IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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Criminal Petition Nos.6432 and 6448 of 2014

Criminal Petition Nos.6432 of 2014:

Between:

V.Venkata Anil Kumar …. Petitioner/A8

And

State through CBI, Hyderabad

…. Respondent

Criminal Petition No.6448 of 2014:

Between:

Yabaluri Vasudeva Rao …. Petitioner/A7

And

The Vijaya Bank, Jubilee Hills, Hyderabad
Hyderabad and another

…. Respondents

DATE OF JUDGMENT PRONOUNCED**: 06.08.2015**

SUBMITTED FOR APPROVAL**:**

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers 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 Lordship wish to see the fair copy of the Judgment? Yes / No

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL PETITION Nos.6432 and 6448 of 2014

Common Order:

Criminal Petition Nos.6448 and 6432 of 2014 are filed by Accused Nos.7 and 8 respectively under Section 482 Cr.P.C. to quash the proceedings in C.C.No.13 of 2014 on the file of Principal Special Judge for CBI Cases, Hyderabad.

2) The facts which led to file the instant petitions are briefly thus:

a) On the complaint given by Chief Vigilance Officer, Vijaya Bank, Jubilee Hills, Hyderabad, the Superintendent of Police, CBI, Hyderabad registered a case in FIR No.20(A)/2011-CBI-Hyd. against the petitioners and some other accused for the offences under Sec.120-B, 420, 465, 468 & 471 IPC and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, investigated into the matter and laid charge sheet and case was registered as C.C.No.13 of 2014 by learned Principal Special Judge for CBI Cases, Hyderabad.

b) The allegations in brief are that A2 purchased Plot No.6 admeasuring 1142.76 sq. yards, Block No.J, Ward No.21, Gudimalkapur Village, Asifnagar, Hyderabad and he obtained permission for construction of residential building consisting of stilt for parking and 5 floors for 30 flats i.e. 6 flats in each floor. However, he constructed building consisting of cellar for parking, ground floor and first floor for commercial use, 4 flats from 2nd floor to 5th floor and terrace violating the building plan issued by the Municipal Corporation of Hyderabad.

c) The Vijaya Bank, Head Office, Bangalore launched a new loan scheme i.e. V-Rent Scheme in the month of February, 2000 vide circular No.34/2000 dated 15.02.2000. The said scheme envisages raising loan by the owner of commercial property against future rent receivables for the unexpired period of lease specified in the lease agreement. The property owners, who let out their commercial properties to Corporate/Companies of good standing and financial soundness are eligible to avail loan under V-Rent Scheme. The rent receivables from tenants is the primary security to the loan, whereas the property mortgaged by the owner is the collateral security to the bank against extension of credit facility under V-Rent Scheme. While it is imperative to ensure the financial soundness of the tenant, it is equally important to look into the financial capacities of the owner of the premises. Hence, advances under V-Rent Scheme can be extended after critically assessing the financial soundness of both owner and tenant.

d) While so, A2 submitted loan application on 16.01.2006 to Vijaya Bank, Banjara Hills, Hyderabad for sanction of term loan of Rs.5 crores under V-Rent Scheme for completion of construction of commercial complex. The loan was extended in two phases of Rs.350 lakhs and 290 lakhs on 09.03.2006 and 22.02.2007 respectively against the prime security of rents and collateral security of the immovable property. To get these loans A2 played fraud on the bank with the conspiracy of other accused. He submitted a fake lease deed dated 17.02.2006 allegedly entered by him and M/s.Jiangsu Communications Construction Group Company Limited and also a tripartite agreement dated 09.03.2006 said to be executed among himself, M/s. Jiangsu Communications Construction Group Company Limited represented by G.U.Rao and Vijaya Bank, Jubilee Hills Branch, Hyderabad represented by A4. By virtue of conspiracy, A4 who was the then Branch Manager of Vijaya Bank gave a false certificate dated 09.01.2006 to the effect that he verified information furnished in the statements of assets and liabilities of A2. Further, A4 submitted a false certificate dated 24.11.2005 to the effect that he conducted inspection of the building in Plot No.6 on 15.11.2005 and declared that property was a commercial building consisting of ground and five floors and ground floor was leased out to M/s. Jiangsu Communication and M/s. Food World Supermarkets and A2 was in receipt of rental income of Rs.6,78,000/-. When the bank asked for legal opinion for granting loan to A2, A7—the empanelled advocate in conspiracy with A2 gave legal opinion dated 23.11.2005 falsely declaring that he conducted search in the office of the Sub-Registrar, Golconda with regard to execution and registration of sale deed No.1894/2003 dated 04.07.2003 relating to Plot No.6 of A2. As the loan being a high value one, second legal opinion was obtained from A8—another panel advocate. A8 also in conspiracy with A2, falsely declared that A2 was the absolute owner and possessor of the property and a valid equitable mortgage of the said property can be created in favour of bank.

e) However, it was revealed later that A2 even before submission of loan application dated 16.01.2006 had, fraudulently executed 25 sale/gift deeds in respect of the flats constructed by him on Plot No.6 to third parties and he suppressed the material fact of 25 alienations and only informed the lease transaction allegedly entered with M/s.Jiangsu Communications Construction Group Company Limited.

f) Subsequently, A2 submitted another loan application dated 22.11.2006 for sanction of another term loan. He offered Plot No.6 as collateral security and monthly rent of Rs.3,16,000/- receivable from M/s. Reliance Retails Limited as primary security. He submitted a false lease deed dated 02.10.2006 said to be entered by him with M/s. Reliance Retails Limited. A4 in conspiracy with A2 issued a false certificate stating that he personally inspected the subject property and declared that A2 was the owner of the building and he let out portion of the building measuring 4000 sq. ft. to M/s. Reliance Retails Limited for a period of 10 years.

g) A6—Senior Manager dishonestly presented the residential building as commercial building and declared that operations of the existing loan account were satisfactory and introduced A2 as a successful engineering contractor and falsely depicted his financial position as sound in terms of repayment of the existing loan of Rs.350 lakhs and the current loan of Rs.290 lakhs and thus he dishonestly recommended for sanction of 2nd term loan under V-Rent Scheme to A2.

h) Investigation revealed that after availing first terms loan and before availing second term loan of Rs.290 lakhs A2 executed 10 registered documents transferring some flats to third parties and suppressed all the sale/gift deeds executed by him. He played fraud on bank and took away the original sale deed in respect of Plot No.6 through his closed aide—G.Bhaskar (A3) on the pretext of producing the original sale deed before Town Planning Officer, GHMC, Hyderabad for verification of property document and they did not return the document.

Hence, the criminal case.

3) Heard Sri D.V.Sitaram Murthy, learned Senior Counsel representing for Sri M.Karibasaih and N.Ashwani Kumar, learned

counsel for petitioners and Sri P.Kesava Rao, learned Special Standing Counsel for CBI cases (for short "Spl.S.C").

4) Vehemently opposing the charge sheet allegations that the petitioners/A7 and A8 issued false legal opinions dated 23.11.2005 and 17.02.2006 respectively in conspiracy with A2, learned senior counsel argued that the accepted practice for a bank panel advocate is to give legal opinion on the title of a borrower basing on the documents forwarded by the bank and in the instant case also both the petitioners upon carefully scrutiny of title deeds, ECs. and other relevant documents have given their opinion in prescribed proforma and absolutely they have not committed any offence much less the offence of criminal conspiracy, cheating, forgery and fabrication of documents as alleged by CBI. Learned senior counsel submitted that as per the Encumbrance Certificate produced before them the property in question was free from encumbrances and therefore, they opined that the borrower i.e. A2 had clear and marketable title in respect of property offered as collateral security and it was free from encumbrances. It may be that the borrower alienated some flats constructed on the Plot No.6, but the said fact was not reflected in the ECs. produced by him and therefore, the petitioners were not in a position to know this fact. The legal opinion will be issued by any lawyer treating the documents produced before him were genuine but he cannot entertain any suspicion about their genuinety unless suspicious nature of documents is evident on the face of the documents. In the instant case, he argued, believing that there were no encumbrances on the subject property as nothing was evident from ECs. both the petitioners bonafidely issued the legal opinions and so, no criminal intention can be attributed to them. If at all the

legal opinions given by them suffer from legal lacuna, the bank may at best complaints to the concerned authorities for their professional incompetency or misconduct but it cannot launch criminal prosecution. On this aspect he relied upon the decision of the Apex Court reported in ***CBI v. Narayan Rao***[1]. He thus prayed to allow the petitions.

5) Per contra, learned Spl.S.C argued that since the criminal conspiracy will be hatched in secrecy, seldom it is possible for the prosecution to secure and place direct evidence and so, circumstantial evidence can only be gathered to enable the Court to infer criminal conspiracy among the charged accused. In this case, he argued, there may not be any direct evidence to establish that the petitioners conspired with other accused to cheat the bank. However, from the series of events, their conduct will inferentially establish such criminal conspiracy among all the accused. He argued the facts and evidence would show that as per the guidelines and circulars, it is avowed duty of bank panel advocates to cause a search in the concerned Revenue and Sub-registrar offices with reference to the property particulars of the borrowers furnished by them or by the bank to know about the genuinety of such documents and protect its interest. Both the petitioners being the bank panel advocates quite for some time knew their responsibility. However, contrary to the entrusted duty they did not visit the concerned Revenue and Sub-registrar offices to secure the ECs. and other relevant documents, but they simply carried away by the title deeds, ECs. building plans etc. furnished by A2—borrower. Though did not visit the concerned offices, they mentioned in their opinions as if they visited the Sub-registrar office and obtained the documents by themselves. A2

furnished wrong EC i.e. he produced EC relating to vacant plot which was obviously not covered with any encumbrances, but he did not produce ECs. relating to the constructions made on the vacant plot. The panel advocates without insisting for further ECs. relating to constructions made by A2 on the vacant plot gave opinions basing on the EC relating to vacant plot and declared that A2 had absolute title over the property and that there were no encumbrances and bank can accept the property as collateral security. In fact, A2 has made sale alienations prior and subsequent to first term loan and suppressed that fact and petitioners/A7 and A8 also without securing the relevant ECs. and verification of the property gave false legal opinions which can be said as because of criminal conspiracy. He thus prayed to dismiss the petitions.

6) In the light of above rival arguments, the point for determination is:

"Whether there are merits in the petition to allow?"

7) **POINT**: I have gone through the FIR, charge sheet and copies of the statements of the witnesses. The complaint dated 20.12.2011 was lodged by Sri Jayanth T.S., Chief Vigilance Officer, Vijaya Bank. The main allegation is that A2 obtained two term loans of Rs.350 lakhs and 290 lakhs on 09.03.2006 and 22.02.2007 respectively under V-Rent Scheme on the primary security of rents of his building and collateral security of land and building. It is the allegation that even before extending first term loan, A2 made 25 alienations transferring substantial portion of immovable property by way of registered sale/gift deeds. Similarly, between first and second term loan he effected 10 registered documents transferring portion of the

property which was offered as collateral security. He also created bogus lease deeds to show that he was getting rents for leasing portion of his building. Some bank officials are also said to have conspired with him. Sofaras petitioners/A7 and A8 are concerned, though it is mentioned that bank has obtained legal opinions from them, it was not the case of the complainant that they conspired with A2—borrower and bank officials. It was only mentioned that the legal opinions did not reveal the earlier alienations. On the other hand, it was mentioned that as per the opinion dated 06.05.2011 of Sri N.V.Subba Raju the borrower had suppressed the alienations made by him at different times in respect of different flats. Except that no aspersions were cast on them in the complaint and hence, they were not shown as accused at the time of registration of FIR. Of course, FIR is not encyclopaedia for inclusion of all facts and police on investigation may lay charge sheet against any person who was not initially shown as accused and there is no demur on this legal point. In the instant case, the police after investigation laid charge sheet against different accused including the petitioners/A7 and A8. The role of petitioners/A7 and A8 as per charge sheet is thus:

> *" Sri Y.Vasudeva Rao (A7) and Sri V.V.Anil Kumar panel advocates (A8) of Vijaya Bank gave false legal opinions on 23.11.2005 and 17.02.2006 respectively to the effect that Sri Gundluri Srinivas was having full ownership over the Plot No.6 and opined that the Bank could accept the property as collateral security, by way of creating equitable mortgage, against extension of credit facility to Sri Gundluri Srinivas (A2)."*

a) More vividly, A2 purchased Plot No.6 measuring 1142.76 sq. yards in block J, Block No.J, Ward No.21, Gudimalkapur Village, Asifnagar, Hyderabad under sale deed No.1894/2003 dated 28.05.2003 of SRO, Golconda, Hyderabad and obtained permission for construction of residential building consisting of stilt for parking and 5 floors for 30 flats i.e. 6 flats in each floor. However, contrary to the building plan and permission he constructed a building consisting of cellar for parking, ground floor and first floor for commercial use and 4 flats from 2nd floor to 5th floor and terrace.

b) Be that it may, as already stated supra, he applied for loan of Rs.5 crores from the complainant—bank under V-Rent Scheme on the primary security of rents receivable from the commercial buildings and on the collateral security of the building. In respect of his loan application petitioner/A7 gave first legal opinion and petitioner/A8 gave the second opinion. The loan was granted in two phases; Rs.350 lakhs and 290 lakhs on 09.03.2006 and 22.02.2007 respectively. The allegations in FIR and charge sheet sofaras A2 are that he alienated some of the flats in the subject property prior to first loan and some flats subsequent to the sanction of first loan and some other flats subsequent to the sanction of second loan. He suppressed this fact before bank authorities in collusion with some of the bank officials. Further, for whetting his loan application, he produced Encumbrance Certificate in respect of vacant plot but not in respect of constructions made and alienated by him.

c) It is in this context, the allegation against A7 and A8 is that they proclaimed to have visited Sub-registrar office and obtained EC, but they did not do so and on the other hand, they were carried away by the ECs. produced by A2 and declared as if A2 is the absolute owner of the property and bank can accept the same as collateral security.

8) It is in this backdrop, I have verified the copies of legal opinions issued by petitioners/A7 and A8. Legal opinion dated 23.11.2005

was issued by A7. The following documents were placed before him for verification:

Sl.No.	Date of Document	Name of Document	Whether Original/ Certified True Copy/Photostat
1.	04.07.2003	Sale Deed (Doc No.1894/2003	Original
2.	23.04.1998	Order No.S1/35029/94	Xerox
3.	28.01.2000	G.O.Ms.No.17 issued by Govt. of A.P.	Xerox
4.	01.05.2000	A.P.Pollution control Board—Panchanama	Xerox
5.	08.03.2004	Building Permission	Original
6.	30.07.2005	Encumbrance Certificate 1974-1976	Xerox
7.	30.07.2005	Encumbrance Certificate 1977-1995	Xerox
8.	30.07.2005	Encumbrance Certificate 1995-2005	Xerox

Item No.	Survey No. Khata No. House No. Site No.	Extent/Areas of land/Building	Location Sub-Dist./District/Village Municipality etc.	Boundary
1	T.S.No.13/1 Block No.J Ward No.21 Plot No.6 Group Housing 12.02.460	1142.76 Sq.Yds.	Asifnagar (M) Gudimalkapur (V) Hyderabad Dist.	N: 40’ wide road S: Partly amenities E: 60’ wide road W: Plot No.5

In column No.3 the property was described as 1142.76 sq. yards in Plot No.6 of Asifnagar (M) in Gudimalkapur (V), Hyderabad district with the given boundaries. In column 5.8 it was mentioned that the Municipal Corporation of Hyderabad issued a building permission on 08.03.2004 for construction of ground plus five floors. In column 5.6 it was mentioned new complex was under construction. In column 5.3a relating to the title of the owner it was mentioned as *full ownership*. Further, in column No.5.2 it was mentioned that owner has absolute and clear marketable title.

a) So, from the above opinion, it is clear that petitioner/A7 knew that the subject property was originally a vacant plot and new complex was under construction by the time of his giving legal opinion. It appears that petitioner/A7 opined that A2 was having absolute and clear marketable title basing on the ECs. produced by him which ECs. were only relating to vacant plot but not the constructions made by him.

b) In this context, it is pertinent to peruse 161 Cr.P.C. statement of G.Malla Reddy, Sub-Registrar, Golconda. In his statement, he referred about different sale deeds and gifts deeds executed by A2 in respect of different flats. He also referred about the Encumbrance Certificates produced by him which was showing nil encumbrances despite his making several alienations. In that context he stated as follows:

> *"On being asked as to how a nil Encumbrance Certificate was issued by the Sub-Registrar, Golconda when several transactions in respect of the subject property, as mentioned above, were carried out by Sri Gundluri Srinivas, he stated that under the head description of the property, the details of Plot was given, hence the Encumbrance Certificate was issued in respect of the plot and not for the flats in the apartment. As mentioned in the registered sale/gift deeds, mentioned above, Sri Gundluri Srinivas constructed an apartment on the plot and sold/gifted away flats to third parties. For issue of Encumbrance Certificate in respect of an apartment, it is required to mention the details of apartment and construction of flats in the application."*

So, from his statement, it is clear that A2 obtained ECs. for the

Plot No.6 but not the apartments constructed by him. Naturally, the EC for plot would show nil encumbrance and pettioner/A7 without insisting for ECs. for apartment, declared that A2 was the absolute owner of the property and opined that bank can create equitable mortgage by accepting the property as collateral security.

The crucial point is whether on that count the offence of criminal conspiracy, cheating, forgery can be ascribed against him. In none of the records i.e. FIR, charge sheet and 161 Cr.P.C. statements, any tangible material is placed showing the criminal association of petitioners/A7 and A8 with other accused so as to hatch criminal conspiracy to cheat bank. It may be only a negligence on the part of petitioner/A7 if he has not insisted for ECs. relating to apartments. To impute a criminal negligence, the prosecution must invariably show *mens rea* on the part of accused that is lacking in the case of petitioner/A7.

9) In ***K.Narayan Rao***'s case (1 supra) which is also a similar type of case, the Honourable Apex Court observed thus:

> *"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 of Indian Penal Code 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."*

So, on a conspectus of entire record there is absolutely no *prima facie* material against petitioner/A7 to hold him guilty for criminal conspiracy, cheating and other offences charged.

10) Then, petitioner/A8 is concerned, it must be said prosecution has much worse case. He issued legal opinion dated 17.02.2006 on the perusal of following documents:

S.No.	Original/ Xerox	Date of Document	Nature of Document	Parties to Document
1.	Original	04.07.2003	Registered Sale Deed Doc.No.1894/03	Estate Office HUDA-Srinivas Gundluri
2.	Original	01.10.2005	Lease Deed	Srinivas Gundluri M/s.Food World Super Market Ltd.
3.	-do-	01.10.2005	Security Deposit Agreement	Srinivas Gundluri M/s.Food World Super Market Ltd.
4.	Xerox	Nil	Auction Publication	HUDA
5.	Xerox	23.04.1998	Govt. G.O. G.O.Ms.No.277	Govt. of A.P.
6.	-do-	17.03.1998	Gazette Notification Act No.8 of 98	Govt. of A.P.
7.	-do-	28.01.2000	Govt. G.O. G.O.Ms.No.17	Govt. of A.P.(EFS & T Dep)
8.	Original	30.07.2005	E.C. C.No.8538/05	SRO Banjara Hills G.Srinivas
9.	Original	30.07.2005	E.C. C.No.1218/05	SRO Banjara Hills G.Srinivas
10.	Original	30.07.2005	E.C. C.No.5635/05	SRO Banjara Hills G.Srinivas
11.	Original	30.07.2005	E.C. C.No.1310	SRO Banjara Hills G.Srinivas
12.	-do-	09.03.2004	MCH Permission Permit No.121/73Plan	Commissioner MCH G.Srinivas
13.	Original	08.02.2006	Proper Tax Receipts	MCH G.Srinivas
14.	Original	07.02.2006	Proper Tax Receipts	MCH G.Srinivas

15.	Original	6&7.02.2006	Electricity Bills	MCH G.Srinivas
16.	-do-	11.12.2005	Lease Deed	G.Srinivas M/s.Jiangsu Communications Con.Group
17.	-do-	11.12.2005	Security Deposit Agreement	G.Srinivas M/s.Jiangsu Communications Con.Group

From the history of the property narrated by him, it is evident that he knew that the subject property was a complex and not vacant site. In column 5.3 he opined that A2 has full ownership and in column 5.12 he answered that property was free from encumbrance. In respect of question in column 5.13 as to whether any equitable mortgage by deposit of title deed is possible, he answered positively by instructing the bank to obtain deposit of following documents.

1. Sale deed executed by the HUDA in favour of Sri Srinivas G. S/o Sri Late Venkateswara Rao, date of doc.04.07.2003 – Original
2. Building Permit issued by MCH dated 09.03.2004 – Xerox
3. Latest Property Tax Receipt — Original
4. **Latest E.C. till the date of sanction of loan /limits – Original**
5. Undertaking from the tenants/lessee regarding payment of rent to the bank.

Not only that at the end of his legal opinion, he mentioned the following conditions for creation of mortgage:

1. The Original Documents Sale deed is to be deposited with bank.
2. Latest Property tax receipts Originals also deposited with the bank.
3. **Notarized affidavit to be obtained from the applicant on 10 Rs. Stamp paper stating that there are no**

encumbrances/Sales in the above mentioned complex.

4. Undertaking from the lessees that they will remit the monthly rentals directly to the bank.

So, the prominent aspects in his legal opinion are that he insisted for latest EC till the date of sanction of loan and further insisted a notarised affidavit stating that there were no encumbrances/sales in respect of property complex. The above would show that petitioner/A8 wanted to protect the interest of the bank by all means and therefore, insisted for latest EC and notarized affidavit to be obtained from A2. It is needless to say that he would not have insisted these documents had he conspired with A2 and other accused.

11) So, in my considered view, there is no *prima facie* material to prosecute petitioners/A7 and A8 and in these circumstances, continuation of criminal proceedings against them would certainly amount to abuse of process of the court.

12) In the result, Criminal Petition Nos.6432 and 6448 of 2014 are allowed and proceedings in C.C.No.13 of 2014 on the file of Principal Special Judge for CBI Cases, Hyderabad are quashed insofar as petitioners/A7 and A8 are concerned.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 06.08.2015

Murthy

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[1] (2012) 9 SCC 512