-fide, to act as an agent on behalf of the complainant. The anguish resultant from the deprivation of such a huge sum of money earned only through untiring personal efforts of the complainant causes mental depression which will virtually make the life only a vegetable existence.

39. In the aforesaid circumstances, the final report filed by the police in Crime No. 437 / 2008 is only to be rejected and the present complaint is to be taken on file for the offences punishable U/ss 403,406 and 420 of IPC.

40. The complainant has witnesses and documents to prove his case. Witness No. 2, Mr. C.P. Paul, who was working in an Engineering company in Abu Dhabi, with whom the complainant had business connections in Abu Dhabi, will be able to explain at the court, that complainant was owned the establishments and that, he knows the facts. Witness No. 3, Mr. M.M.Shereef, was the second power of attorney holder of the complainant and he visited Abu Dhabi twice to settle the dispute. Witness No. 4, Mr. A.V.Mohanan Venghad, a long-time intern at Al Wathba Prison, Venghad had known the facts, the complainant was incarcerated just below of his cell which was meant for non-convicted prisoners. So, he can well explain that the complainant was not a convicted prisoner and he knows that, the complainant had received the Judgment in his favour.

41. Witness No. 5, Mr. Arif Kunhimon is the complainant's brother-in-law. "Summer Pool Building Material Trading Est", the 2nd establishment of the complainant was managed by him. Mr. Arif Kunhimon was put in such an important and key position in the said "Trading Est" taking him into deep confidence and faith. He was also a signatory to the "Power of Attorney" which was given to the accused by complainant. As such, he should have been very sincere and responsible to the complainant in view of the fact that he is a close relative (brother-in-law) of the complainant. The mala fide activities of Arif Kunhimon who colluded with the accused (a brother of the complainant) resulted in irreparable economic loss and mental agonies to the complainant. When both, the accused and Arif Kunhimon betrayed



24

him, he received the severe back-stab and became ineffective in his efforts to revamp his business in Abu Dhabi. Mr. Arif Kunhimon thereafter joined in the company belongs to the accused in Abu Dhabi. In the above background, Arif Kunhimon is listed as Witness No.5, to testify his malpractices.

42. Sanction from the central government is not required in the above matter U/s 188 Cr.P.C The complainant has witness and documents to prove his case. The accused has retained the proceeds of the offence of breach of trust, criminal misappropriation and cheating and invested the same in land at places within the territorial jurisdiction of this Hon'ble Court. The accused is also staying within the territorial jurisdiction of this Hon'ble Court. The complainant lost his properties, those were entrusted to the accused and hence the consequence of the offence is ensued at Chavakkad, the permanent residence of the complainant. And hence this Honble Court has jurisdiction to try the matter.

In the circumstances it is humbly prayed that this Hon'ble court may be pleased to take cognizance of the matter, issue process against the accused and punish him in accordance with law.

Dated this 2 Day of October 2012.

Panikkaveetil K. Jabir
Complainant

Counsel for the Complainant

By Order

Junior Superintendent
Court of the Hon'ble Justice G. S. Narayana
Chavakkad



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