**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-28161-2017 (O&M)
Date of decision: 28.08.2023

Navin @ Naveen Kumar Thakur

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.S. Randhawa and Ms.Tarranum Madan, Advocates, for the petitioner

Mr. Dhruv Sihag, AAG, Haryana

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AMAN CHAUDHARY. J.

1. Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure is for quashing of FIR No.227, dated 30.06.2015, registered under Sections 406, 420, 467, 468, 471 & 120-B IPC at Police Station Civil Lines, Sonipat.

2. Learned counsel would contend that the petitioner has been involved in this case only on the fact that he had rendered a legal opinion to the Syndicate Bank (now Canara Bank) being on their panel as an Advocate, with regard to a two storeyed house situated in New Delhi, which was to be provided as a collateral for purpose of loan that had been applied by the co-accused namely O.P. Jain. Since, the petitioner had been handed over a copy of the Sale Deed No.741 dated 31.01.2013 of the above property, therefore, he visited the office of the Sub-Registrar and obtained a certified copy of the said

title deed and taking the same to be genuine, rendered his opinion. However, the aforesaid co-accused O.P. Jain and others had allegedly sold the said property to some other persons prior to the opinion. The petitioner perhaps at the worst can be stated to be negligent in not ascertaining the status on that day with regard to the property in question, however, there is no criminality attached to his having given his opinion based on the certified copy of alleged sale deed. To buttress his submission, reliance is placed on the judgments of Hon'ble The Supreme Court in **CBI vs. K. Narayana Rao,** (2012) 9 SCC 512, **Sajjan Kumar vs. CBI,** (2010) 9 SCC 368 and **Bhaskar Banerjee vs. CBI,** 2022 SCC OnLine Cal 710.

3. Learned State counsel opposes the prayer on the ground that the name of the petitioner was mentioned in the contents of the FIR, as the one who gave his clearance to the genuineness of the title deeds and there are allegations of his having intimated the bank that the co-accused were in possession of the property and thus, it can be inferred that he was in conspiracy with the other co-accused.

4. In rebuttal, learned counsel for the petitioner submits that the role of the empanelled advocate is merely to verify the documents regarding title and not to ascertain the factum of possession, as it is a duty imposed on the Bank as per e-Circular of Syndicate Bank dated 26.11.2002, Annexure P-7 in that regard. The relevant para of the said circular reads thus:

> "It is important that the branches should verify the physical existence of the property which has to be done before sanctioning the loan and certify in a separate letter to the Sanctioning Authority that they have verified the physical existence of the property offered as security. Advocates and Law Department will confine themselves only to legal issues involved regarding the property being offered as security. The lawyers who do not take care for giving

proper legal opinion, may. be warned that the Bank will take action through the Bar Council if there is dereliction of duties while following our guidelines for tracing of title."

5. Heard learned counsel for the parties.

6. In the case of **K. Narayana Rao** (supra), Hon'ble The Supreme Court had observed and held that the criminal liability of an advocate, who gave a legal opinion would arise only when he could be shown to have been an active participant in the conspiracy to defraud the bank, which in that particular case was missing, hence the quashing of proceedings qua him was held to be valid. Relevant paras thereof, read thus:

> "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. <u>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 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. Inferences 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.</u>
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> 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. <u>At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and</u>

> cannot be charged for the offence under Sections 420 and 109 of 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."

7. Further in **Bhaskar Banerjee** (supra), the Calcutta High Court, in similar circumstances, where the advocate was fastened with criminal liability for providing false and improper legal advice, with respect to sanctioning of loan to a company which had turned NPA, had quashed the FIR qua him, by holding that there was no tangible evidence to establish any collusion between him and other co-accused. The relevant paras thereof read thus:

> "10. Learned advocate for the petitioner to fortify his argument relied upon a decision in the case of *CBI, Hydrabad v. K. Narayana Rao* : (2012) 9 SCC 512, where the accused, a panel advocate submitted false legal opinion to the bank in respect of 10 housing loans and did not point out the actual ownership of the properties. On the basis of an FIR, investigation was carried out and charge sheet was submitted against the advocate as one of the accused persons. It was observe by the Hon'ble Supreme Court that, the court has to find out whether any prima facie material was available against the advocate who has been charged with an offence under section 420 read with section 109 of the Indian Penal Code. It was held, "That 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 circumstantial 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." Learned advocate for the petitioner further submitted that Hon'ble Supreme Court in the said judgment has noted the role and liability of a lawyer and observe that merely because his opinion may not acceptable, he cannot be mulcted with the

criminal prosecution, particularly in the absence of tangible evidence that he associated with the 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 section 420 and 109 of 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 entitle to proceed under criminal prosecution.

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32. In the case of Surindra Nath Panda and Anr. Vs. State of Bihar (2020) 18 SCC 730, allegations were levelled against the panel advocates of the bank that they had furnish false search report/NEC/ Legal Opinion with regard to the properties/land documents in order to cheat to the Bank and to facilitate obtaining loan by the persons concerned. On the basis of an FIR lodged investigation led to a charge sheet but the same did not refer to any specific finding with regard to the role of the advocate in the alleged conspiracy. The Hon'ble High Court of Patna refused to quash the criminal proceeding against the appellant. Appeal was preferred before the Hon'ble Supreme Court and in the aforesaid case it was held that, "Taking into account the contents of the FIR, we are left with the impression that the said allegations are bald and omnibus and do not make any specific reference to the role of the appellants in any alleged conspiracy." Relying upon its earlier decision in the case of CBI Vs. K. Narayana Rao (2012) 9 SCC 512, the Hon'ble court reiterated that criminal prosecution on the basis of such bald and omnibus statement/ allegations against the panel advocates of the Bank ought not to be allowed to proceed as the same constitute and abuse of the process of the court and such prosecution may in all likelihood be abortive and futile. Hon'ble Court held that the High Court was wrong in refusing to interdict the proceeding against the appellant and therefore the order of the High Court was set aside and proceeding was quashed.

33. The decision relied on behalf of the petitioners, in the case of A. Kumar Sharma Vs. CBI; (2015) SCC Online Del 7206, a finding of Hon'ble Single Bench of the Hon'ble High Court Delhi in the similar situation and relying upon the decision of CBI Vs. K. Narayana Rao also quashed the proceeding against an panel advocate who had submitted a false search report in alleged collusion with the principal accused, holding therein that mere negligence or want of greater professional care and competence on the part of an

> advocate would not make him liable for a criminal offence in absence of tangible evidence.
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> 34. Having considered the facts and circumstances of the case, the contents of the FIR and the charge sheet and the ratio of the decisions referred above. I find and have no hesitation to hold that there is no tangible evidence to establish any connection or collusion between the petitioner and other co- accused persons for the purpose of defrauding the bank in sanction of the loan amount. Even there is no iota of evidence in the charge sheet where from it would indicate that the petitioner due to such act had made a wrongful gain from the other beneficiaries. Under such circumstances continuation of this proceeding against the petitioner would amount to an abuse of the process of court, as such the proceeding against the petitioner in GR Case No. 4105 of 2013 pending before the Learned Metropolitan Magistrate 22nd court at Kolkata, arising out of CBI/ EOW Case No. RC 07/E/011- Kol dated 16.12.2011 under section 420, 468, 471 read with section 120B of the Indian Penal Code is hereby quashed qua the petitioner only. Revisional application is accordingly allowed on contest. The observations made herein above shall not influence the prosecution in any manner against the co-accused. Copy of the case diary be returned to learned Advocate for CBI/Opposite Party no.1."

8. Reverting now to the facts of the case at hand, there is no other instance brought on record or to the notice of this Court during the course of hearing regarding the petitioner's involvement in any other case of a similar nature, he being on the panel of the Bank for more than a decade and as stated that he still continues to be. The Bank had provided him with the title deed and link documents for verification of authenticity thereof, on the basis of which, he made a visit to the office of the Sub-registrar and checked their genuineness as also verified regarding any encumbrances created over the aforesaid property and obtained a certified copy of the sale deed and based on which observed that the titled documents in the name of co-accused-OP Jain are duly registered.

9. As per the e-Circular, the Advocates and Legal Department of the

Bank were required to confine themselves only to legal issues involved regarding the property being offered as security while it was the duty of the branches to verify the physical existence of the property before loan is sanctioned. The petitioner had verified the authenticity of the documents handed over to him by obtaining certified copy thereof from the office of Sub-Registrar. However, it has not been shown that he was apprised by the said office to enquire into and ascertain the current status of the ownership of the house, nevertheless even if it was the scope of the work assigned to him, still the same can be viewed as his negligence or oversight or perhaps a reflection on quality of his work or want of greater professional care and competence on his part as an empanelled advocate. In the case of **Surendra Nath Pandey vs. State of Bihar,** (2020) 18 SCC 730, in which, the allegations of furnishing false search report /NEC/ Legal Opinion with regard to the properties/land documents in order to cheat to the Bank and to facilitate obtaining loan by the persons concerned were levelled against the panel advocates of the bank. However, there was no specific finding with regard to their role in the alleged conspiracy in the charge sheet and it was held by Hon'ble The Supreme Court that, "Taking into account the contents of the FIR, we are left with the impression that the said allegations are bald and omnibus and do not make any specific reference to the role of the appellants in any alleged conspiracy." In the case at hand as well, there being an absence of direct or tangible material of the petitioner being in cahoots with other co-accused or was a beneficiary or involvement in defrauding the bank, criminality would not get attracted, warranting his prosecution for the offences punishable under Section 420 read with Section 120B IPC, as was also held in **K. Narayana Rao** (supra).

10. The foregoing facts and circumstances of the case when considered based on the judicial pronouncements referred to hereinabove, persuade this Court to hold that the continuation of the criminal proceedings against the petitioner would be an abuse of process of law and it would be expedient in the interest of justice to quash the same, for which a gainful reference can be made to the judgment in **Ramesh Chandra vs. State of U.P.**, 2022 SCC OnLine SC 1634, wherein Hon'ble The Supreme Court had observed and held thus:

> "15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in *Vineet Kumar* v. *State of Uttar Pradesh*1 decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:
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> "22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.
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> 23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in **State of Karnataka vs. L. Muniswamy**, (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated:
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>> '7. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary

> public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

11. In view of the above discussion, the present petition is allowed. FIR No.227 dated 30.06.2015 along with the subsequent proceedings, if any, are quashed qua the petitioner.

(AMAN CHAUDHARY)
JUDGE

28.08.2023
Ankur

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No