HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL REVISION CASE No.588 of 2019

ORDER:

1) The present revision is filed by accused No.2 under Sections 397 and 401 Cr.P.C., questioning the order, dated 08.04.2019, passed in Crl.M.P.No.2253 of 2018 in C.C.No.25 of 2006 on the file of the Principal Special Judge for CBI Cases, Hyderabad, wherein and whereunder an application for discharge filed by the petitioner/accused No.2 was dismissed.

2) A charge sheet came to be filed against the petitioner and others for the offences punishable under Sections 120-B and 320 IPC. The allegations against the petitioner is that the petitioner has applied for housing loan vide loan A/c.No.HL-T-3/125 for Rs.9.90 lakhs on 19.02.2003 for purchase of flat at southern side at H.No.1-8-430/22, Umabagh, Chikkadapally, Hyderabad, which belongs to Tunga Pavan Kumar (Accused No.11). It is further stated that the petitioner has received Rs.9.90 lakhs as loan and the same was paid to the house owner, which was deposited in his SB Account at Andhra Bank, Kachiguda Branch, Hyderabad. Legal opinion was given by accused No.12. In his report, accused No.12 stated that T.Pavan Kumar (accused No.11) possessed clear and marketable title over the property and that S.K.Agarwal (petitioner) would become absolute owner and possessor of the said property if the sale deed is executed in his favour by accused No.11. It is further stated that M.Panduranga Rao (accused No.13),

who is the valuer has given his valuation report on 13.02.2003 mentioning the value of the property as Rs.11,75,000/-. It is stated that both the legal opinion and the valuation report were issued much prior to the date on which the loan is applied for. It is stated that the said property was already mortgaged by accused No.11 with Andhra Bank, Abids Road Branch for OD facility and Term loan. Apart from that the petitioner also stood as guarantor for B.Anand Kumar (accused No.3), who was also purchased another property from accused No.11 and sanctioned housing loan of Rs.9.90 lakhs in similar manner. The petitioner conspired with other accused and cheated the bank by applying housing loan and got higher amount on the basis of false valuation report showing the exaggerated value knowing fully well that the said property was already mortgaged by his vendor (accused No.11).

3) Heard learned counsel for the petitioner and learned Special Public Prosecutor for C.B.I.

4) Learned counsel for the petitioner submits that the loan was discharged by the vendor of the petitioner and there is no cheating committed either by the vendor of the petitioner or the petitioner. In fact, the petitioner was not in the knowledge of mortgage of the property by his vendor. He further submits that this High Court quashed the proceedings against accused No.12, who gave the legal opinion. The case against accused No.13, who gave valuation report, was also discharged by the Court. He further submits that

there is no documentary evidence to prove that the petitioner has committed the alleged offences.

5) Learned Special Public Prosecutor for CBI, submits that the statements of LWs.1, 3 and 6 coupled with document Nos.5 to 8 and 99 show *prima facie* case against the petitioner.

6) A perusal of the material on record would show that on the date of application dated 19.02.2003, the petitioner has submitted agreement of sale executed by accused No.11 in his favour stating that the sale consideration of the property is Rs.11.75 lakhs, but the sale deed executed in favour of the petitioner on 22.02.2003 would show that the entire sale consideration is Rs.7.00 lakhs only. As per the statement of Satya Prasad (LW.6), the title deeds of the property were already pledged with the bank as collateral security in Andhra Bank, Abids on 20.09.2000 and the documents were returned to accused No.11 under his acknowledgment on 14.10.2004. By the date of execution of sale deed in favour of the petitioner, the property was already mortgaged in Andhra Bank, Abids Branch, Hyderabad. As per the charge sheet during the year 2002, accused No.1 sanctioned and disbursed 9 fraudulent housing loans by violating the guidelines of the bank. Housing loans of Rs.9.9 lakhs each were sanctioned in favour of the petitioner, accused No.3 and accused No.4 for purchasing of two portions of ground floor and first floor portion. The said property was already mortgaged by its owner to Andhra Bank, Abids Branch, Hyderabad, for availing cash credit facility and the original title deeds were in

possession of that branch. Apart from that though the sale agreements executed by three borrowers for Rs.11.75 lakhs each, but the sale consideration shown in the three sale deeds was only Rs.7.00 lakhs. The issue as to whether the petitioner has got knowledge about the mortgage created by his vendor or not, is a disputed fact which has to be gone into only during the course of the trial. Apart from that the discharge of accused Nos.12 and 3 will not help the petitioner as they have given legal opinion and valuation report prior to the date on which the loan was applied for. Hence, this Court is of the view that there is no illegality or irregularity in the order passed by the trial Court.

7) Accordingly, the Criminal Revision Case is dismissed at the admission stage. Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE G. SRI DEVI

18.06.2019
gkv