IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17322 of 2016

Arising Out of PS. Case No.-20 Year-2012 Thana- KANKARBAG District- Patna

---

Rajesh Chandra Narayan, S/o Lt. Umesh Chandra Narayan, Resident of C/C 68, P.C. Colony, Kankarbagh, P.O. Lohiya Nagar, P.S. Kankarbagh, Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Bank of India, Assets Recovery Branch, Zonal Office, Patna Zone, Chanakya Place, First Floor, R. Blcok, Patna 800001 through Sr. Branch Manager, Sri Mukul Srivastava, 4 B, Basakala Apartment, Ray and Yadav Path, Gyan Niketan More Bailey Road, Patna

... ... Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Durgesh Kumar Singh, Advocate
		Mr. Sanjay Kumar Singh, Advocate
		Mr. Anjana Sinha, Advocate
For the O.P. No. 2	:	Mr. Rakesh Kumar, Advocate
For the Opposite Party/s	:	Mr. Shyam Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 24-07-2019

Heard learned counsel for the parties.

2. The petitioner has sought for quashment of order dated 31.01.2014, passed in Kankarbagh P.S. Case No. 20 of 2012, whereby the learned Judicial Magistrate, 1st Class, Patna has taken cognizance against the petitioner along with others for offences under Sections 419, 420, 467, 468, 471 and 120(B) of the Indian Penal Code.

3. Learned counsel for the petitioner submits that the petitioner is not named in the FIR and ingredients of offences under Sections 419, 420, 467, 468 and 471 of the Indian Penal Code are apparently not made out against the petitioner nor there is no allegation that the petitioner was involved in the conspiracy with other co-accused. Hence, offence under Section 120(B) of the Indian Penal Code is also not made out.

4. Learned counsel for opposite party no. 2-the Bank of India submits that the petitioner was Panel Advocate of the bank and it was duty of the petitioner to verify the genuineness of the sale deed which was produced as a document of mortgage for sanction of the loan. The petitioner did not verify the same and submitted his report which caused pecuniary loss to the bank. Hence, the petitioner is also liable to face the trial along with other co-accused.

5. According to FIR, two firms known as M/s Infotech Solutions of which co-accused Ashish Kumar was proprietor and M/s Aditi Textiles India of which Soni Kumari, the wife of Asish Kumar was proprietor applied for loan to the Bank of India. Both Ashish Kumar and Soni Kumari were guarantor in respect of the firm of each other. Both the firms are running in the town of Patna at the address mentioned in the FIR. M/s Infotech was sanctioned loan of Rs.8,00,000/- (eight lacs) and M/s Aditi was sanctioned loan of Rs.10,00,000/- (ten lacs). Both had produced a registered sale deed dated 20th January, 1989 pertaining to an area of 66 decimals in Plot No. 456 under Khata No. 229 in village

Jaganpura, P.S. Phulwari Sharif, District Patna. The sale deed was executed by Most. Gulabi Devi, wife of Late Asman Das Mehta. When the installment of 'refund of loan' was not being made by the loanees, the bank inquired the matter and consulted to Gulabi Devi, who reported that she had never executed any registered sale deed nor she is a literate lady nor proposes any kind of immovable property. Thereafter, FIR was lodged against the loanees and the guarantors. During investigation, it revealed that the petitioner had given legal opinion on 30th October, 2004 in the matter.

6. A copy of the opinion of the petitioner is at page 55 and 56 which depicts that the petitioner examined the registered sale deed produced by the loanees and certified copy of the mutation order in pursuance of the aforesaid sale deed as well as the rent receipt issued in favour of the purchaser. The petitioner further verified from sub-registry office that there is no encumbrance on the said land. The sale deed was entered in Index II vide Deed No. 660 of 1990. The petitioner further verified and reported regarding non-acquisition/requisition of the referred plot and no due of the government against that property and thereafter the petitioner reported that loanee Ashish Kumar had marketable title over the property and the property was free from any encumbrances on that.

7. There is no material to substantiate that the report of the petitioner was in any way against the material on the record or the same was made in collusion with other co-accused.

8. It is not business of the Panel Advocate to inquire whether the registered sale deed produced before the bank was executed by a genuine person or by some fictitious man/women. This liability is on the witnesses of the sale deed to identify the executor. The entire case diary does not reveal that the petitioner had any nexus with the main accused as conspirator. The improper legal advice or negligent legal advice cannot attract a criminal liability against an Advocate.

9. Almost identical issue was there before the Hon'ble Supreme Court in **Central Bureau of Investigation** Versus **K. Narayana Rao** reported in **2012 AIR (SCW) 5139,** wherein the Andhra Pradesh High Court had quashed the criminal proceeding in identical circumstances against the Advocate who was arrayed as accused for giving wrong legal advice and the order of Andhra Pradesh High Court, passed in exercise of power under Section 482 Cr.P.C., was not interfered by the Hon'ble Supreme Court.

10. In the case of **Jacob Mathew** vs. **State of Punjab & Anr.** reported in **2005(6) SCC 1**, the Hon'ble Supreme Court laid down the standard to be applied for judging the competence of the professionals and the Court held that the professional (in that case a Doctor was involved) has to be judged like an ordinary prudent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices.

11. In para 26 and 27 of the judgment of **K. Narayana Rao's** case (supra), the Hon'ble Supreme Court observed as follows:-

> *"26. 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.*
>
> *27. 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 IPC 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."

12. Thus, it is evident from the material on the record that the petitioner was not involved in making a false document nor he acted at any point of time with dishonest and fraudulent intention to cheat the Bank. Further there is no evidence of conspiracy of the petitioner with other co-accused who were loanees from the bank and who were conversant with the fact whether sale deed was by a genuine person or not.

13. Therefore, in my view, the criminal prosecution of the petitioner is an abuse of process of the Court. Hence, the impugned order stands quashed in respect of the petitioner only and this application stands allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	25.06.2019
Transmission Date	25.06.2019