

Court No. - 11

Case :- APPLICATION U/S 482 No. - 1014 of 2018

Applicant :- Anjani Kumar Dvivedi Advocate

Opposite Party :- State Of U.P. And Anr.

Counsel for Applicant :- Dharendra Kumar Mishra

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Rajesh Singh Chauhan,J.

1. Heard.

2. This Court has passed the order dated 07.02.2024, which reads as under:-

“1. Heard Sri Jyotindra Mishra, learned Senior Advocate, assisted by Sri Dharendra Kumar Mishra, learned counsel for the petitioner and Sri Aniruddha Kumar Singh, learned Additional Government Advocate-I for the State.

2. In compliance of earlier order dated 25.01.2024, the paper-book of Criminal Misc. Case No. 627 (C) of 2017 (Jugul Kishore Vs. Sri Raj Kumar Pandit, BSA, Amethi); Criminal Misc. Case No. 626 (C) of 2017 (Mangaru Vs. P. Shiva Shankar, Project Director NHA); Writ Petition (L/A) No.25635 of 2016 (Mangaru Vs. Union of India and others) and Writ Petition No. 1216 (SS) of 2015 (Jugul Kishore vs. State of U.P. & others) have been produced before the Court.

3. Criminal Misc. Case No. 626 (C) of 2017 (Mangaru vs. Sri P. Shiva Shankar, Project Director, NHA and Sri Abhay Kumar Pandey, Prescribed Officer/ Sub-Divisional Magistrate, Musafirkhana, Amethi) has been filed on 06.04.2017 wherein affidavit has been sworn by one Sri Mangaru, whose Aadhar Card bearing No.3253 5585 8301 has been filed for identification thereof.

4. Criminal Misc. Case No. 627 (C) of 2017 has been filed by on 06.04.2017 by Sri Jugul Kishore against Sri Raj Kumar Pandit, BSA, Amethi and Sri Arvind Pathak, BSA, Amethi. The affidavit has been sworn by one Sri Kamla Kant on behalf of Sri Jugul Kishore. In the affidavit of Sri Kamla Kant, it has been indicated that Sri Jugul Kishore is his paternal uncle.

5. The writ petition bearing Writ Petition No.1216 (SS) of 2015 (Jugul Kishore vs. State of U.P. & others) has been filed by Sri Jugul Kishore and in this case affidavit on behalf of Sri Jugul Kishore has been sworn by Sri Kamla Kant (above named).

6. One writ petition bearing Writ Petition (L/A) No.25635 of 2016 (Mangaru Vs. Union of India and others) has been filed by Sri Mangaru wherein affidavit has been sworn by

the said person Sri Mangaru and he has enclosed the Aadhar Card bearing No.3253 5585 8301 for his identification.

7. After perusing the aforesaid paper-books of four cases, Bench Secretary of the Court is directed that these paper-books be sent back to the office concerned to keep these paper-books at their proper place.

8. Undisputedly, the aforesaid Aadhar Card belongs to Sri Jugul Kishore and the photograph of the Aadhar Card belongs to Sri Jugul Kishore. So far as the identity of Sri Mangaru is concerned, it has come during investigation that no such person in the name of Sri Mangaru is ever in existence, rather, the photograph on the Aadhar Card of Sri Mangaru is of Sri Jugul Kishore and such Aadhar Card belongs to Sri Jugul Kishore.

9. Sri Jyotindra Mishra, learned Senior Advocate Assisted by Sri Dharendra Kumar Mishra, learned counsel for the petitioner has stated that he may be given one week's time to submit written submissions.

10. Order is reserved.

11. Interim order, if any, to continue till delivery of order”

3. In compliance of the aforesaid order, Sri Dharendra Kumar Mishra, learned counsel for the petitioner has filed written arguments.

4. By means of this petition filed under Section 482 Cr.P.C., the petitioner has prayed the following reliefs:-

“For the facts reasons and circumstances as narrated in the accompanying affidavit it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the impugned charge sheet no. 01/17, dated 20-10-2017, filed in case crime no. 0626/2017 under section 419,420,467,468,471 and 120 B IPC Police station Kotwali Musafirkhana, District Amethi, which has been submitted against the petitioner without considering the facts and circumstances and controversies involved in the matter, where by the petitioner has been implicated falsely in the aforesaid case crime no. 626/17, due to malafide intention.

Any other order or direction which this Hon'ble Court may deem fit and proper may kindly be also passed in favor of the petitioners in the interest of justice.”

5. Brief facts of the case are that the petitioner is a practicing Advocate of the High Court having Enrollment No.3353/2007 as well

as AOR No. B/A0848/2012 and has no allegation of professional misconduct or complaint by any of his client.

6. In terms of his regular Advocate practice, on the request and instruction of one Kamlakant S/o Raj Narain, Applicant filed a Writ Petition No.1216 (S/S) of 2015, Jugul Kishore Vs. State of U.P. and Others, in which Kamlakant S/o Raj Narayan sworn affidavit being Pairokar of Jugul Kishore stating that Jugul Kishore is paternal uncle of Kamlakant and is unable to appear before the Court due to his illness of paralysis, and the said petition was allowed by this Court vide order dated 17.11.2016.

7. Aforesaid Kamla Kant again met to the petitioner with a poor person introducing him as Mangru, who produced his Aadhar Card (Photo ID) and PAN Card with his photo and other documents stating that his claim of compensation regarding his acquired land is not being considered and on the request of aforesaid Mangru as well as assurance of Kamlakant, the petitioner filed a Writ Petition No.25635 of 2016 (LANA), Mangru Vs. Union of India and Others, before this Court which was disposed of on 25.10.2016 with a direction to the Project Director, NHAI to take appropriate decision within three months.

8. Prior to lodging the FIR dated 01.09.2017, this fact never came to the knowledge of the petitioner that Jugul Kishore and Mangru is the same person as every time Kamla Kant met on behalf of Jugul Kishore showing Jugul Kishore is suffering from paralysis and again on request of both i.e. Kamlakant and Mangru, the petitioner filed two contempt petitions against the aforesaid orders dated 25.10.2016 & 17.11.2016 bearing Contempt Petition No.626 (C) of 2017, Mangru Vs. P. Shiv Shankar, Project Director, NHAI and Contempt Petition No. 627 (C) of 2017, Jugul Kishore Vs. Sri Raj Kumar Pandit BSA Amethi on the same day and affidavit was also sworn by the deponent of both the cases in terms of writ petitions

before the Oath Commissioner (Kamlakant for Jugul Kishore and Mangru (Jugul Kishore) for Mangru).

9. There was no reason for the petitioner to presume that Jugul Kishore is appearing as Mangru as he has given his Aadhar Card in the name and photograph of Magru and as such the petitioner, who is an Advocate, bonafidely on the basis of records/ documents produced by him (Mangru) filed a writ petition in good faith. In the contempt case of Mangru, it has been stated that Sub Divisional Magistrate Musafirkhana is not complying the order passed by this Court and thus, on the direction of this Court dated 21.07.2017, the informant/opposite party no.2 namely Abhay Kumar Pandey, Sub Divisional Magistrate Musafirkhana was impleaded as respondent no.2 in Contempt Petition 626 (C) of 2017 and was ordered that "*List on 28.08.2017. If by that date the order passed by the writ court is not complied with, Shri Abhay Kumar Pandey, Prescribed officer Sub Divisional Magistrate, Musafirkhana Tehsil Musafirkhana District Amethi Shall appear in person.*". On the date fixed i.e. 28.08.2017, Sub Divisional Magistrate Musafirkhana appeared before this Hon'ble Court and filed his counter affidavit stating therein that Mangru is an imposture.

10. On 28.08.2017, for the first time, it has come in the knowledge of the petitioner that Mangru was an imposture and it is specifically submitted that there is no evidence on record of the case that after filing of counter affidavit dated 28.08.2017, the petitioner appeared before this Court to do parivi of the said Mangru. The facts of the case appear to be that Kamlakant and Mangru for getting the compensation conspired with each other and used the petitioner as a tool.

11. In terms of undertaking of the petitioner dated 28.08.2017 before this Court, on 29.08.2017 so called Mangru appeared before the opposite party no.2 who after conducting the enquiry took Mangru alias Jugul Kishore in custody and lodged FIR on 01.09.2017 against

Jugul Kishore, Ramesh Kumar, Kamlakant Singh, Anjani Dvivedi Advocate (applicant/petitioner) and some other unknown persons.

12. The Investigating Officer has recorded the statement of complainant under Section 161 Cr.P.C. firstly on 02.09.2017 in which no allegation was made against the petitioner (Anjani Kumar Dvivedi Advocate), but subsequently on 10.10.2017 by subsequent statement/supplementary statement, the complainant modified his version and several false allegations were leveled against the petitioner.

13. It is relevant to mention here that in the FIR itself as well as in the first statement of Informant/opposite party no. 2/ Sub Divisional Magistrate Musafirkhana, it was stated that Jugul Kishore applied for the Aadhaar Card bearing Enrollment No. 2187/8063/2850 dated 17.07.2017 and a recovery was also made for a PAN Card of Mangru with photograph of Jugul Kishore where as the Aadhaar Card of Mangru is 325355858301 which is in existence prior to filing Writ Petition No.25635 of 2016 (LANA). It shows that Aadhaar Card of Mangru was issued with the biometric of Jugul Kishore otherwise, there was no need of enrollment of Aadhaar Card in the name of Jugul Kishore dated 17.07.2017. It clearly indicates that the Aadhaar Card was originally made in the name of Mangru with finger print, eye retina and photograph of Jugul Kishore and later on, it was converted in the name of Jugul Kishore.

14. Learned counsel for the petitioner submits that none of the witnesses has stated that any illegal act has been done by the petitioner. It is also submitted here that no offence has been committed by the applicant and there is no evidence on record to connect the applicant with the crime in question. There is no evidence to show that the petitioner knowing the said Jugul Kishore from before.

15. Further, the statement under Section 161 Cr.P.C. of Jugul Kishore was recorded on 03.09.2017 and nowhere he has stated that the petitioner gave any advice to him for committing the said offence. The petitioner submitted his rejoinder affidavit and also annexed the copy of FIR lodged against prescribed authorities NH-56 (Sub Divisional Magistrate, Musafirkhana, Amethi having tenure from year 2012) for a scam of Rs.382 Crore which is annexed as Annexure No. RA-3 of the rejoinder affidavit alongwith news items (Annexure No. RA-4).

16. Learned counsel for the petitioner has further submitted that nowhere Jugul Kishore has denied the fact that Kamlakant is doing pairvi on his behalf. There is no evidence on record that the petitioner prepared any false document which could be used by the co-accused persons. An Advocate cannot be prosecuted if he has acted in good faith and relied upon the documents, which were produced before him by his client for the purpose of identification. Wrong advice has not been given/provided by the petitioner and it was Kamlakant and Jugul Kishore, who used the petitioner as a tool to get the compensation from the authorities. In the instant case, no transaction of money has taken place, as such, no offence under Sections 419, 420, 467, 468, 471 and 120-B I.P.C. is made out against the petitioner.

17. Further submission of learned counsel for the petitioner is that it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interest of the client and it is lawyers responsibility to act in manner that would best advance in the interest of client and this does not permit a lawyer to act as a spy for his client. Further, the petitioner has acted in his professional responsibility by filing the petitions for their client and if the petitioner was an imposture, a lawyer cannot be prosecuted in a criminal case for that.

18. Further submission of the learned counsel for the petitioner is that it is settled position of law that a lawyer does not tell his client that the client shall win the case in all circumstances except that he

will do his best with his professional skill and thus, it cannot be stated that if the petitioner, who is a lawyer, has conducted any case, then he is also involved in the imposition of his client. In support of his contention, learned counsel for the petitioner has relied upon the judgments of the Apex Court in re; **Central Bureau of Investigation, Hyderabad v. V. K. Narayana Rao, 2012 AIR SCW 5139, Surendra Nath Pandey and Another v. State of Bihar and Another, 2015 SCC OnLine SC 1841** and judgment of this Court in re; **Vinayjit Lal Varma Vs. State of U.P., Application U/S 482 No. 940 of 2021, dated 26.08.2022.**

19. Learned counsel for the petitioner has reiterated that the writ petition and the contempt petitions were filed on the basis of documents provided by the client himself and he has not prepared any false document.

20. On the other hand, learned AGA has submitted that there is no dispute that the petitioner is a practising Advocate and prima facie, it appears that the authentic and proper papers have not been supplied to the petitioner but being an Advocate, he should have taken due care and precaution before filing any petition before this Court. He has also stated on the basis of material available on record that huge amount of compensation would have been paid to the unauthorized person, had the revenue authority not been so vigilant.

21. Having heard learned counsel for the parties and having perused the material available on record and also having gone through the judgments of the Apex Court in re; **V. K. Narayana Rao** (supra), **Surendra Nath Pandey** (supra) and the judgment of this Court in re; **Vinayjit Lal Varma** (supra), I am of the considered opinion that any criminal offence against an Advocate arises only if he is an active participant in the plan to defraud the Government. Further, without having any material or evidence on record corroborating the offences indicated in the charge sheet, the Advocate may not be held guilty of committing offence in question.

22. Notably, none of the ingredients of Sections 419, 420, 467, 468, 471 & 120-B of IPC are attracted against the petitioner. The material available on record does not convince that the Advocate/petitioner by deceiving any person fraudulently or dishonestly induced that person so deceived to deliver any property to any person so the offence under Section 419 IPC does not make out against the petitioner. Since the factum of cheating is missing against the present petitioner, therefore, the offence under Section 420 IPC does not make out. Likewise, as per material available on record, the petitioner has not forged any document, which purports to be a valuable security etc. and he has not received any amount doing such forgery, therefore, the offences under Section 467, 468 & 471 IPC do not make out against the petitioner. Since the records indicate that the petitioner was not having any prior meeting of mind to deceive or to cheat or to commit forgery with other co-accused persons and with the intention to deceive or to commit forgery etc., he has acted further, therefore, the offence under Section 120-B of IPC does not make out against the petitioner.

23. It appears that being a counsel, the petitioner has filed petitions of his clients after getting the relevant papers/ documents and on the basis of instructions of the pairokar. It further appears that except to protect the interest of his clients, he was not involved in any illegal and unauthorized activity so as to gain something by adopting fraudulent means. Paragraph Nos.5 & 6 in re; **Surendra Nath Pandey** (supra) are being reproduced herein below:-

"5. Taking into account the contents of FIR, we are left with the impression that the said allegations are bald and omnibus and do not make any specific reference to the role of the appellants in any alleged conspiracy. In CBI v. K. Narayana Rao [CBI v. K. Narayana Rao, (2012) 9 SCC 512 : (2012) 4 SCC (Civ) 737 : (2012) 3 SCC (Cri) 1183] to which one of us (Ranjan Gogoi, J.) was a party, it has been held by this Court that a criminal prosecution on the basis of such bald and omnibus statement/allegations against the panel advocates of the Bank ought not to be allowed to proceed as the same constitute an abuse of the

process of the court and such prosecution may in all likelihood be abortive and futile. The following view expressed in CBI v. K. Narayana Rao [CBI v. K. Narayana Rao, (2012) 9 SCC 512 : (2012) 4 SCC (Civ) 737 : (2012) 3 SCC (Cri) 1183] will be appropriate to be quoted : (SCC pp. 531-32, paras 30-31)

“30. Therefore, the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. In the given case, there is no evidence to prove that A-6 was abetting or aiding the original conspirators.

31. However, it is beyond doubt that a lawyer owes an “unremitting loyalty” to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein.

6. Taking into account the aforesaid facts and the ratio of the law laid down by this Court in CBI v. K. Narayana Rao [CBI v. K. Narayana Rao, (2012) 9 SCC 512 : (2012) 4 SCC (Civ) 737 : (2012) 3 SCC (Cri) 1183] , we are of the view that the High Court was plainly wrong in refusing to interdict the proceedings against the appellants. We, therefore, set aside the order [Surendra Nath Pande v. State of Bihar, 2012 SCC OnLine Pat 1739] of the High Court and quash the proceedings in GR No. 710 of 2006 arising out of Agiaon (G) PS Case No. 20 of 2006 pending before the Chief Judicial Magistrate, Bhojpur, Ara insofar as the two appellants Surendra Nath Pandey and Suresh Prasad are concerned.”

24. Accordingly, the impugned proceedings of Case Crime No.0626 of 2017, under Sections 419, 420, 467, 468, 471 & 120-B of IPC, Police Station- Kotwali Musafirkhana, District- Amethi as well

as the impugned charge sheet No.01 of 2017, dated 20.10.2017 are hereby quashed only in respect of the petitioner.

25. Thus, the instant petition is **allowed**.

26. However, the petitioner is warned that in future, he should be careful while filing the petitions and without interacting with the client directly, he should not act on the instructions of the Pairokar/stranger.

[Rajesh Singh Chauhan,J.]

Order Date :- 01.03.2024
RBS/-