

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

For the State of Telangana and the State of Andhra Pradesh

MAIN CASE NO: CRL.P.No.No.12899 OF 2010

Between:

Mutturu Bhasker Reddy and others

.. Petitioner(s)

And

State of A.P. and others

.. Respondent(s)

DATE OF JUDGMENT PRONOUNCED: 23.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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|---|--------|
| 1. Whether Reporters of Local news papers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.12899 of 2010

ORDER:-

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.568 of 2007 on the file of the XIV Additional Chief Metropolitan Magistrate, Hyderabad for the offences punishable under Section 120-B read with Sections 419, 420, 468 and 471 IPC. 2. The 2nd respondent is the State Bank of India (PBB), S.P.Road Branch, Secunderabad and the petitioner/A3 is a panel advocate for the 2nd respondent.

3. The allegation against the petitioner/A3 is that he being the panel advocate has submitted false legal opinion thereby committed the alleged offences.

4. Learned counsel for the petitioner/A3 submitted that petitioner used to submit legal opinions based on the documents furnished by the bank officials. Therefore, he is not liable for charges as per decision of the Supreme Court in Criminal Appeal No.1460 of 2012.

5. The Hon'ble Supreme Court in Criminal Appeal No.1460 of 2012 at paras 23, 25 and 26 held thus:

“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.

25. In **Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra and others** (1984(2)SCC 556), this Court held that “.. there is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere

negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct.

26. 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.

6. In view of the above, if an advocate gives his opinion he cannot be prosecuted for any defects in the process of sanction of loans. Therefore, continuation of further proceedings against petitioner/A.3 amounts to abuse of process of Court and, therefore, the same is liable to be quashed.

7. In the result, Criminal Petition is allowed quashing the proceedings in C.C.No.568 of 2007 on the file of the XIV Additional Chief Metropolitan Magistrate, Hyderabad against the petitioner/A3 herein.

8. Miscellaneous petitions, if any, pending in this Criminal petition shall stand closed.

M.S.K.Jaiswal, J

23rd July, 2015

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HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.12899 of 2010

DATED: 23.07.2015

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