D/L 44
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C.R.R. No.3123 of 2019
(Via Video Conference)

In Re: An application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973;

Smt. Sraboni Ghosh
Versus
The State of West Bengal & Anr.

Mr. Sabir Ahmed,,
Mr. Mujibar Ali Naskar,
Mr. Apan Saha,
Mr. Shraman Sarkar,
Mr. T. Ahmed.
…for the petitioner.

Mr. Saswata Gopal Mukherjee, Ld.P.P.,
Mr. Imran Ali,
Ms. Debjani Sahu.
…for the State.

Mr. J. Brahmachari,
Mr. Uttam Kr. Bhattacharya.
…for the opposite party no.2.

The present petitioner is an advocate who has been implicated in the present case along with one Dhurjatidhar Saha. According to the Investigating Officer, the report so prepared by the present petitioner being an advocate was a false one and the same was found to be the foundation for release of the funds/credit facility given to the said Dhurjatidhar Saha. The Investigating Officer after completion of investigation has already submitted charge-sheet.

I have perused the materials so collected by the

Investigating Officer of the case and the foundation on which charge-sheet has been submitted. There are no documents except the report, which has been prepared by the learned advocate that a forged document was prepared or obtained by the learned advocate. Neither any material has been collected to show that the present petitioner, an advocate has been beneficiary of the credit facilities or the loan which has been advanced to the said Dhurjatidhar Saha. In absence of the aforesaid, the probable conclusion would be that there has been a deficiency of service of the learned advocate who did not exercise complete skills for obtaining proper report. There was no *mens ria* or wrongful gain which can be attributed to the learned advocate who has prepared the report.

Having regard to the settled authority of the Hon'ble Apex Court in **Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao** reported in **(2012) 9 SCC 512**, the following paragraphs are quoted below:

> " 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.

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 no 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 proposition of law and the materials available before this Court, I am of the opinion that the present case falls short of merits so far as the professional who is an advocate/petitioner before this Court is concerned.

Accordingly, all further proceedings arising out of Taltala Police Station Case No.202 of 2010 under Sections 465/467/471/474/420/120B of the Indian Penal Code presently pending before the learned Metropolitan Magistrate, 20^{th} Court, Calcutta is hereby quashed so far as Sraboni Ghosh, present petitioner is concerned. However, the proceedings would continue against the other accused, namely, Dhurjatidhar Saha in accordance with the provisions of Section 309 of the Code of Criminal Procedure.

Thus, CRR 3123 of 2019 is allowed.

Interim order is hereby made absolute.

Pending application, if any, is consequently disposed of.

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

Urgent photostat certified copies of this order, if applied for, be given to the parties, upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)