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

\+   **WP(CRL) No.1380/2013**

Date of Reserve: 21.09.2015
Date of Decision:29 .09.2015

P S SHETTY ..... Petitioner
Through: Mr.V. Sudeer, Adv. along with petitioner in person

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent
Through: Mr. Sanjeev Bhandari, SPP for CBI

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The present petition is directed against the order dated 3.6.2013 passed by the District & Sessions Judge (East), Special Judge (CBI), Karkardooma Courts, Delhi whereby in reference to First Information Report No. RC-DAI-2011-A-209 dated 25.07.2011 (AC No.04/2012), the prayer of the petitioner for being discharged, was rejected and later charges were framed against him.

2. On the written complaint of one Shri M.R. Bagade, Chief Vigilance Officer, Syndicate Bank, a case was registered for the commission of offence under Sections 120B read with Section 420, 467, 468 and 471 IPC and Sections 13(2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 against the partners of M/s Shree Sai Shyam Enterprises namely Rajeev Sharma and Sanjay

Sharma and officers of the Syndicate Bank of Nirman Vihar Branch, Delhi.

3. As per the investigation and charge-sheet, co-accused Roshan Lal Rewaria and Hans Raj Kumar, who were posted as Chief Manager and Assistant Manager respectively in the Syndicate Bank, Nirman Vihar branch, New Delhi at the relevant time, had entered into conspiracy with the partners of the aforesaid firm and the petitioner P.S. Shetty, a panel advocate of the said bank, for providing overdraft limit to the firm to the tune of Rs.90 lakhs and a term loan of Rs.8.10 lakhs.

4. The aforesaid overdraft limit and the term loan were accorded by the bank on deposit of fake and laminated title deeds. Accused Hans Raj Kumar looked after Loan and Advance Section whereas Roshan Lal Rewaria had to supervise the process of disbursement of loan. The aforesaid officials of the bank were required to scrutinise the documents in order to ascertain whether the documents were in prescribed form and in accord with the procedure of the bank, for grant of loan. This required a thorough investigation/scrutiny of the documents for ascertaining their genuineness. Before any loan could be advanced, the bank was required to ascertain the credit worthiness and financial viability of borrower firm. The monthly stock statement of the firm was also required to be verified.

5. It is the case of the prosecution that for obtaining loan and overdraft facilities, the partners of the firm, referred to above, made an application along with the list of machines to be purchased and their market prices. Along with the application, documents such as

collateral security of the factory (a building at 25, Shyam Industrial Area, Loni, Ghaziabad), registration certificate of the firm, audit report, balance-sheet, profit and loss account statement under the signature of one Surjit Grewal and a statement of account maintained with J & K Bank, Vikas Marg was also submitted. The aforesaid documents were ultimately found to be forged/fabricated. The fraud could be detected only when the borrowers did not return the loan amount.

6. The investigations revealed that the loan application was processed by accused Hans Raj Kumar and accused Roshan Lal Rewaria sanctioned the proposal, by holding that, the mortgaged properties were inspected and it was ensured that such properties were in possession of the mortgagee. A detailed investigation further brought to light that the partners of the firm had made a false declaration that they had not deposited the title deeds at any point of time with any person and that such properties were absolutely free from all encumbrances.

7. The fact of the matter is that the firm had already availed cash credit facility from UCO Bank, Krishna Nagar, UCO Bank, Mukherjee Nagar and Nainital Bank Ltd., Punchkuian Road. The aforesaid facts were never verified by the sanctioning authority.

8. With respect to the properties which were offered as security for the loan, the petitioner, who at the relevant time was the panel advocate of the bank, is alleged to have submitted a false legal scrutiny report with respect to property at building No.25, Shyam Industrial Area, Loni, Ghaziabad without any verification of the

documents with the original.

9. Various acts of omission and commission were alleged against the accused persons, specially the officers of the bank namely non-retrieval of report of Credit Information Bureau of India Limited (hereinafter call CIBIL report) before sanctioning of loan. The aforesaid report was mandatory in nature. The report in question was generated subsequent to the sanction of the loan and thus it was a lapse on the part of the bank authorities. The forged audit report and copies of stock statements were also not confirmed from the concerned Chartered Accountant.

10. No person in the name of Mr. Surjit Singh ever worked with M/s Grewal and Singh, Chartered Accountant and the letterhead on which the audit report was prepared, did not even belong to aforesaid Chartered Accountant firm.

11. With respect to the petitioner, it has been alleged that he being a panel advocate of the bank in complicity with the bank officials and the partners of M/s Shree Sai Shyam Enterprises, submitted a false scrutiny report of the mortgaged property, thereby facilitating the disbursement of loan to the firm. All the pages of the sale deed of property in question were laminated and as per the guidelines of the bank, the same could not have been accepted by the bank as security. Only photocopies of the properties were held by the bank and there was no demand for the original before sanctioning the loan.

12. The loan amount which was disbursed was misappropriated and the same was never used for the purpose for which it was taken. No machinery was purchased out of the term loan. Thus, as a whole it

was alleged that the accused persons included petitioners in conspiracy with each other, caused lawful gains to the accused persons and loss to the bank to the tune of Rs.120.25 lakhs.

13. After submission of charge-sheet, cognizance was taken and by order dated 3.6.2013, charges framed against the petitioner and other accused persons. The aforesaid order, as stated above, is under challenge.

14. The petitioner has assailed the aforesaid order on several grounds including the denial of submitting any forged, fabricated or false report. In support of his contention, learned counsel for the petitioner has submitted that the petitioner as a panel advocate was not required to verify from original regarding genuineness of the sale deed in the said property. The petitioner was never shown the original sale deed. The petitioner has not stated in his report that he has verified the documents from the original. Since the petitioner was given the photocopy of the original sale deed, he did not have any mechanism to discern in the absence of original documents that the documents offered by the partners of the firm were forged or fabricated.

15. It has further been contended by the learned counsel for the petitioner that the petitioner only gave his legal opinion to the bank which may or may not have been accepted. A legal opinion was not binding on the bank.

16. It has lastly been submitted that there is no evidence in the entire investigation papers which would suggest there was any conspiracy between the petitioner and the other co-accused persons for the loan to be advanced to the firm on forged and fabricated

documents.

17. Learned counsel for the petitioner placed reliance on a judgment reported in **Central Bureau of Investigation, Hyderabad vs. K. Narayana Rao,** (2012) 9 SCC 512, wherein the Supreme Court has observed that the liability against an advocate, who opines, arises only when the lawyer is an active participant in a plan to defraud the bank. In **Jacob Mathew vs. State of Punjab and Another**, (2005) 6 SCC 1, the Supreme Court has laid down the standards to be applied for judging a case of a professional doctor to determine whether a person charged has been negligent or not; he is required to be judged like an ordinary competent person with ordinary skills in that profession. It is not necessary for every professional to possess a high degree of expertise in the branch in which he practices. Similarly, in **Pandurang Dattatraya Khandekar vs. Bar Council of Maharashtra and Others**, (1984) 2 SCC 556, the apex court has clarified that there is a world of difference between giving of improper legal advice and giving of wrong legal advice. Negligence, unaccompanied by any overt act of omission or commission for the purposes of defrauding the bank, would not be sufficient for saddling a legal practitioner with the offences for which the other accused persons are charged with. Therefore, the true import of the aforesaid decisions are that there should be positive evidence with regard to conspiracy for foisting any legal practitioner with the main charges for which the other accused persons are being prosecuted.

18. An undoubtful proposition about a lawyer's ethics would be an unflinching loyalty to the interests of the client. A legal opinion may

not be binding on any authority but merely because such legal opinion is capable of being rejected also, a professional lawyer cannot be absolved of his responsibility if there are other materials to suggest that the wrong opinion or negligence in conducting research for giving an opinion was not inadvertent or because of incompetence of the professional but only with an avowed purpose of defeating the claims and interests of the organisation as against the demands of other accused persons.

19. It has been submitted on behalf of the CBI that after the framing of charges, many witnesses have been examined and the deposition of some of the witnesses have been brought on record by the petitioner.

20. For the present, it can only be said that had the legal scrutiny report been otherwise, the loan would not have been advanced and in that event the bank would not have been put to loss. The sale deed with respect to the property which was offered as collateral security was found to be forged and the firm had already availed of credit facilities from other bank on the basis of same collateral security.

21. Learned counsel for the petitioner has laid great stress on the wordings of certificate which was given by him to the bank which reads as under:

> *"I hereby certify that I have verified the documents filed in the office of Sub Registrar-IV, Ghaziabad, and compared the same with the copies of the documents provided to me and found that the same are genuine and not fake or fabricated."*

22. The contention of the petitioner that the gravamen of charge being non verification of documents with the original, that charge

cannot be substantiated in the trial as admittedly the petitioner was never given or shown the original and was only given a photocopy of the document.

23. The learned Trial Court while rejecting the prayer of discharge of the petitioner rightly made a distinction between a legal opinion and legal scrutiny report. A legal opinion could turn out to be wrong because of lack of understanding of law or of facts by a legal professional, but the same would not be a case with a legal scrutiny report which does not require any application of law but only verification of the records for the purposes of ascertaining its genuineness. Any wrong legal scrutiny report, leads to a strong presumption and grave suspicion against the persons submitting such report, for it only requires due diligence and not any interpretation of facts and law. Even the bank authorities or for that matter any statutory body which seeks a legal opinion/legal scrutiny report, rely upon such report to be absolutely correct as a proposition of fact, before taking any decision

24. I have carefully gone through the deposition of witnesses during trial.

25. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing any illegal act, or for by illegal means, an act which by itself may not be illegal. The ingredients of the aforesaid offence could be proved either by direct evidence or by circumstantial evidence or by both. It is a matter of common knowledge that direct evidence to prove conspiracy is hardly

available. Accordingly, only circumstances attending before or after the act are relevant for consideration of the same.

26. Merely, because the petitioner is a legal professional, full dress trial which is required in a case of this kind, ought not to be halted in between. It is only during trial that such materials regarding conspiracy of the petitioner with other accused persons would surface.

27. Without expressing any opinion over the merits of the case of conspiracy, as it would have the potential of prejudicing the trial of the petitioner, this Court only affirms the fact that a full trial would be necessary for bringing to the fore and for unravelling the truth.

28. Considering the above facts and that many prosecution witnesses have been examined uptil now, I am not inclined to quash the order and the charge.

29. The petition is, thus, dismissed.

ASHUTOSH KUMAR, J

SEPTEMBER 29, 2015
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