IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36881 of 2013

Arising Out of PS. Case No.-13 Year-2010 Thana- PIRBAHOR District- Patna

==

Shashi Shankar S/O Late Muneshwar Prasad R/O Road No 2, Rajendra Nagar, Ps - Kadamkuan, Distt-Patna

... ... Petitioner/s

Versus

The State Of Bihar

... ... Opposite Party/s

==

Appearance :
For the Petitioner/s : Mr. Shailendra Kumar Sinha
For the Opposite Party/s : Mr. BINOD KUMAR-III(APP)

==

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date : 24-01-2018

Heard learned counsels for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 17.02.2012 passed by the Chief Judicial Magistrate, Patna in G.R. No. 2277 of 2010, Tr. No. 910 of 2012 arising out of Pirbahore P.S. Case No. 131 of 2010, whereby and whereunder cognizance has been taken against the petitioner for the offence under sections 420, 406, 467, 468, 471 and 120B of the Indian Penal Code.

Facts of the case, in short, is that one Ajay Kumar, Proprietor of M/s Amit Synthetic requested the Cenetral Bank of India (Opposite party no. 2) for sanctioning loan of Rs.

5,00,000/-. In this regard, Bank asked him to give security in the form immovable property. Said Ajay Kumar, introduced one Abhay Kumar Sharma saying that he is related to him and is ready to deposit original document of his property situated at Mugalpura, Chohata, Murtaza Khan, Khajakala, Patna in the capacity of mortgagor and guarantor. On submission of the required documents, the Bank sanctioned loan in his favour. The Firm utilized the loan amount but neglected to pay the due amount, and as such, the same became Non-Performing Assets (N.P.A.) for the Bank. Bank gave several reminders and even contacted him for repaying the loan amount, but the same was not paid. Bank visited the site of the mortgaged property where its officials came to know that the aforesaid property does not belong to Abhay Kumar Sharma, the Guarantor. On verification from the concerned Registry Office, the Bank came to know that the aforesaid sale deed is not genuine. Thereafter, Bank filed Complaint Case No. 723 (C) of 2010 against the Firm, its Proprietor and the Guarantor. The aforesaid complaint was sent to the Pirbahore Police Station under section 156(3) Cr.P.C. for investigation by the police. In that connection, Pirbahore P.S. Case No. 131 of 2010 was registered.

Learned counsel appearing for the petitioner submits that petitioner is a practising advocate of the Patna High Court and the Patna Civil Court. Petitioner is panel lawyer of Punjab National Bank, Allahabad Bank, Bank of Baroda, HUDCO and the Central Bank of India. Being the panel Lawyer of the Banks he is required to give legal opinion on the basis of documents supplied by the Bank concerned. The Central Bank of India sought his legal opinion in the present case and supplied him the original sale deed no. 6717 dated 16.11.1989, Mutation Order, rent receipt, municipal tax receipt and also non-encumbrance certificate in respect of the land in question.

Considering the aforesaid documents, petitioner gave his legal opinion on 25.03.2003. After submission of the legal opinion by this petitioner, the Bank asked its registered valuer Sri Shyam sunder Bhartia to submit the Valuation Report, who submitted the same on 05.04.2003 alongwith sketch map and photograph of the property. Thereafter, the Bank sanctioned the loan amount. On the request of the borrower, the loan was further enhanced to Rs. 8,00,000/-. however, the loan, later on, became bad and the account was categorized as N.P.A. Thereafter Bank instructed this petitioner to file a mortgage suit against the Firm and the Guarantor. Petitioner even filed Mortgage Suit No. 143 of 2009, which is still pending. The

Bank verified about the genuineness of the documents and came to know that the same is fake. Thereafter, Bank filed Complaint Case No. 723 (C) of 2010 against the Firm, its Proprietor and the Guarantor. The aforesaid complaint was sent to the Pirbahore Police Station under section 156(3) Cr.P.C. for investigation by the police. In that connection, Pirbahore P.S. Case No. 131 of 2010 was registered. Police after investigation submitted charge-sheet (Annexure-3) against the firm and its proprietor but did not submitted charge-sheet against the Guarantor, who has allegedly submitted the fake sale deed. Surprisingly, this petitioner has been made non-F.I.R. accused in the said charge-sheet alongwith the Branch Manager.

Learned counsel submits that petitioner has been giving legal opinions to different Banks on basis of documents supplied to him and in the present case also he has only discharged his official duty. According to the guidelines of the Bank, no agency has been provided to the petitioner for verifying the genuineness of the documents supplied to him. It is not incumbent upon the petitioner to verify the genuineness of the documents and as to whether the documents are fake or genuine. It is further submitted that during investigation, no material has come to suggest his complicity in the present occurrence. He has no concern either with the Firm, its Proprietor or the Guarantor.

In the background of above submissions, learned counsel submits that the order taking cognizance of the offence against this petitioner is fit to be quashed.

Learned counsel appearing for the Bank submits that the Bank sanctioned the loan to the firm in question on the basis of the legal opinion given by the Empanelled Lawyer and the Registered Valuer and also in light of the various guidelines of the Bank.

Considering the facts and circumstances of the case, the materials available on record and the submissions advanced on behalf of the parties, this Court finds that the submissions advanced by the learned counsel for the petitioner has substance. Petitioner was empanelled lawyer of the Bank concerned and he used to give his legal opinion to the Bank on basis of the documents supplied to him. In the present case also he gave his legal opinion considering the documents supplied to him. He has no mechanism to verify about the genuineness of the documents supplied as no agency has been provided to him by the Bank concerned to verify about the genuineness of the documents. Petitioner only appears to have discharged his official duty being the Empanelled Lawyer of the Bank. Moreover, during investigation also nothing has come suggesting complicity of this petitioner in the alleged occurrence. There is also nothing on the record to suggest any connection of this petitioner either with the Firm, M/s Amit Synthetic, its Proprietor, Ajay Kumar or the Guarantor, Abhay Kumar Sharma.

In view of the discussions made above, this Court find that the order dated 17.02.2012 passed by the Chief Judicial Magistrate, Patna in G.R. No. 2277 of 2010, Tr. No. 910 of 2012 arising out of Pirbahore P.S. Case No. 131 of 2010, whereby and whereunder cognizance has been taken against the petitioner for the offence under sections 420, 406, 467, 468, 471 and 120B of the Indian Penal Code, is not sustainable in the eye of law. The same is, hereby, quashed.

The application, accordingly, stands allowed.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	18.09.2017
Uploading Date	25.01.2018
Transmission Date	25.01.2018