IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present: -   Hon'ble Mr. Justice Subhendu Samanta.

CRR 2394 of 2018
With
IA CRAN 5 of 2022
+
CRAN 7 of 2022

Dhirendra Nath Samaddar
Vs.
State of West Bengal & Anr.

For the petitioner	:	Mr. Sabyasachi Banerjee, Mr. Satadru Lahiri, Mr. Safdar Azam
For the State	:	Imran Ali, Ms. Debjani Sahu
Judgment on	:	05-01-2023

Subhendu Samanta, J.

This is an application under Section 482 of the Code of Criminal Procedure against an order dated July 17, 2018 passed by the learned Additional Sessions Judge, 3rd Court, Barasat, 24 Parganas(North) in connection with GR case No. 1016 of 2006 arising out of Barasat Police Station Case No. 466 dated 21.06.2006 under Section 120B read with Sections 420/467/468/471 of the Indian Penal Code thereby rejecting the prayer of the petitioner for discharge in connection with the instant case.

The brief fact of the case is that petitioner is a panel advocate of a bank who issued a certificate namely "Non-Encumbrance Search Certificate" in respect of ownership of a landed property. The bank issued loan amounting to Rs.24,00000/- on the basis of that certificate; the loan become unpaid. The bank filed a letter of complaint against the erstwhile Manager of the bank and other employees involved in issuance of said loan including the present petitioner.

Investigation of the police ended in charge-sheet against all the accused persons barring two under Sections 120-B/420/468/469/471 and 419 of Indian Penal Code.

Discharge petition was filed by the petitioner before the Learned Trial Court which was turned down. Hence this revisional application.

The brief fact of the petitioner is that he being one of the empanelled lawyer of the said bank, in discharge of his professional obligation and upon instruction of the concerned authority made scrutiny on a landed property on the basis of the material produced before him by the said bank. It is further case of the petitioner that after pursuing the materials produced before him and on receipt of report from the concerned department, maintaining records regarding title and possession of the said property he issued "Non-Encumbrance Certificate". Therefore, his entire act or actions are limited to discharge of his professional obligation, which is based on documents produced by the said bank or by the concerned Registration Office of Additional District Sub-registrar Office, Barasat and District Registrar office, Barasat 24 Parganas(North).

It is the further case of the petitioner that the investigating agency during the course of investigation, is of finding that the landed property is not belonged to Mihir Ghauri and Ranjit Mallick but they have transferred the same in favour of Ayub Ali and Sk. Kasem Ali by virtue of power of attorney. The only allegation levelled against the present petitioner is that the petitioner has suppressed the fact in furtherance to a common intention and conspiracy with the other co-accused persons to cheat the said bank.

Learned advocate for the petitioner submitted before this court that the petitioner being an empanelled advocate of the bank has performed his professional duties with care and caution. The necessary search certificate was issued by the petitioner on the basis of the documents received by him from the concerned Registrar Office. It is the further argument of the learned Advocate for the petitioner is that so-called power of attorney in favour of Ayub Ali and Sk. Kasem Ali is not a document of transfer and the power of attorney is not capable of being searched by any person according to the provisions of Sub-section 3 of Section 57 of the Registration Act 1908. He further pointed out that the investigating agency has failed to bring out any material or evidence to entangle the petitioner with the other co-accused person to establish the fact that the petitioner in any point of time was in agreement with other co-accused person to make a conspiracy to cheat the bank.

He further pointed out that the impugned order passed by the Learned Trial Judge is not a speaking order and it is liable to be set aside by discharging the present petitioner. In support of his contention, he cited a decision reported in ***(2012) 9 SCC 512(Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao)*** the said judgment was also followed by the Hon'ble Supreme Court in a subsequent case reported in ***(2020) 18 SCC***

730.

Learned advocate for the petitioner also cited a circular of Government of West Bengal Directorate of Registration and Stamp Duty dated February 28, 2020.

Learned advocate for the petitioner also cited a decision reported in (2012) 1 SCC 656 regarding the scope of power of attorney.

Learned advocate appearing on behalf of the State submitted before this Court that after conclusion of investigation the charge-sheet have been submitted against the present petitioner. The petitioner was well connected with the other accused persons to commit conspiracy to cheat the bank. Huge amount of money was defrauded by the principle accused with the help of the present petitioner. Thus, the present petitioner cannot be discharged.

Paragraph 24 and 27 of ***K. Narayan Rao*** Case is read as follows:

"24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons 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. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged

conspiracy. Interference from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."

"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 lawyer, doctor, 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."

Having regard to the ratio of ***K. Narayana Rao*** Case it appears to me that in the instant case the petitioner being an empanelled advocate of the bank has performed his professional duties in utmost care and caution. The circular of the State of West Bengal dated February 28 of 2020 makes it clear that the power of attorney is kept in book No.4 named as "Miscellaneous Registrar". The "Miscellaneous Registrar" is not capable of being searched by any other person except the parties therein. For which a huge difficulty causes and the State of West Bengal has to issue such circular. It has been specifically mentioned in the circular that after eighteen day of March 2020, the registered Power of Attorney is only made capable of being searched.

Considering the entire circumstances, I am of the clear view that at the time of conduction of search by the present petitioner in respect of the title of the property in question, the petitioner had no opportunity to search the power of attorney executed in favour of Ayub Ali and Sk. Kasem Ali. It further appears to me that the record of rights were also standing in the name of Mihir Gorui and Ranjit Mallick thus, the so-called "Non-Encumbrance Search Certificate" issued by the present petitioner is not all illegal.

Hon'ble Supreme Court in ***(2012)1 SCC 656*** has categorically held that "a power of attorney is not an instrument of transfer in regard to any right title or interest in an immovable property. The power of attorney is a creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of the grantor, which when executed will be binding on the grantor as if done by him." (paragraph 20).

Thus considering the facts and circumstances of the case and considering the materials on record I am of the view that the charge levelled against the present petitioner by the investigating agency regarding the offences as stated therein is groundless. Thus, the impugned order passed by the Learned Trial Court in respect of present petitioner is liable to be set aside. There is no prima facie case for proceeding in respect of the charges alleged in so far as the present petitioner herein is concerned.

In result thereof the instant criminal revisional application is allowed.

The present petitioner namely, Dhirendra Nath Samaddar is hereby discharged from the case being GR Case No.1016 of 2006 arising out of Barasat Police Station Case No. 466 dated 21.6.2006 under Sections 120B read with Sections 420/467/468/471 of the Indian Penal Code.

Connected pending CRAN applications, if any, are consequently disposed of.

Any order of stay passed by this Court during the pendency of the instant criminal application is hereby also vacated.

Let of this order be sent down to the Learned Court for his information and necessary action.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Subhendu Samanta, J.)