

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 763/2011 & Crl.M.A. 473/2013

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Reserved on: 20th March, 2013

Decided on: 16th May, 2013

S.RAM YADAV

..... Petitioner

Through: Mr. Sidharth Yadav, Mr. Wasim
Ashraf, Advs.

versus

CBI & ORS.

..... Respondent

Through: Mr. P.K. Sharma, SC with Mr. A.K.
Singh, Adv. with SP CBI Ghanshyam
Upadhyay, Insp. S.P. Singh.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner challenges the orders dated 31st March, 2009 and 8th April, 2009 directing and framing charge against the Petitioner for offences under Section 420/467/468/471 IPC read with Section 120B IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (in short 'the PC Act') and in the alternative Section 109 read with Section 420 of the IPC.

2. Learned counsel for the Petitioner contends that the job assigned to the Petitioner was only of legal search and he was not required to look into whether the property was vacant or constructed which was the job of the valuer and not the Petitioner. An inadvertent/ negligent mistake in noting the difference in the area in the sale deed cannot hold the Petitioner liable for

criminal misconduct, when the document was found genuinely registered with the Sub-Registrar. The Petitioner in his legal search report had asked the bank officials to follow the safeguards and in case the safeguards would have been adhered to, the loss as alleged would not have been caused. Further the loan was not sanctioned pursuant to the search report of the Petitioner as the search report by the Petitioner was dated 16th November, 1998 whereas the loan had been sanctioned prior thereto on 13th November, 1998. Thus, it cannot be said that the Petitioner in connivance or in conspiracy with the co-accused committed the offences alleged. Reliance is placed on *Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao JT 2012 (9) SC 355* and *Neeta Deep Rastogi Vs. CBI Crl.Rev.P. 77/2008 decided by this Court on 21st January, 2009*. There is no legal evidence to show that the Petitioner ever met the main accused and thus the finding of the learned Trial Court in para 70 distinguishing the case of the Petitioner from *Neeta Deep Rastogi* (supra) is not borne out from the evidence on record. Further as alleged that the report of the Petitioner was incomplete as 13 year title report was not given, the bank ought not to have acted on such a report and should have referred the matter for a further opinion to the Petitioner. Thus, the impugned order be set aside.

3. Learned counsel for the CBI contends that due to active connivance of the Petitioner and on the basis of the search report of the Petitioner, loan was sanctioned to the main accused by the bank. The Petitioner failed to even notice that the copy of the sale deed in possession of the Petitioner for conducting the search report stated the area to be 9183.6 sq. mtr whereas the actual land in question and as per the sale deed registered with the Sub-

Registrar was 83.6 Sq. mtr. The Petitioner did not even visit the site and opined that the property was fit for mortgage. The Petitioner failed to take report from the UPSIDC to see whether the property was mortgaged or not. Learned counsel for the CBI relied upon the statement of prosecution witnesses Shri H.K. Verma, Dr. Vichitra Narain Pathak, Shri Mayank Srivastava and Shri Kailasam Raghuraman to show the link between the Petitioner and the other accused. Reliance was also placed on the statements of Shri Dharmender Mohan. It is further stated that conspiracy has to be inferred from the facts of the case as conspiracy is hatched in secrecy. However, it is fairly admitted that there is no legal evidence on record that the Petitioner met the main accused Vijay Manchanda.

4. Heard learned counsel for the parties. The Petitioner has been charged for offences abovementioned on the basis of complaint of Shri H.K. Verma, Assistant General Manager, Central Bank of India, Janpath Branch New Delhi wherein he alleged that Vijay Kumar Manchanda and his late father Desh Raj Manchanda, Directors and partners of M/s. Raj Raxine (P) Ltd. and M/s. PU Foam Industries in conspiracy with Ravinder Kapoor, D.N. Upadhyay, H.O. Mehrotra, State officers of the Central Bank of India and other unknown persons cheated the bank to the tune of more than 2 crores of rupees by misusing their official position on the basis of forged documents of property, fake valuation, search reports and false projections of sale etc. The role of the Petitioner was limited to preparing the search report of property No. A-11/3, Site-IV, Industrial Area, Sahibabad/ Ghaziabad. The report given to the bank showed the property having an area of 1983.61 sq. metre and the total value of the transaction Rs. 1.9 lakhs, however the

original sale-deed and the index register available in the office of Sub-Registrar showed the total area of 83.61 sq. metres and thus the figure of 19 have been added in front of the area by forging the sale deed. The allegations against the Petitioner are that the Petitioner did not conduct the legal search of the property as per rule in connivance with the main accused. Though the contention of the learned Spl. PP before the learned Trial Court was that the Petitioner in conspiracy with Vijay Manchanda and his father gave false and bogus reports, however this contention is wholly unsupported by evidence on record, as the legal search report was given by the Petitioner on the request of the bank and to the bank and not on the request of the co-accused Vijay Manchanda and his father. It is on the basis of this averment of the learned Spl. PP that the Trial Court came to the conclusion and held as under:

“These Advocates had recommended some safeguards to the bank but they themselves failed to act on these safeguards as they did not demand the original documents from the bank for carrying out the legal search. It is clear from the record that they had not carried out the legal search as per legal requirement in the office of Sub-Registrars of the concerned area. Failure of bank officials to take safeguards as recommended by them, does not absolve them, of their duties. Moreover, a bare perusal of the aforesaid three legal search reports would reveal that these were prepared by three Advocates on the asking of the Manchandas and not the bank. They were not supposed to just rely upon these documents but were required to carry out further legal search. In the instant case the accused had met the main accused Manchandas and as such, they cannot say that there is no material to draw an inference of conspiracy as was the case in *Neeta Deep Rastogi Vs. CBI* (supra) as in that case, lawyer was not directly or indirectly in touch with the accused. Here the case is quite

different. The search report was given at the instance of the accused persons and not the bank.”

5. Before this Court a specific query was put to the learned Spl. PP for the CBI and a status report was also called from the S.P., CBI with regard to the link evidence. Learned Spl. PP clearly stated that there is no legal evidence on record of the Petitioner meeting Vijay Manchanda and his father. Thus, the distinction drawn by the learned Trial Court from the decision in *Neeta Deep Rastogi (supra)* is wholly erroneous based on no evidence.

6. Coming to the contention of the learned counsel for the CBI that in a case of conspiracy inference has to be drawn from the circumstances and the following facts lead to irresistible conclusion that the Petitioner in conspiracy with Vijay Manchanda and his father gave a false search report as:

“i) That Petitioner did not carry out mandatory legal search from the office of Sub-Registrar. As per the Bank Loan Policy, legal search report must trace the title of each property backwards to at least 13 years (30 years where the advance is purely against the security). Every aspect of the title should be discussed. It further specifies that where the equitable mortgage is to be created on a leasehold property, the lease must be carefully scrutinized to see the power of the lessee to create mortgage thereof and if the same is made subject consent of the lessor, the said consent should be obtained before hand. It should be ensured that the remaining time of the lease is sufficient to recover the loan advance. The standing circulars of Central Bank of India (Loan Policy and Lending Powers) contain the duties to have been discharged by the Petitioner.

(ii) That the Petitioner did not conduct the search for the prescribed period, which would have revealed that the same

property was transacted 7 days ago i.e. on 23rd October, 1998 between the father and son (sale deed executed by Shri Vijay Manchanda (son) in favour of Shri Desh Raj Manchanda (father). It would have also revealed further that it was originally taken on lease for 90 years on 09.01.1993 by Arihant Suedes Limited from UPSIDC and the property had already been mortgaged with PICUP. It could not have been resold as Arihant Suedes was already a defaulter of UPSTDC, PICUP, UPFC and P&SB, Hemkunt Branch, Delhi. This deliberate act of omission on the part of Petitioner clearly establishes his involvement in conspiracy by the overt acts of the Petitioner and other accused persons.

iii) That Petitioner suppressed crucial fact about the actual area of property mortgaged. The sale deed of property given to the bank shows the area of property as 1983.6 sq. mtrs. and the total value of the transaction as Rs. 1.9 lakhs. The original sale deed available in the office of Sub-Registrar shows the total area as only 83.61 st. mtrs. The figure '19' was added ahead of 18.63 through subsequent interpolation. The Petitioner being panel advocate of the bank was duty bound to compare the title deed with records available with the office of Sub-Registrar. This act would have easily exposed the forgery, had Petitioner simply multiplied the cost per unit with total area and compared the result with total value of the transaction which was all indicated in the title deed given to the Bank.

iv) That as per the sale deed dated 30.10.98 the said plot was sold to M/s Raj PU Foam Industries through its partner Shri Vijay Manchanda by M/s SLF India Ltd. through its Director Shri Desh Raj Manchanda. If Petitioner would have compared the two title deeds it would have not only exposed the forgery but also detected manipulation in the total area simply by multiplying the cost per unit with the total area and compared the result with the total value of the transaction which was indicated in the title deed given to the bank.

v) That a conspiracy is always hatched in secrecy. The sequence of events of this case, coupled with the evidence on

record, establish that the Petitioner was involved as a conspirator.”

7. A perusal of the record shows that the legal search report was given by the Petitioner on 16th November, 1998 whereas as per the statement of Dr. Vichitra Narain Pathak PW15 working as Chief Manager, Central Bank of India, the credit facilities were recommended by Shri Ravinder Kapoor and sanctioned on 13th November, 1998 by Shri H.O. Mehrotra, Assistant General Manager of the Bank. Thus, the bank awarded credit facilities without going through the search report of the Petitioner which was submitted subsequently.

8. In *Neeta Deep Rastogi (supra)* this Court while dealing with a case of an advocate on the panel of Central Bank of India held that there was no material to show that the Petitioner therein met the accused therein at any point of time and in the legal search report certain safeguards were advised, however the same were not followed and there was no allegation that the Petitioner gained any pecuniary advantage as a result of preparing such report. It was held that apart from the statement that the report was false, there was no material to show that the Petitioner therein was in criminal conspiracy with any of the accused to commit the offences alleged. It was further observed that as a panel advocate the Petitioner therein was only required to prepare a scrutiny report and not required to visit the property. Further the Hon’ble Supreme Court in *Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao JT 2012 (9) SC 359* held:

“22. The High Court while quashing the criminal proceedings in respect of the Respondent herein has gone into the allegations in the charge sheet and the materials placed for his

scrutiny and arrived at a conclusion that the same does not disclose any criminal offence committed by him. It also concluded that there is no material to show that the Respondent herein joined hands with A-1 to A-3 for giving false opinion. In the absence of direct material, he cannot be implicated as one of the conspirators of the offence punishable Under Section 420 read with Section 109 of Indian Penal Code. The High Court has also opined that even after critically examining the entire material, it does not disclose any criminal offence committed by him. Though as pointed out earlier, a roving enquiry is not needed, however, it is the duty of the Court to find out whether any prima facie material available against the person who has charged with an offence Under Section 420 read with Section 109 of Indian Penal Code. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an advocate's work. In the law of negligence, professionals such as lawyers, doctors, architects and Ors. are included in the category of persons professing some special skills.

23. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings, viz., either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.”

9. In the present case the legal search report of the Petitioner reads as under:

“ANNEXURE- P13

S.R. YADAV & CO.
ADVOCATES, SUPREME COUR OF INDIA
AND DELHI HIGH COURT.

The Manager,
Central Bank of India,
Janpath,
New Delhi.

Dtd. 16.11.1998

Re: Scrutiny of title deed of property
M/s Raj PU Foam Industries.

Dear Sir,

With reference to your letter, we submit our legal scrutiny report as hereunder:

1. Name and address of the mortgager: M/s Raj PU Foam Industries.
2. Details/ description of the documents scrutinized:

S.No.	Date of document	Name of Document	Whether original/ certified/ true copy/ Photostate copy.
1.	30.10.98	Photocopy of sale deed executed by Sh. Desh Raj in favour of M/s. Raj PU Foam Industries registered as document No.4708 page 10/14 at No. 3923 dated 30.10.98.	

Details/description of the property:

Land measuring 1983.61 sq. mts. bearing plot No. A-11/3 Industrial Area Site No.4, Sahibabad, Dist. Ghaziabad.

4. Brief history of the property and how the owner has derived the title:

Land bearing plot No.A-11/3 Industrial Area Site No.4, Sahibabad, Distt. Ghaziabad was earlier owned by Sh. Desh Raj who later on sold the same vide sale-deed dated 30.10.98 to the above party who acquired a legal and valid title over the above lands. The lands were free from encumbrances at the time of transfer in favour of the above party.

Search and Investigation:

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|--------|--|---|
| 5.1 | The person who is the present owner of the property | M/s Raj PU Foam Industries |
| 5.2 | Whether the party has absolute and marketable title over the property proposed to be mortgaged and can create to valid mortgage on the property. | Yes the above parties have clear, absolute title over the properties mentioned above and can create valid mortgage in favour of bank. |
| 5.4 a) | What is the nature of the title of the owner. | Full ownership |
| b) | Whether there is any restriction/ prohibition under personal laws of the owner to hold the property under the title deed through which he has derived the title. | No. |
| 5.5 | Whether the latest title deeds and the immediately previous title deeds are available. | Yes, the same are available. |
| 5.6 | Whether the building has been paid. | Not applicable since no building has been constructed on the land. |
| 5.7 | Whether any dues recoverable as land revenues are | No. |

- outstanding.
- | | | |
|------|---|---|
| 5.8 | In case the facility is sought for construction purpose-whether the land has been converted under the Land Revenues Laws. | The party may be asked to furnish the same. |
| 5.9 | Whether the land is affected by any revenue and tenancy legislation? | No |
| 5.10 | Whether the permission under the Urban Land (Ceiling and Regulation) Act is necessary? | No |
| 5.11 | Is there any special enactment like land Acquisition Act and other state Legislation/ provisions of which are applicable to the property and affecting its title. | No |
| 5.12 | Is the property free from encumbrance | Yes |

The above property is still registered in the name of M/s Raj PU Foam Industries and the same have been found free from encumbrance such as charge, lien, mortgage, gift, sale, litigation, acquisition, gift, etc. the above parties are competent and capable to create charge in favour of the Bank and mortgage the properties in its name.

- 5.13 Whether the proposed equitable mortgage by deposit of title deed is possible? If yes, what are documents to be deposited?

Yes the proposed equitable mortgage can be created by the parties.

The party be directed to deposit the original title deeds of the property with the documents showing their factum of possession on the property. Also the party be directed to

produce any document showing their intention to construct the building on the above land for the purpose of factory.

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|------|--|--|
| 5.14 | Whether the property is free hold | Yes |
| 5.15 | If owner is a company, partnership trust etc. | The firm is a partnership and necessary document viz. deed of partnership may be taken. |
| 5.16 | This para is not applicable as the property is neither flat/ apartment nor commercial complex. | |
| 5.17 | This para is also not applicable. | |
| 5.18 | Please state the name of the person who would join the creation of the mortgage of the property. | Shri Vijay Manchanda and all other partners of the firm as per the partnership deed. |
| 5.19 | Any additional document required to be deposited. | Documents showing factum of possession i.e. khasra girdavari etc. electricity and water bill etc. and the document regarding change of land use and steps/ proof regarding setting up of factory on the said land. |
| 6. | Investigation under Income Tax Act, 1961. | Not applicable. |
| 7. | Search in respect of companies registered under the Companies Act | N.A. |
| 8. | Investigation in regard to the | N.A. |

Agricultural land

9. CERTIFICATE

We have scrutinized the titled deeds intended to be deposited relating to the property to be offered as security by way of equitable mortgage and that the documents of title referred to above are perfect evidence of title and that if the said documents are deposited an equitable mortgage is created in a manner required by law. It will justify the requirements of creation of mortgage and we further certify that:

1. There are no prior mortgage/charged as could be seen from the encumbrance certificate for the period from 1975 to 1998 pertaining to the immovable property covered by the above title deed.
2. There are no claims of minors in the property.
3. The property is not subject to payment of any amount
4. Provision of Urban land (Ceiling) Act 1976 are not applicable.
5. Holding/acquisition with in accordance with the provisions of the Land Reform Act.
6. The mortgage if created will be available to the bank for the liability of the intending borrower M/s Raj PU Foam Industries.

We certify that M/s Raj PU Foam Industries have valid, clear and marketable title to the property shown above:

SAFEGUARDS

1. All the original documents of title be deposited with the bank
2. The document showing factum of possession of the above party on the above land and the documents showing their intention to raise construction on the above land for the purpose of factory may be obtained from the

party along with an affidavit as per the proforma enclosed.

Sd/-
(S.R.YADAV & CO.)”

10. The allegations against the Petitioner are that the Petitioner has failed to see that the property was mortgaged with UPSIDC, the area in question was less which could also be verified from the sale deed. No doubt the Petitioner has committed an error in not noticing the difference in the area, however negligence cannot amount to criminal misconduct in all cases. The Petitioner has suggested safeguards which were not adhered to by the bank. Further the bank gave the credit facilities even before the legal search report was submitted by the Petitioner. Thus, it cannot be said that the bank acted on the report of the Petitioner herein. It is also contended that the Petitioner failed to visit UPSIDC to find out whether property was mortgaged or not. It may be noted that the documents of the property were accompanied by a valuer report and non-examination of the records of the UPSIDC cannot lead to irresistible conclusion that the Petitioner acted in connivance with the other co-accused.

11. It was lastly contended by the Spl. PP that 47 prosecution witnesses have been examined and the CBI is likely to close the evidence after examining 7-8 more witnesses. The Petitioner had filed a criminal revision petition before this Court being CrI.Rev. No.340/2009 immediately after the impugned order was passed, however the same was finally dismissed in view of the Division Bench judgment of this Court that a revision petition against the order of framing charge for offences under Sections of PC Act was not

maintainable and liberty was granted to file a fresh petition. Hence this petition was filed. The Petitioner who had pursued his remedy diligently immediately after the impugned order was passed cannot be non-suited because the writ petition could not be heard on merits in the meantime.

12. In view of the aforesaid discussion, the impugned order framing charge is set aside qua the Petitioner. Petition and application are disposed of.

(MUKTA GUPTA)

MAY 16, 2013
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