THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.12604 OF 2018

ORDER:

The petitioner is A-6 in C.C.No.296 of 2018, on the file of the learned XII Additional Chief Metropolitan Magistrate, at Nampally, Hyderabad, taken cognizance for the offences punishable under Sections 420, 406, 465, 468, 471 & 120-B of Indian Penal Code (for short, 'IPC'), which is outcome of the report of the 2nd respondent-Chief Manager of Tarnaka Branch of Andhra Bank, dated 22.01.2017, to the Station House Officer, CCS, DD, Hyderabad, in registration of the crime and from investigation, having cited 21 witnesses in all including the 2 Investigating Officers-L.Ws.20 & 21 besides L.W.1-*de facto* complainant, L.Ws.2 & 3-Sub-Registrar, Champapet, Hyderabad and Sub-Registrar, L.B. Nagar, Ranga Reddy District, L.Ws.4, 5, 7, 8 & 9-bank employees of SBI and HDFC, L.W.6-Nooka Jagannadham, Advocate, who has given legal opinion on the property to be furnished by A-1, L.W.10-Income Tax Officer, Ward-4(3) of IT Returns of A-3 furnished for the years 2012-15, L.Ws.11 to 15-Panch witnesses to the so-called disclosed statements of A-1 and A-3, L.W.16-Head Constable, L.W.17-Constable, L.W.18-Constable, L.W.19-Constable, who assisted L.Ws.20 & 21 in the investigation. By array of six accused including the petitioner, Advocate and panel Advocate of the Bank by name M.V.S. Prasad. The other accused are A-1 for whose business purpose, the loan availed that was running in the name of 'Goldfish Holidays Travel Agency', Singapur, A-2 & A-3, other business persons including A-3 of Creative Graphics, A-4 private employee and A-5 AGM, Andhra Bank.

2. Heard and perused the material on record.

3. The report of the *de facto* complainant in registration of the crime speaks that A-1 approached the Tarnaka Branch of Andhra Bank for housing loan of Rs.95,00,000/- to purchase the residential building bearing No.9-5-99/26 (Old No.9-5-210/2), admeasuring 318 square yards of ground plus first floor in Ward No.9, Block No.6, Raji Reddy Nagar, Sultanvalva, Champapet, Saroornagar Mandal, Hyderabad, saying he entered agreement with Mirza Yaseen Baig (A-2), a resident of Road No.5, Banjara Hills, Hyderabad, stating A-2 got title over the property by virtue of registered Sale Deed No.2012 of 2010, dated 11.01.2010 and A-1 accordingly availed housing loan supra from the bank by producing registered Sale Deed No.433 of 2016, dated 18.12.2015, said to have been executed by A-2 supra registered with Sub-Registrar, L.B. Nagar, and the *de facto* complainant, having joined the Branch on 06.06.2016, visited the property on 14.07.2016 and observed that SBI, Nirmal Branch, already initiated SARFAESI proceedings in respect of the property and when obtained copy of sale deed of Sub-Registrar, L.B.Nagar, it is found Sale Deed deposited by A-1 with the Bank is not same document which was registered in Sub-Registrar Office, L.B.Nagar and further enquiries reveal that A-2 and A-1 colluded with *mala fide* intention to defraud the Bank and suppressed creation of mortgage by A-2 in favour of SBI, Nirmal Branch and during subsistence of the said mortgage by fabricating the Sale Deed No.433 of 2016, dated 18.12.2015, said to have been executed at Sub-Registrar Office, L.B. Nagar, created mortgage by depositing fabricated and manipulated deed with bank and the borrower committed default. Therefore, to register crime and investigate against the culprits. The charge sheet filed from the investigation shows that A-5 and A-6 in collusion with A-1 to A-4, from which A-5 recommended for sanction of housing loan to A-1 and A-6 has opined that the fabricated Sale Deed

No.443 of 2016, dated 18.12.2015, submitted in bank by A-3 – Keshapaga Bhaskar is as if genuine. What all ultimately concluded sofar as the petitioner (A-6) is A-1 to A-3 fabricated the Sale Deed supra and submitted the fabricated document at the Andhra Bank, Tarnaka Branch, that was accepted by the Branch Manager of the Bank (A-5) and as per their commitment, A-2 transferred Rs.5,00,000/- to A-3's account and after obtaining loan, A-1 committed default and there is conspiracy and collusion in defrauding the bank and cheating the bank by using forged and fabricated documents as if genuine. What all referred in the charge sheet is A-6 has given opinion of the fabricated sale deed as if genuine. The legal opinion given by A-1 to the Branch Manager, Andhra Bank, Tarnaka Branch, on 13.01.2016, reads as follows:

> "1) I have verified the sale deed vide Doc.No. 443/2016, dt. 18/12/2015, regd. at SRO-L.B.Nagar, executed by Mr. Mirja Yaseen Baig in favour of Mr. S.ArunKumar. The said document was presented and registered on 06/01/2016. The said document was executed and sigend by Mr.Mirza Yaseen Baig, and presented through Special Power of Attorney Mr.Shaik Ibrahim vide Doc.No.6/2015, dt.18/12/2015, regd. at SRO-Champapet, for the purpose of registration.
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> 2) The execution of Sale Deed and Special Power of Attorney above mentioned were also confirmed by Mr. Mirza Yaseen baig by email dt.12/01/2016, addressed to Andhra Bank, Tarnaka-Branch.
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> 3) In view of the above I am the opinion that the sale deed vide Doc.No.443/2016, regd. at SRO-L.B.Njagar, is validly executed and registered and it is in order and lawfully transferred the title to Mr.S.Arun Kumar.
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> Hence, this opinion."

4. From the above, what the Sale Deed No.443 of 2016, dated 18.12.2015, registered at L.B. Nagar, Sub-Registrar's Office, shown executed by Mirza Yaseen Baig to S.Arun Kumar, when presented and registered through Special Power of Attorney holder Shaik Ibrahim *vide*

Document No.6 of 2015, dated 18.12.2015, registered at Sub-Registrar Office, Champapet, and opined that the Sale Deed is with reference to the same including from the email, dated 12.01.2016, addressed to Andhra Bank, Tarnaka Branch, by A-2 as executant and cause registered through Special Power of Attorney holder confirmed in saying it was validly executed and registered and is in order and lawfully transferred the title by A-2 to A-1. On the face of the Sale Deed, if an opinion given, it is sufficient to say there is no irregularity in the opinion given by verifying the Sale Deed and Special Power of Attorney. Both are registered. But for, if at all, it is a legal opinion with reference to any other documents by its suppression. The bank issued legal notice, dated 14.07.2017, to the petitioner (A-6) by mentioning that the opinion is given solely based on the documents furnished by parties and did not obtain certified copies of Title Deeds and ECs from SRO and did not make any search by visiting the office of the SRO and this led to perpetration of fraud on the bank by the parties and exposed the Bank to a possible loss of Rs.95,00,000/- with interest and thereby call upon to explain why his services shall not be dispensed with as panal advocate and to initiate any action against him. His reply to it, dated 13.09.2017, to the General Manager, Legal Department, Andhra Bank, Hyderabad, is that he rendered his opinion on 13.01.2016 on the request of the Bank based on the Sale Deed No.443 of 2016, registered with SRO, L.B. Nagar, furnished and not based on any papers furnished by party and he was asked to render an opinion on the face of the document and as to legality of the document executed and signed by the vendor and presented through Special Power of Attorney and furnished email, dated 12.01.2016, of the vendor addressed to the bank confirming the execution of Sale Deed and registration through Special Power of Attorney. He opined of the Sale Deed was validly executed and title lawfully transferred in said opinion, dated 13.01.2016. Leave about further mention that loan was sanctioned on 26.11.2015 and disbursed on 31.12.2015 prior to the legal opinion, dated 13.01.2016, according to him, if at all from the show cause notice issued to him. However, the core issue to decide therefrom is whether it is a negligent giving of opinion or aiding and abetting as part of the conspiracy in giving opinion to cheat the bank by A-1 and A-2 in making use through A-5, as same is the prerequisite to sustain the prosecution, as held by the Apex Court in **Central Bureau of Investigation, Hyderabad v. K.Narayana Rao**[1] that there must be evidence to show that lawyer in question aided or abetted the other conspirators, for the lawyer owes an unremitting loyalty to the client's interests and however, merely because his opinion may not be acceptable, he cannot be fastened with criminal prosecution in absence of tangible evidence that he aided or abetted the other conspirators. In this case, coming to the facts even the letter addressed to him by the Bank to give opinion not furnished, though it is supposed to be available with him, leave about copy must be available with bank and the copy must be available with bank and the Investigating Officer was supposed to collect at least. That is silent either in the report or in the charge sheet contents and the Advocate not even furnished on what aspects the opinion is asked in the show cause notice, dated 14.07.2017, issued to the petitioner, for his reply referred supra filed to say as if there are any lapses and as to how without so describing. From this, in the absence of showing the prerequisites of he is peeving with other accused 1 to 5, particularly A-1, A-2 and A-5, he cannot be mulcted with the criminal prosecution into the grave offences so casually for the Investigating Officer to implicate him in the charge sheet with a stray sentence referred supra from the

[1] (2012) 9 Supreme Court Cases 512

charge sheet without investigating material to substantiate, as held by the Apex Court in **Central Bureau of Investigation, Hyderabad v. K.Narayana Rao (supra 1).**

5. Having regard to the above, the Criminal Petition is allowed and the proceedings against the petitioner (A-6) in C.C.No.296 of 2018 on the file of learned XII Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 5th February, 2019

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THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.12604 OF 2018

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