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C.R.R. No.98 of 2020

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973 filed in connection with G.R. Case No.785 of 2019 arising out of Khanakul Police Station Case No.185 of 2019 dated 10.07.2019 under Sections 420/406/409/465/467/468 of the Indian Penal Code;

Dipak Mukherjee
Versus
The State of West Bengal & Anr.

Mr. Niladri Sekhar Ghosh,
Ms. Sompurna Chatterjee,
Mr. Sourav Mondal.
…for the petitioner.

Mr. Saswata Gopal Mukherjee, Ld.P.P.,
Mr. Arijit Ganguly,
Mr. Sanjib Kr. Dan.
…for the State.

Mr. Kaushik Chatterjee,
Mr. Tirthankar Dey.
…for the opposite party no.2.

The present revisional application has been preferred challenging the proceedings arising out of Khanakul Police Station Case No.185 of 2019 dated 10.07.2019 under Sections 420/406/409/465/467/468 of the Indian Penal Code.

Report submitted by the Investigating Officer be kept with the record.

Mr. Ghosh, learned advocate appearing for the petitioner submits that the petitioner happens to be a lawyer who has prepared the search report after the documents were received from the bank-authorities and on the basis of which loan was sanctioned. According to the learned advocate, the report was prepared after the search report was obtained from the concerned office of the sub-registrar and by relying upon the same, the petitioner prepared his report.

Mr. Mukherjee, learned Public Prosecutor, appears on behalf of the State and produces the case diary.

Mr. Chatterjee, learned advocate appearing for the opposite party no.2/bank-authorities submits that the search report is contrary to the materials which were collected subsequently by the bank authorities from the office of the Sub-Registrar and subsequent report of the lawyer who prepared the search report in respect of the property-in-dispute is completely different from that of which the present petitioner who has been implicated in connection with the instant case.

Be that as it may, I have perused the case diary and the documents relied upon by the prosecution which include the report and the documents on which the present petitioner has relied upon to prepare his search report. I find that along with the report there is a receipt of the office of the District Sub-Registrar. On the basis of such documents, the bank-authorities decided to sanction loan.

Now, the search carried out at the subsequent stage has been challenged by the bank-authorities and the criminal case has been initiated. The primary object of a criminal case is to unearth the intention of the accused and not to check the negligence which has been committed in course of performance of the duty. Throughout the case it is not established that there was any intention of the present petitioner who has been benefited by the transaction otherwise than his legal entitlements. No case has been established for a conspiracy to be benefited from the defaulters.

It has been observed by the Hon'ble Supreme Court in case of **Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao** reported in **(2012) 9 SCC 512** in paragraph 31 regarding the responsibility of the lawyer. The relevant paragraph is set out as follows:

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

Having regard to the fact that the same principle do apply in the present case, I am of the opinion that further continuance of the proceedings so far as the present petitioner is concerned is unwarranted. As such, all further proceedings against the present petitioner, namely, Dipak Mukherjee in connection with Khanakul Police Station Case No.185 of 2019 dated 10.07.2019 under Sections 420/406/409/465/467/468 of the Indian Penal Code and the charge-sheet and the supplementary charge-sheet filed therein are hereby quashed.

Thus, CRR 98 of 2020 is allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is made absolute.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)