IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.12.2022**

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.10300 of 2019
and Crl.M.P. No.5343 of 2019

V.Sundaresan ... Petitioner

Vs.

1. The State represented by
   Sub-Inspector of Police,
   Central Crime Branch,
   Tiruppur City,
   Tiruppur.

2. B.Krishnakumar ... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the Charge Sheet in C.C. No.29 of 2019 on the file of the learned Judicial Magistrate No.1, Tiruppur and quash the same in so far as the petitioner (A5) is concerned.

For Petitioners : Mr.A.S.Kaizer

For Respondent-1 : Mr. A.Damodaran
Additional Public Prosecutor
2 : No appearance

ORDER

This Criminal Original Petition has been filed to call for the records relating to the Charge Sheet in C.C. No.29 of 2019 on the file of the learned Judicial Magistrate No.1, Tiruppur and quash the same in so far as the petitioner (A5) is concerned.

2. The petitioner is the fifth accused who is a practising advocate and notary public and the second respondent / *de facto* complainant is a Branch Manager in Canara Bank.

3. The case of the prosecution is that on 20.12.2017, the first accused by name Prakash came to the office of the petitioner and submitted certain documents belonging to the second accused Parthiban in respect of a property situated within the jurisdiction of Sub Registrar, Kunnathur. He handed over the original sale deed dated 24.08.2016 and certified copies of parent documents, sketch of the land, building permit plan etc., for the scrutiny of petitioner for offering legal opinion in order to avail loan from the second respondent's Canara bank. On scrutiny by the bank authorities, it is seen that the accused 1 and 2 have created forged documents with the help

of the fourth accused. The third accused is the mother of the second accused and the petitioner is the advocate who has given his legal opinion by approving the title of Parthiban. On the basis of these allegations, a case has been registered in Cr. No.11 of 2018 for the offences under Section 120B, 467, 470, 471, 472, 420 IPC and charge sheet in C.C. No.29/2019 has been laid for the offence under Section 120B, 467, 470, 471, 472, 420, 465, 409 & 109 IPC.

4. The learned counsel for the petitioner submitted that the petitioner is a reputed Advocate and Notary Public having thirty one years of practise; he is the panel advocate for State Bank of India and Canara Bank for many years and he has given legal scrutiny report in many matters; the petitioner's job as an Advocate is to scrutinize the document with respect to title of the property; if the accused 1, 2 & 4 have created forged documents that would not imply that this petitioner had also played a vital role in the culpable activities; the petitioner had not committed any criminal offence including the offences under Section 409 r/w. 109 IPC.

5. In support of his above contention, he cited the following judgment of Hon'ble Supreme Court:

i) ***Central Bureau of Investigation, Hyderabad Vs. K.Narayana Rao*** reported in ***CDJ 2012 SCC 639.***

ii) ***Surendra Nath Pandey and Another Vs. State of Bihar and Another*** reported in ***(2020) 18 SCC 730.***

6. The petitioner who is an advocate by profession has been giving his legal scrutiny reports as a panel advocate for the second respondent bank for several years. It is pertinent to mention that even now the petitioner continues to be the panel advocate for the second respondent's bank. The petitioner has not given any special opinion to the second accused but he has given his legal opinion during the routine course of his profession for having received the consideration called 'Legal fees'.

7. As an advocate, the petitioner had scrutinized the documents just in order to find out whether the applicant has got a valid title over the property to be offered as a security for availing loan. It cannot be within his knowledge that someone has produced forged or concocted documents for

obtaining his opinion. The petitioner had seen the original sale deed before offering his opinion. If the rest of the documents are forged ones, it cannot be said that the petitioner had abetted the forgery.

8. A similar opinion has also been expressed by the Hon'ble Supreme Court in ***Surendra Nath Pandey and Another Vs. State of Bihar and Another*** (cited supra). In this judgment, the rationale of Narayana Rao's case (cited supra) has been adopted and it is held that the advocate cannot be roped in a case where private persons are joined together to create documents in order to get his opinion. It is further held that in the absence of any tangible evidence that the petitioner had associated himself with other conspirators, he cannot be attached with any criminal liability.

9. The petitioner as an advocate can only scrutinize the title on the basis of the documents produced by the applicant and if the documents are not genuine and if it is not within the knowledge of the petitioner, the petitioner cannot be blamed for giving an opinion approving the title of the applicant. Hence, I feel it is an appropriate case where the powers of the Court under Section 482 Cr.P.C. should be invoked.

10. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C. No.29 of 2019 on the file of the learned Judicial Magistrate-I, Tiruppur is quashed against the petitioner. Consequently, connected miscellaneous petition is closed.

06.12.2022

Index : Yes/No
Speaking Order : Yes / No

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To:

1. The Sub-Inspector of Police,
   Central Crime Branch,
   Tiruppur City,
   Tiruppur.

2. The Judicial Magistrate No.I, Tiruppur.

3. The Public Prosecutor,
   High Court, Madras.

R.N.MANJULA, J.,

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