HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3643 of 2018

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner/A.16 seeks to quash the proceedings against him in C.C.No.25 of 2006 on the file of Special Judge for CBI Cases, Hyderabad, registered against him and other accused for the offences under Sections 120-B, 420 and 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 (for short "P.C. Act").

2) The factual matrix of the case is thus:

a) On the complaint given by the Chief Vigilance Officer, Oriental Bank of Commerce, Head Office, New Delhi, the Sub-Inspector of Police, CBI, ACB, Hyderabad, registered a case in Crime No.RC 28(A)/ 2005-CBI, Hyderabad and after investigation laid charge sheet against A.1 for the offences under Sections 120-B, 418 and 420 IPC and 13(2) r/w 13(1)(d) of P.C. Act and against A.2 to A.17 for the offences under Sections 120-B and 420 IPC. The allegations are that A.1, who worked as Branch Manager, Oriental Bank of Commerce, Mehdipatnam Branch, Hyderabad during the period from 11.03.2002 to 02.04.2003 committed several misdeeds in the matter of granting loans to different borrowers and caused financial loss to the bank. Sofaras the allegations touching petitioner/A.16 are concerned, one N.Uma Maheswar Rao (A.7) proposed to purchase the property i.e, Flat No.302 in the 3rd floor admeasuring 1352 SFT, bearing door No.1-11-20, Gurumurthy lane, Begumpet, under an agreement of sale dated 07.03.2001 executed by M/s. Chakkilam Estates Ltd., represented by its Managing Director C.Raghuram (A.5). He applied for housing loan of Rs.10,00,000/- against the equitable mortgage of the aforesaid flat which he proposed to purchase. The bank referred the loan application of A.7 to the petitioner/ A.16, who is the Panel Advocate for his legal opinion. He issued the legal opinion dated 09.03.2002 to the effect that the property has good valid and marketable title and the agreement holder has possession over the said flat and his request for the loan can be considered by way of equitable mortgage on collateral security. It appears, sometime thereafter the loan became a bad debt and declared as non-performing asset. During the course of investigation in respect of the misdeeds of A.1 i.e, the Branch Manager, it was revealed that petitioner/A.16 gave legal opinion for sanctioning of the loan though the documents revealed that the MCH gave permission to M/s. Chakkilam Estates Ltd., to construct only G + 2 floors but the property i.e, Flat No.302 proposed to be purchased by A.7 is located in the 3rd floor for which there was no sanction by the MCH. In the loan file it was mentioned that the site was visited by A.1 and housing loan of Rs.10,00,000/- was sanctioned against equitable mortgage of the flat. Thus the Investigating Officer came to conclusion that A.1, A.7 and A.16 conspired together and cheated the bank in the matter of granting loan. Accordingly, in the charge sheet it is mentioned that A.16 was found guilty for the offences under Sections 120-B and 420 IPC.

Hence the instant Criminal Petition.

3) Heard both sides.

4) Learned counsel for petitioner while denying the allegations would argue that the petitioner is a senior counsel and panel advocate of the Bank and he gave the legal opinion basing on the documents referred to him by the bank and except that he has not committed any offence. The petitioner cannot be held liable for the offences under Sections 120B and 420 IPC without there being any material that he conspired with other accused. Even assuming that there is some legal lacunae in his opinion, that by itself the petitioner/A.16 cannot be held guilty of the criminal liability without a strong evidence showing his conspiracy with other accused. The Investigating Officer in a mechanical manner added the petitioner as accused though nothing was stated against him in the complaint. He placed reliance on the decision reported in ***Surendra Nath Pandey and others v. State of Bihar and others***[1].

5) Learned standing counsel for CBI opposed the petition on the ground that the petitioner issued legal opinion in collusion with other accused knowing fully well that though the MCH issued permission only to construct G + 2 floors, the subject property was constructed in 3rd

[1] MANU/SC/1216/2015

floor without permission which was purchased by A.7 and sought for loan. Thus the petitioner/A16 is guilty of the charges levelled against him. He thus prayed to dismiss the petition.

6) The point for determination is:

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

7) **POINT**: As per the charge sheet and other material placed on record, the precise allegation against petitioner/A.16 is that though MCH granted permission for construction of G + 2 floors only, M/s. Chakkilam Estates Ltd., represented by A.5 had constructed 3rd floor. Flat No.302 which is situated in the 3rd floor was intended to be purchased by A.7 and he applied for loan from the complainant bank and though the documents produced by the borrower revealed these facts, the petitioner/ A.16 issued legal opinion as if the vendor had good valid and marketable title and possession over the said property and opined that the request of the borrower for loan can be considered by way of equitable mortgage on a collateral security. So as per charge sheet, the Investigating Officer observed that there is a flaw in the legal opinion since the petitioner/A.16 has not given his opinion to reject the loan application since the MCH has given permission to construct only G + 2 floors but the subject property is situated in the 3rd floor for which no permission was accorded by MCH. In my considered view, even if the entire charge sheet allegations are unrebutted and accepted to be true, they would at best show that there is a flaw in the legal opinion to the

effect that A.16 recommended for sanction of the loan to purchase the property for whose construction there was no sanction from MCH. Merely because there is a technical or legal flaw in the opinion given by a panel advocate, by that count alone he cannot be mulcted with criminal prosecution without a strong evidence showing the criminal conspiracy of A.16 with other accused. As rightly argued by learned counsel for petitioner, except alleging that the legal opinion is lopsided one, no specific overtacts touching the connivance and conspiracy of A.16 with other accused is mentioned in the charge sheet. It is true that conspiracy is generally hatched in secrecy and most of the times it will be difficult to get direct evidence. However, no iota of pleading and evidence are placed before the Court showing the conspiracy. If the legal opinion is incorrect one, the petitioner may be proceeded against for his professional misconduct but not for criminal liability. In similar circumstances, the Apex Court in ***Central Bureau of Investigation v. K.Narayana Rao***[2]**,** has observed thus:

> *"Para 30: 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.*
>
> *Para 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*

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[2] (2012) 9 SCC 512

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."

In ***Surendra Nath Pandey***[1] also, the Apex Court following its earlier decision in ***K. Narayana Rao***[2], quashed the proceedings against the petitioner therein. In view of the above judgments, the continuation of the proceedings against the petitioner would amount to abuse of process of the Court.

8) Therefore, this Criminal Petition is allowed and the criminal proceedings against the petitioner/A.16 in C.C.No.25 of 2006 are quashed.

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

U. DURGA PRASAD RAO, J

Date: 26.06.2018
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