

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.1338 OF 2015

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner-accused No.5 to set aside the order of dismissal dated 02.07.2015 passed in CrI.M.P. No.101 of 2015 in C.C. No.3 of 2014 on the file of the Principal Special Judge for C.B.I. Cases, Visakhapatnam (for short, 'the trial Court') filed under Section 239 Cr.P.C. seeking to discharge the petitioner-A.5 in C.C. No.3 of 2014 for the offences punishable under Sections 120B, 420 and 471 I.P.C. and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act').

2. Heard the learned counsel for the petitioner-accused No.5 and the learned Special Public Prosecutor for C.B.I., apart from perusing the material on record.

3. Learned counsel for the petitioner-accused No.5 would submit that the petitioner-A.5 is a practising advocate; he has given opinion to the loan obtained by A.2 and A.3 in the subject crime after analysing the documents; in the encumbrance certificate filed, there was no mention of alienation or mortgage of the property in question; there is no conspiracy or any fault on the part of the petitioner-A.5 in giving the opinion with regard to the sanction of loan to A.2 and A.3 in this case; if there is any defect in the opinion, the petitioner-A.5 is required to be proceeded by making a complaint to the Bar Council, but not by way of instituting the criminal proceedings; there is no record to establish that the petitioner-A.5 admitted the commission of offence; and ultimately, prayed to set aside the impugned order and discharge the petitioner-A.5 in C.C.

No.3 of 2014 for the aforesaid offences. In support of his contentions, he has relied on the decision of the Hon'ble Supreme Court in **Central Bureau of Investigation, Hyderabad vs. K.Narayana Rao**¹.

4. On the other hand, learned Special Public Prosecutor for C.B.I. would contend that the borrowers A.2 and A.3 and guarantors have no title over the property; the petitioner-A.5 indulged in the criminal conspiracy in committing the offence; the banker had obtained second opinion, wherein it has come to light that the petitioner-A.5 gave erroneous opinion stating that the borrowers have clear title over the property in question; there are sufficient grounds to proceed against the petitioner; and ultimately, prayed to dismiss the criminal revision case.

5. In view of the submissions made on behalf of both sides, the point that arises for determination is, whether the impugned order is liable to be set aside and the petitioner-A.5 can be discharged in C.C. No.3 of 2014 for the offences punishable under Sections 120B, 420 and 471 I.P.C. and Section 13(2) read with Section 13(1)(d) of the PC Act?

6. **POINT:** As per the material placed on record, a loan of Rs.20 lakhs was obtained by A.2 and A.3 from the Bank of India, Kakinada. The Bank Manager is also being prosecuted in this case as A.1. The petitioner-A.5 gave legal opinion in favour of A.2 and A.3 stating that their guarantors have clear title over the property measuring Acs.1-63½ cents in Sy.No.1044/4 and 459/1, Patta No.14, situated at Hukumpet, hamlet of Rajahmundry. The certified copy of settlement deed dated 04.07.1959 shows that the aforementioned property belong to Kappala Peda Seshayya and he has conveyed the same to his wife Narasamma and his son Nageswara Rao. The guarantors acquired property from

¹ (2012) 9 SCC 512

Nageswara Rao, but they have not filed any certificate issued by the revenue authorities to show that they are the successors to the land covered by the said document. Further, no copy of pahani/adangal was filed, but only two encumbrance certificates were filed. The encumbrance certificates would not confer title in favour of any person. The petitioner-A.5 had examined ryotwari passbook dated 24.07.1980. It confers no title. There are allegations against the petitioner-A.5 that he conspired with other accused and gave the subject opinion stating that the guarantors have title over the property, but the guarantors have not filed any documents or pahanies to show their inheritance over the property on the demise of Kappala Nageswara Rao, who said to have died in the year 1970 and later K.Narasamma also died in the year 1972. The petitioner-A.5 gave his opinion. Without there being any document showing title over the subject property, when there are allegations of specific conspiracy, etc., against the petitioner-A.5 in sanctioning loan, it cannot be said that there are no grounds to proceed against him.

7. In the decision relied on by the learned counsel for the petitioner-A.5 in **K.Narayana Rao's** case (1 supra), it is held by the Hon'ble Apex Court that although a lawyer owes an unremitting loyalty to client's interests, however, merely because his legal opinion may not be acceptable, the advocate cannot be fastened with criminal prosecution in absence of tangible evidence that he had aided or abetted other conspirators. It is further held that at the most, the advocate who gave the opinion is liable for gross negligence or professional misconduct. In the instant case, there are specific allegations of conspiracy against the petitioner-A.5. In the settlement deed dated 04.07.1959, there is a mortgage clause and the petitioner-A.5 did not make efforts to know either the mortgage was redeemed or not. The documents placed before the

petitioner-A.5 by the bank to give opinion would not establish title and possession of the guarantors over the property offered as security. When there are specific and grave allegations, it cannot be said that there are no sufficient grounds to proceed against the petitioner-A.5 for the offences alleged. The facts and circumstances of the decision, relied on by the learned counsel for the petitioner, are quite different from the facts and circumstances of the instant case. The trial Court while dealing with the matter had elaborately dealt with the entire material placed on record and rightly dismissed the discharge application filed by the petitioner-A.5. There is no error manifest to interfere with the impugned order passed by the trial Court in exercise of power conferred under Sections 397 and 401 Cr.P.C. The criminal revision case is devoid of merit and it is liable to be dismissed.

8. Accordingly, the Criminal Revision Case is dismissed. The observations/findings made in this order shall not have any bearing over the trial Court when the calendar case is finally decided. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 23-10-2018

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