IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 696 OF 2018

Prakash Raghuram Shenoy ...Applicant
Versus
The State Of Maharashtra ...Respondent

WITH

CRIMINAL REVISION APPLICATION NO. 697 OF 2018

Radhika Koteshwar ...Applicant
Versus
The State Of Maharashtra ...Respondent

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Mr. Sainand Chaugule, Advocate for the Applicant in both matter.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 7th SEPTEMBER, 2022

PC :

1. The applicants are aggrieved by order dated 27th November, 2018 passed by Special Judge on Misc. Application in ACB Special Case No.87 of 2013 rejecting the said application for discharge.

2. The Assistant Commissioner of Police, Anti Corruption Bureau, (for short 'ACB'), Mumbai lodged First Information Report (for short "FIR") bearing No.20 of 2011 with ACB, Mumbai alleging that the Chairman and other officers of Bhandari Coopeartive Bank Ltd. having its office situated at P. L. Kale Marg, Dadar (West), Mumbai had conspired with 'Sai Krupa' Constructions Developer

Shri. Sudhakar Mhatre in disbursing loan to purchase flats of 'Sai Balaji' apartment situated at Pach Pakhadi, Thane and by sanctioning loan to borrowers to purchase the flats without verification of any documents and misappropriated crores of rupees. The first informant was directed to conduct open enquiry. He recorded statements of various persons including applicant Prakash Shenoy, Advocate and collected various documents. During enquiry it was found that, during the period from 27.03.2008 to 17.07.2008, proposals were received by above Bank for loan to purchase flats in building Sai Prerna and owned by Laxman Divekar of 'Ekal Enterprises' from 1.11.2008 to 30.11.2009, the bank received loan proposals from 48 purchasers of flats in 'Saikrupa Constructions' belonging to Shri. Sudhakar Mhatre, in building Sai Balaji apartments'. Savings accounts of 69 borrowers were opened and documents were collected by bank. Opinion was sought from Advocate from Panel of Bank M/s. 'Legal Eye Associates'. Documents were forwarded to Advocate Prakash Shenoy. Opinion was given by Shri. Shenoy from Legal Eye Associates. It was opined that, while advancing loan to BEST employees, letter be obtained from 'BEST' for deducting loan installment from their salary. The development agreement be registered with Sub-Registrar. While disbursing loan cheque be issued directly in the name of developer with details of bank account of developer and name of Bank. On disbursing loan, letter be obtained from developer that possession of flat is handed over to the purchaser/borrower. However, without complying the opinion, the bank sanctioned loan to 69 borrowers. Mortgage deed was registered by branch manager Ratilal Bhole on payment of stamp duty with Sub-Registrar, Thane. The loan sanctioned to borrowers was credited into their accounts. The amount of Rs.6,25,53,000/- was credited into account of developer by pay order instead of progressive disbursement. The buildings 'Sai Prerna' and 'Sai Balaji Apartments' were existing. However, flats were occupied by others who were not borrowers of loan. The building 'Sai Prerna' was developed by Laxman Rajaram Divekar. The building Balaji apartment was not developed by Sudhakar Mhatre but by Anand Vasudeo Singh. Enquiry with Thane Municipal Corporation revealed that, commencement certificates or occupation certificate was not issued by corporation to building 'Sai Prerna' and 'Sai Balaji Apartment'. The manager of the Dadar Branch of the bank, Shri. Ratilal Bhole had objected for sanction of loan in meeting dated 1.11.2008 on the basis of opinion given by Advocate Prakash Shenoy. However, the committee members did not take note of his objection and sanctioned loan. The manager of the bank, Mr. Bhole visited the buildings and by letter dated 10.11.2010 brought to the notice of bank that the borrowers of loan are not occupying the premises. The occupation certificate submitted by developer Sudhakar Mhatre was found bogus. Bank did not take and action. The FIR was registered against Chairman, Board of Directors, Developer Laxman Divekar and Sudhakar Mhatre under Sections 13(1)(d), 13(2) of the Prevention of Corruption Act and Sections 465, 467, 468, 471, 420 read with Section 120-B of Indian penal Code (for short ‘IPC’).

3. Investigation proceeded. Statements of witnesses were recorded. The applicants were subsequently impleaded as accused. On completing investigation, charge-sheet was filed.

4. The applicants preferred an application for discharge before the trial Court, which were rejected by common order dated 27th November, 2018.

5. Learned Advocate for the applicants submitted that, no case is made out to proceed against the applicants. The trial Court has committed an error while rejecting the application for discharge. The applicant in Criminal Revision Application No.696 of 2018 is the partner of Legal Eye Associates. He gave opinion in writing to the Board of Directors stating that the permission of employer as well as direct deduction of EMI from the salary of the employees

should be the condition for disbursement of loan. The employer's consent must be obtained from the borrower. The documents and the agreement of the development executed by the developer needs to be registered and stamped under the provisions of Bombay Stamp Act, 1958 and Indian Registration Act, 1908. The Development Agreement was neither adequately stamped nor registered with the office of Sub-registrar of Assurances. In meeting dated 01-11-2008 opinion of Legal Eye Associates was placed and perused. However, the same was overruled by the committee members. The committee members stated that, although the salary is received by the borrowers i.e. employees of BEST, the borrowers were intending to let out the flats and accept sum of Rs.15,000/- to 18,000/- per month as compensation, which will enable them to pay EMI towards the loan. As far as registration of the agreement, Committee Members had stated that the expenses for registration of agreement would be huge and therefore the document notarized by the Notary and produced by the Developer should be accepted. Thus, the legal opinion of Legal Eye Associates was overruled by the Committee while sanctioning and disbursement of loan. The police recorded statements of several witnesses. The document seized by the Police includes the report of meeting dated 01-11-2008 about Bank's Loan scrutiny and loan sanction committee, there is no evidence to show the complicity of the applicants. The applicant in Criminal Revision Application No.697 of 2018 has been implicated being associated with Legal Eye Associates. About 69 employees of BEST obtained loan from the Bank. The Legal Eye Associates conducted search and title certificate on the basis of verification on record in the office of Sub-registrar of Assurances, Thane. It is not the case of the prosecution that the registered documents based on which the Title Certificates are issued to the borrowers are false. There is no material even to raise suspicion against the applicants. The accused cannot be prosecuted on the basis of inferences. Both the applicants were not present at the time of sanctioning the loan. They are associated with Legal Eye Associates, a Partnership Firm of Advocates. The report dated 01-11-2008 indicates that the opinion given by Legal Adviser is overruled. The prosecution has filed affidavit and tried to improvise case against applicants which is not supported by any evidence. The Forensic report relied upon by prosecution does not provide incriminating evidence against applicants. There is no evidence of conspiracy against applicants.

6. Learned Advocate for the applicants has relied upon the decision of the Hon’ble Supreme Court in the case of **Central Bureau of Investigation, Hyderabad V/s. K. Narayana Rao (2012) 9**

SCC 512.

7. Learned APP submitted that there is sufficient evidence to frame charge against the applicants. The trial Court has rejected the application for discharge by assigning reasons. The applicants were legal advisors of the Bank. Opinion in respect to the title of the building projects viz. 'Sai Prerna' and 'Sai Balaji Apartments' was sought from the Legal Advisors M/s. Legal Eye Associates. Both the applicants are associated with the said firm. Both the applicants had conspired with other accused by issuing opinion letter dated 06-10-2008 in respect to the said projects. The grounds urged by the applicants cannot be considered at this stage. Hard Disk was recovered during the course of investigation and it was forwarded for analysis. Reliance is placed on the report submitted by Directorate of Forensic Science Laboratory. The applicants had changed several reports of the bank in connivance with the co-accused.

8. The applicants were not named as accused in the FIR. Infact the FIR refers to opinion given by applicant Prakash Shenoy at the instance of Legal Eye Associates being panel Advocate for Bhandari Cooperative Bank. Before registration of FIR, open enquiry was conducted by first informant and statements of several persons were recorded including applicant Prakash Shenoy and documents

were collected which includes the opinion from Legal Eye Associates. The FIR refers to the fact that loan proposal documents were forwarded to Legal Eye Associates for opinion. Advocate Prakash Shenoy on behalf of aforesaid panel Advocate firm gave independent opinion that while sanctioning loan to BEST employees certain measures be taken such as (I) obtaining letter from employer BEST that loan installment of employees would be deducted from salary of employees (II) Development agreement submitted by Developer be registered with Sub-Registrar of stamp duty by paying stamp duty. (III) While disbursing loan cheques be issued in the name of developer with details of bank and their bank account. (IV) Letter be obtained from developer that possession of flat is handed over to purchaser. The bank did not adhere to opinion and sanctioned loan. FIR also mentions that in the meeting held on 1.11.2008 for scrutiny of loan proposal, the branch manager had objected for sanction of loan in the light of opinion given by Advocate Prakash Shenoy. However, the objection was overruled and loan was sanctioned. Although it was brought to the notice of Bank that some other persons are occupying the premises, the bank did not take any action. Thus, the applicants were not attributed any role of being conspirator. The FIR does not refer to any other opinion regarding title of property as alleged in the affidavit. There is no evidence to support the charge of conspiracy against the applicants. Although in the affidavit-in-reply it was alleged that the applicants had changed several reports, there is no evidence in that regard. The affidavit itself mentions that, such reports were not found in the computer, however, on that basis adverse inference has been drawn against the applicants. There is no evidence to support that the applicants have in any manner involved in change of reports. The disk was forwarded to forensic examination. Learned APP has tendered report. No adverse inferences can be drawn against the applicants on the basis of the said report. Only on the basis of assumption and inferences, the applicants cannot be compelled to face the prosecution.

9. The relevant part of opinion dated 06.10.2008 given by Legal Eye Associates and signed by applicant Prakash Shenoy reads as follows :-

> *" The said project "Sai Balaji Apartment" has been developed on a piece and parcel of land bearing Survey No.314, Hissa No.7(P), admeasuring about 3633.37 sq. mtrs. alongwith structure standing thereon, situate, lying and being at village – Panchapakadi, Near Saibaba Temple, Vaityawadi, Thane (West), within the limits of Thane Municipal corporation which was originally jointly owned by Mrs. Janaki Raghunath Patil, Mr. Vasant Ramachandra Patil, Mr. Trimbak Ramachandra Patil and Mr. Prabhavati Kamalakar Patil (Original Owners) as evident from 7/12 Extract dated 07.07.2008 issued by Talati, Panchapakadi,*

District-Thane.

The said piece and parcel of land was occupied by the tenant on Leave & License basis. The original land owners, i.e. Mr. Janaki Raghunath Patil & 3 others, it appears that have entered into an Agreement in terms of which the tenants have vacated the said piece and parcel of land peacefully and without any claim and vacant land has been handed over to Mr. Sudhakar Mhatre, sole proprietor of M/s. Krupa Construction, having his principal piece of business at 702, Janaki Towers, Old Mumbai Pune Road, Kalwa (West), Thane – 400 605 (Developer).

In terms of a Development Agreement dated 28.12.2007 executed between the said original owners and Mr. Sudhakar Mhatre, sole proprietor of M/s. Sai Krupa Constructions, the original owners have granted development rights in respect of the said piece and parcel of vacant land and also handed over exclusive and vacant possession of the said land in favour of the Developer.

Such type of Development Agreement executed in favour of the Builder needs to be stamped and registered under the provisions of Bomaby Stamp Act, 1958 and Indian Registration Act, 1908, it is however, observed the said Development Agreement is neither adequately stamped nor registered with the Office of Sub-Registrar of Assurances. Hence, it is advisable on the part of the bank of insist that the co-owners of the land to join as the confirming party in the principal Agreement of Sale to be executed with the prospective purchasers of flats in the building "Sai Balaji Apartments".

It is further observed that in terms of a Power of Attorney dated 28.12.2007, the original land owners Mrs. Janaki Raghunath Patil & 3 Others have granted various powers in favour of M/s. Sai Krupa Constructions, a sole proprietary concern of Mr. Sudhakar Mhatre to exercise various acts, deeds and things for development of the said plot by constructing a building for a residential/commercial purposes. It is observed that in the said Power of Attorney also there are no specific powers in favour of the *attorney to sell the flats/units in the proposed building "Sai Balaji Apartments" and to receive consideration directly. Under the circumstances, this Power of Attorney also in our opinion needs certain amendments so that unconditional powers are given to the said Mr. Sudhakar Mhatre to sell the flats and to receive consideration directly in his own name.*

We have been give to understand that certain class of people employed with B.E.S.T. have evinced interest to purchase the flats in the said building "Sai Balaji Apartments", proposed to be financed by your bank. In our opinion, permission of the employer as well as direct deduction of EMI from the salary or the employee need to be looked into, so that the loan availed would become self-liquidating by deduction from the salary of the employees. This should be done with concurrence and written consent of the employer.

While granting loan an undertaking must be obtained from the loanee that any indulgence on their part to create interest in favour of the third party in the flats financed by the Bank can be done only with the concurrence and knowledge of your Bank and with their written permission.

Besides the above, usual principles of lending as a prudent banker must be undertaken by the bank, i.e., payment and disbursement of loan must be made directly in favour of M/s. Sai Krupa Constructions, a sole proprietary concern of Mr. Sudhakar Mhatre stating therein the name of their banker as well as the Account number to ensure that the payment of the loan is done directly in favour of the builder and end use of the funds is confirmed.

Needless to mention, while calculating EMI the balance period of service of the loanee must be taken into consideration. Subject to above, and the amendment suggested as above in our opinion the title of the builder is clear, marketable and free from any encumbrances being capable of creating charge by way of mortgage.

The charge on flats could be created by completing formalities of mortgage for each flat separately. "

10. During investigation statement of Smt. Anagha Karalkar was recorded on 23.10.2012. She is working as employee of Bhandari Cooperative Bank. She stated that, Legal Eye Associates had given opinion dated 06.10.2008 which was in file of Ratilal Bhole and it bears endorsement of receiving it on 08.10.2008. Statement of Rajendra Kadrekar was recorded on 22.01.2013. According to him he was appointed as expert Director by Bank being Chartered Accountant. He was present for meeting of loan scrutiny committee on 13.07.2009 and 14.10.2009. He had urged that unless proper documents regarding paying capacity of borrowers are received loan should not be sanctioned. He had also questioned about legal opinion of Bank's Legal Advisor and search/ title certificate report of Advocate Shenoy. He informed that, loan is already sanctioned and disbursed and Director of Bank has taken responsibility for sanction of loan. Statement of Rajesh Shinde recorded on 07.06.2011 refers to his visit with Advocate Shenoy to see place and buildings 'Sai Prerna' and 'Sai Balaji'. None of the statements show that applicants had conspired with other accused causing loss to Bank.

11. While rejecting application for discharge, it is observed by

Sessions Court that, applicants have given their Legal opinion in respect to house loans to employees from BEST for deducting EMI's from their salary and opinion that they did not have repayment capacity as the salary was less than EMI amount and for registered agreement between developer and owner, which were overruled by the bank authorities. Investigation found that false opinion was given by accused being Advocate, inspite of knowing that buildings are unauthorized and developers are fake and issued opinion about title clearance. It is pertinent to note that inspite of measures suggested by legal Advisor, the loans were sanctioned by overruling objections. It is not the case of prosecution that loans were sanctioned on the basis of any report of search and title clearance. In fact it is the case of the prosecution that opinion of Legal Eye Associates was not adhered by Committee. There is no reference of applicant in Criminal Revision Application No.697 of 2018 in the FIR at all. No role is attributed to her.

12. In the case of **Central Bureau of Investigation, Hyderabad V/s. K. Narayana Rao** (supra), the apex Court had observed that the Advocate, who gave legal opinion cannot be prosecuted on the ground of conspiracy in the absence of evidence to show that the Advocate in question aided or abetted the other conspirators. Although the lawyer owes an unremitting loyalty to the client's

interests, merely because his legal opinion may not be acceptable. He cannot be fastened with criminal prosecution in absence of tangible evidence that he had aided or abetted other conspirators. The Court has also laid down principles of scope of Section 227 of Cr.P.C. The Court referred various discussions in that regard. In Paragraph – 21 it was observed as follows :-

> “ *21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*
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> *(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
>
> *(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*
>
> *(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*
>
> *(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*
>
> *(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge*

the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

13. It is settled law that, which is also reflected in above decision that, to constitute offence of criminal conspiracy there should be an agreement between the person who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal.

14. There is no evidence to establish role of applicants even to frame charge and proceed against them. Hence, the impugned order deserved to be set aside. Hence, I pass the following order :-

ORDER

(i) Criminal Revision Application Nos. 696 of 2018 and 697 of 2018 are allowed.

(ii) Impugned order dated 27.11.2018 passed by the Special Judge on Misc. Applications Exhibit 121 and 123 in ACB Special Case No. 87 of 2013 is set aside.

(iii) The applicants are discharged in ACB Special Case No. 87 of 2013 pending before the Court of Special Judge under Prevention of Corruption Act, Greater Mumbai.

(iv) Applications stand disposed of.

(PRAKASH D. NAIK, J.)