

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.1614 of 2017

Subha Jakkanwar, W/o Arun Jakkanwar, aged 53 years, R/o Plot No.43A, Road No.6, Dixit Colony, Bhilai Nagar, District Durg (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, Through Station House Officer, Police Station Pulgaon, District Durg (C.G.)

---- Respondent

For Petitioner: Mr. Ashish Shrivastava, Advocate.

For Respondent/State: Mr. H.S. Ahluwalia, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/11/2019

1. The short question that emanates for consideration is, whether an Advocate acting professionally and in discharge of his / her professional duty renders an opinion by giving non-encumbrance certificate to bank for granting loan to a borrower certifying that he has legal and marketable title over the land in question free from all encumbrances and subsequently, the same is found to be non-acceptable / untrue, can be prosecuted / criminally liable for offence punishable under Sections 420, 467, 468, 471 & 120B of the IPC for non-exhibiting greater professional care and competence?
2. The above-stated question arises on the following factual background: -

3. Ten borrowers namely, Santuram Netam, Mahaveer Nirmalkar, Pawan Kumar Patel, Toran Lal Netam, Hemkaran Patel, Nileshwar Patel, Chandrashekhar Nishad, Kanti Sahu, Keshoram Patel and Yashuram Patel made application to the Branch Manager, Dena Bank, Pulgaon Chowk Branch, Durg under the scheme of Kisan Credit Card for granting loan on which the concerned Bank requisitioned non-encumbrance certificate from the petitioner herein who was an empaneled Advocate of Dena Bank on that day and on 7-12-2015, the petitioner certified qua the lands held by the borrowers that they have clear, marketable title to the property free from all encumbrances against which they had applied for loan and accordingly, they were granted loan under the said scheme to the following extent: -

S.No.	Name of the borrower	Loan amount
1.	Santuram Netam	₹ 9,90,000/-
2.	Mahaveer Nirmalkar	₹ 7,47,000/-
3.	Pawan Kumar Patel	₹ 18,60,000/-
4.	Toran Lal Netam	₹ 17,83,000/-
5.	Hemkaran Patel	₹ 21,51,000/-
6.	Nileshwar Patel	₹ 18,94,000/-
7.	Chandrashekhar Nishad	₹ 5,11,000/-
8.	Kanti Sahu	₹ 10,29,000/-
9.	Keshoram Patel	₹ 3,82,000/-
10.	Yashuram Patel	₹ 9,62,000/-
Total		₹ 73,14,462/-

4. The borrowers failed to repay the loan amount. Upon enquiry from the Office of the Sub-Registrar, Dhamdha, it was revealed that the documents – B-I, B-II, Khasra Panchshala and Rin Pustika submitted by the borrowers were found to be false and fabricated.

Upon receipt of the aforesaid report, Mr. Dilip Mahajan, Branch Manager, Dena Bank, Durg made first information report (FIR) on 19-10-2016 to Police Station Pulgaon, for registration of aforesaid offence against ten accused persons in which the petitioner was not named. On 18-3-2017, FIR was registered in which also, the petitioner was not named, but when final report was submitted on 14-6-2017, the petitioner was named stating that she is an Advocate and is also empaneled Advocate of Dena Bank at the relevant point of time and she has given non-encumbrance certificate of legal scrutiny and she has certified Rin Pustika & Khasra Panchshala submitted along with the application for grant of loan to be true and issued non-encumbrance certificate and thereby, she has also committed the offence. Questioning legality, validity and correctness of the charge-sheet filed against the petitioner herein, this instant petition under Section 482 of the CrPC has been preferred.

5. Mr. Ashish Shrivastava, learned counsel for the petitioner, would submit that taking the contents of the charge-sheet as it is, no offence punishable under Sections 420, 467, 468, 471 & 120B of the IPC is made out against the petitioner, as the ingredients and elements of the aforesaid offences are clearly missing in the charge-sheet. He would further submit that the ingredients of the offence of criminal conspiracy are also missing and there is no allegation that the petitioner conspired with the other co-accused persons to submit false report or derived any pecuniary advantage

to submit the non-encumbrance certificate which was found to be unacceptable by the Bank and at the conclusion of investigation as well. He would also submit that unless there is direct evidence to prove conspiracy and that in collusion with the co-accused, the petitioner submitted false report, mere negligence, if any, in discharge of professional duty by the petitioner Advocate would not render her criminally liable for the aforesaid offences. As such, the entire criminal case against the petitioner deserves to be quashed. He relied upon the judgment of the Supreme Court in the matter of **Central Bureau of Investigation, Hyderabad v. K. Narayana Rao**¹ to buttress his submission.

6. Mr. H.S. Ahluwalia, Deputy Advocate General appearing for the State / respondent, would submit that the petitioner did not perform her professional duty properly and has submitted false non-encumbrance certificate certifying that the borrowers hold clear and marketable title free from all encumbrances and therefore it cannot be said that she has not committed the offence and is not criminally liable. Statements of three Branch Managers namely, Mr. Dilip Mahajan, Mr. Gangadhar Parate and Mr. Rajan Kumar Dahate have been recorded under Section 161 of the CrPC and they have clearly stated that with intention to extend pecuniary advantage to the co-accused persons, non-encumbrance certificate was issued by the petitioner, therefore, the petition deserves to be dismissed.

1 (2012) 9 SCC 512

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.
8. It is not in dispute that the petitioner was empaneled Advocate of Dena Bank, Durg at the relevant point of time and in order to grant loan to the ten accused persons, Dena Bank, Durg, called for non-encumbrance certificate and the petitioner submitted non-encumbrance certificate on 7-12-2015 in favour of the borrowers on being required by Dena Bank and one of the certificates has been filed along with the charge-sheet i.e. the non-encumbrance certificate issued to the title of Hemkaran certifying that he has a clear and marketable title to the property free from all encumbrances situated at Village Parsauli, Tahsil Dhamdha, District Durg, but at the same time in paragraph 12, the petitioner has recommended some safeguards to be observed by the Bank while granting loan to the borrowers which state as under: -
 - “(a) That the original document obtained from borrower before creation simple mortgage.
 - (b) Copy of Panchsala Khasara Kistbandi B-1 map & Form-C for a period of current year issued by village patwari.
 - (c) A declaration by way of affidavit in bank format should be obtained. Still the same is free from encumbrance of all kind in possession of the depodent.
 - (d) After mutation original Rin-Pustika is applicable issued by the tahsildar.
 - (e) Lagan paid of the current year for the year 2014-15.
 - (f) If the bank pleases may file an application before sub-Registrar office that land has been charge and

debarred from being sale or any kind of transfer.

(g) N.O.C. from required bank.”

9. It is also apparent on the record that according to the investigation report, as on today, the said title deeds of the borrowers who were granted loan were found defective as per the charge-sheet. The chart made herein-below mentions the name of the borrower and the defect in title: -

S.No.	Name of the borrower	Defect in title
1.	Chandrashekhar Nishad	As per revenue record, Rin Pustika of the accused contains names of other co-owners of the land, whereas, in the Rin Pustika submitted by the accused, those <u>names were struck down.</u>
2.	Kanti Sahu	As per revenue record, Rin Pustika of the accused contains names of other co-owners of the land, whereas, in the Rin Pustika submitted by the accused, those <u>names were struck down.</u>
3.	Toran Lal Netam	As per revenue record, the accused is having <u>land of 1.06 hectares</u> , whereas in the Rin Pustika submitted by the accused, the land area is shown to be of <u>8.16 hectares.</u>
4.	Hemkaran Patel	As per revenue record, the accused has <u>no agricultural land</u> in his name, whereas the documents submitted by him before the Bank, show him to be the owner of <u>12.790 hectares</u> of land.
5.	Nileshwar Patel	As per revenue record, the accused has <u>no agricultural land</u> in his name, whereas the documents submitted by him before the Bank, show him to be the owner of <u>10 hectares</u> of land.
6.	Santuram Netam	As per revenue record, the accused has <u>no agricultural land</u>

		in his name, whereas the documents submitted by him before the Bank, show him to be the owner of <u>10.60 hectares</u> of land.
7.	Yeshuram Patel	As per revenue record, the accused has land of <u>0.54 hectare</u> , whereas, in the Rin Pustika submitted by the accused, the land area is shown to be of <u>5.31 hectares</u> .
8.	Pawan Kumar	As per revenue record, the accused has land of <u>1.67 hectares</u> , whereas in the Rin Pustika submitted by the accused, the land area is shown to be of <u>9.80 hectares</u> .
9.	Mahaveer Nirmalkar	As per revenue record, the accused has land of <u>0.40 hectare</u> , whereas in the Rin Pustika submitted by the accused, the land area is shown to be of <u>3.540 hectares</u> .
10.	Keshoram Patel	As per revenue record, the accused has <u>no agricultural land</u> in his name, whereas the documents submitted by him before the Bank, show him to be the owner of <u>1.970 hectares</u> of land.

10. It is well settled law that extending of a legal opinion for granting loan has become an integral component of an advocate's work in banking sector. A lawyer, on his part, has a responsibility to act to the best of his knowledge and skills and to exhibit an unending loyalty to the interest of his clients. He has to exercise his knowledge in a manner that would advance the interest of his clients. However, while acting so the advocate does not assure to his client that the opinion so rendered by him is flawless and must in all possibility act to his gains. Just like in any other

profession, the only assurance which can be given and may even be implied from an advocate so acting in his professional capacity is that he possesses the requisite skills in his field of practice and while undertaking the performance of task entrusted to him, he would exercise his skills with reasonable competence. The only liability that may be imputed on an advocate while so acting in his professional capacity is that of negligence in application of legal skills or due exercise of such skills.

11. The Supreme Court in **K. Narayana Rao's** case (supra) considered the question as to whether a legal professional can be rendered criminally liable for negligence or improper legal advice. Considering the factual situation, Their Lordships of the Supreme Court held that the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank and observed as under: -

“27. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an advocate’s work. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held

liable for negligence on one of the two findings, viz., either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.

28. In *Jacob Mathew v. State of Punjab*² this Court laid down the standard to be applied for judging. To determine whether the person charged has been negligent or not, he has to be judged like an ordinary competent 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.

29. In *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra*³ this Court held that: (SCC p. 562, para 8)

“8. There is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct.”

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.

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 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 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

2 (2005) 6 SCC 1

3 (1984) 2 SCC 556

are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein.

32. In the light of the above discussion and after analysing all the materials, we are satisfied that there is no prima facie case for proceeding in respect of the charges alleged insofar as respondent herein is concerned. We agree with the conclusion of the High Court in quashing the criminal proceedings and reject the stand taken by CBI.”

12. The principle of law laid down by the Supreme Court in K. Narayana Rao's case (supra) was followed with approval by the Supreme Court subsequently in the matter of Surendra Nath Pandey and others v. State of Bihar and others⁴ by observing as under: -

“4. The High Court by the impugned judgment has refused to quash the First Information Report (FIR) on the ground that the same prima facie discloses commission of the offences alleged against the Appellants who are the panel advocates of the Bank. A reading of the FIR would go to show that the allegations levelled against the Appellants is that as panel advocates they had furnished false Search Report/NEC/legal opinion with regard to the properties/land documents in order to cheat the Bank and to facilitate obtaining of loan by the concerned persons. On investigation of the FIR, a charge-sheet has been submitted, a copy of which is enclosed to the present Appeal Paper Book. A reading of the charge-sheet does not refer to any specific finding of investigation.

5. Taking into account the contents of the FIR, we are left with the impression that the said allegations are bald and omnibus and do not make any specific reference to the role of the Appellants in any alleged conspiracy. In *Central Bureau of Investigation v. K. Narayana Rao* [(2012) 9 SCC 512] to which one of us (Ranjan Gogoi, J.) was a party, it has been held by this Court that a criminal prosecution on the basis of such bald and omnibus statement/allegations against the panel advocates' of the Bank ought not to be allowed to

4 MANU/SC/1216/2015

proceed as the same constitute an abuse of the process of the Court and such prosecution may in all likelihood be abortive and futile. ...

6. Taking into account the aforesaid facts and the ratio of the law laid down by this Court in *Central Bureau of Investigation v. K. Narayana Rao* (supra), we are of the view that the High Court was plainly wrong in refusing to interdict the proceedings against the Appellants. We, therefore, set aside the order of the High Court and quash the proceedings in G.R. No. 710 of 206 arising out of Agiaon (G) P.S. Case No. 20 of 2006 pending before the Chief Judicial Magistrate, Bhojpur, Ara insofar as the two Appellants Surendra Nath Pandey and Suresh Prasad are concerned.”

13. The principle of law laid down by the Supreme Court in K. Narayana Rao's case (supra) and Surendra Nath Pandey (supra) has been followed by the High Courts of Gujarat and Rajasthan and very recently by the High Court of Allahabad in the matter of Gyan Chandra Mehrotra v. The State⁵.

14. Reverting to the facts of the present case in the light of the aforesaid legal proposition, it is quite vivid that an advocate while performing his professional duties cannot be held liable for offence in regard to which no direct evidence has been adduced against him and as held in K. Narayana Rao's case (supra), liability in criminal law against an opining advocate arises only when an advocate is active participant in a plan to defraud the Bank, merely because his opinion may not be acceptable, he cannot be criminally prosecuted, particularly, in the absence of direct evidence against him. In the instant case, the petitioner was neither named in the written complaint dated 19-10-2016 nor in the FIR dated 18-3-2017, only in the statements of three

⁵ MANU/UP/1034/2019

Branch Managers, first time, her name was indicated stating that with an intention to extend pecuniary advantage to the farmers, the non-encumbrance certificate was issued in their favour which was found to be not acceptable by the Bank and found to be untrue. There is no basis on record for making such statement except the non-encumbrance certificate was not found proper. There is no evidence on record to hold that the petitioner met the accused persons at any point of time and there is no allegation that she gained any pecuniary benefit as a result of preparing such a report, except the statements of three Branch Managers of Dena Bank namely, Mr. Dilip Mahajan, Mr. Gangadhar Parate and Mr. Rajan Kumar Dahate, that the report was false, there is no material to show that the petitioner at any point of time was involved in any criminal conspiracy with any of the accused persons to commit the offence alleged against her.

15. The petitioner has taken care in observing some safeguards to be followed by the Bank in paragraph 12 of her report which have been noticed herein-above, but there is no material on record to show whether the Bank has observed any such safeguards as recommended by the petitioner. It is true that the petitioner could have exhibited more and greater professional care and competence, yet in failure to exercise the same, she could not have been held criminally liable. The Supreme Court in K. Narayana Rao's case (supra) and Surendra Nath Pandey (supra), has clearly held that mere negligence or want of greater

professional care and competence on the part of an advocate would not make him liable for a criminal offence in an absence of tangible evidence. Even there is no allegation of criminal conspiracy against the petitioner and it is nowhere apparent that only acting upon the non-encumbrance certificate issued by her, loans were granted to the said borrowers.

16. The Supreme Court in the matter of **State of Haryana and others v. Bhajan Lal and others**⁶, in paragraph 102, has laid down the parameters for exercising the extraordinary power of quashing criminal proceeding by observing as under: -

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.”

17. Reverting finally to the facts of the present case in the light of the discussion made herein-above and in the light of the allegations made in the FIR and the charge-sheet, even if the allegations are taken at their face value and accepted in their entirety, the same do not disclose any commission of offence and make out a case against the petitioner. Therefore, I am of the considered opinion that the entire charge-sheet as framed and filed against the petitioner deserves to be quashed following the principles of law laid down by their Lordships of the Supreme Court in **Bhajan**

⁶ 1992 Supp (1) SCC 335

Lal's case (supra).

18. Accordingly, prosecution of the petitioner pursuant to Crime No.149/2017 registered at Police Station Pulgaon, District Durg for the offence punishable under Sections 420, 467, 468, 471 & 120B of the IPC, pending in the Court of Judicial Magistrate First Class, Durg, in which name of the petitioner is mentioned as Accused No.13, is hereby quashed. However, trial against remaining 12 accused persons shall continue.
19. It is made clear that what has been expressed herein is only for disposing of the case filed by the petitioner herein and has nothing to do with the allegations levelled and that are being tried against the other accused persons. The trial Court would decide the trial against the other accused persons without being influenced by any of the observations made herein-above.
20. The petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.1614 of 2017

Subha Jakkanwar

Versus

State of Chhattisgarh

Head Note

An Advocate cannot be prosecuted for criminal offences for non-exhibiting greater professional care and competence while submitting non-encumbrance certificate to a Bank.

बैंक में भारमुक्तता प्रमाण पत्र जमा करते समय वृत्तिक सतर्कता और क्षमता प्रदर्शित न किये जाने हेतु किसी अधिवक्ता को दाण्डिक अपराध में अभियोजित नहीं किया जा सकता।