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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 18th January, 2023
Pronounced on: 15th February, 2023

\+ CRL.REV.P. 1113/2019 & CRL.M.A. 38890/2019 (Stay)

SUDHIR KUMAR ..... Petitioner
Through: Mr.Mohit Mathur, Sr. Advocate with Mr. Amitabh Narendra and Mr. Mridul Chakravarty, Advocates.

versus

CBI ..... Respondent
Through: Mr.Mridul Jain, SPP with Ms. Vedika Rattan, Ms. Neha Goel, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('CrPC') is directed against the order dated 01.10.2019 passed by Ms. Anju Bajaj Chandna, Special Judge (PC Act), CBI-02, Rouse Avenue in CC No. 266/2019, titled CBI v. Ishma Arora & Ors, arising out of FIR No. RC2192015E0009 registered at PS EO-I, N. Delhi, District DSPE, whereby the learned Special Judge framed charges against the petitioner for offences under Section 120B read with Sections 420, 467, 468, 471 of the Indian Penal Code 1860 ('IPC') and Section 13(1)(d) of the Prevention of Corruption Act, 1881 ('PC Act').

2. Briefly stated, the facts of the present case are as under:

i. The present FIR was registered upon a complaint dated 20/22.04.2015 made by Sh. Rajeev Azad, Assistant General Manager, Punjab National Bank, Assets Recovery Management Branch, Rajendra Place, New Delhi ('complainant') against Smt. Ishma Arora, the proprietor of M/s Radhey Shyam Trading Company ('the company'), Sri Nitin Kumar Arora and other unknown persons under Sections 120B/420/467/468/471 of the IPC.

ii. In the FIR, it was alleged that Smt. Ishma Arora had applied for and obtained a credit limit of Rs. 375 Lacs is her capacity as the proprietor of the company and Sri Nitin Kumar stood as a guarantor in his individual capacity. Property situated as C-7/12 (Northern half portion), Krishna Nagar, Delhi - 110051 was offered as collateral security and the title deed for creation of equitable mortgage was also deposited.

iii. It was further alleged in the FIR that the said property was also mortgaged in favor of Central Bank of India, Ghonda, Delhi and Bank of Maharashtra, Sector - 27, NOIDA, Uttar Pradesh. Legal Search report was called for from bank's counsel, which revealed that the sale deed submitted to the bank for creation of equitable mortgage was fake. It is further alleged in the FIR that accused persons had furnished different PAN Numbers for obtaining the credit facilities.

iv. Investigation revealed as per the chargesheet that the accused persons, including the present petitioner entered into a criminal conspiracy in order to cheat Punjab National Bank, L Block, Connaught Place, New Delhi ('the bank') by obtaining a cash credit limit of Rs. 375 Lacs from the bank on the basis of forged documents.

v. During investigation, it was found that the petitioner, who is the panel advocate for the bank submitted an allegedly false Legal Search Report dated 29.08.2013 in which he mentioned that the title deed tallies verbatim with the contents as stated in the certified copy obtained by him from the registrar's office and that the said title deeds are original, genuine and not duplicate or fake. It is alleged that investigation revealed that there were apparent differences in the title deed mortgaged with the bank and the certified copy obtained from the Sub Registrar's office inasmuch as on page no. 5 of the certified copy, there were handwritten details of two pay orders of Rs. 20 Lacs each, while there was no such detail on page no.5 of the title deed given to the bank. It was also alleged that the petitioner had not received the certified copy from the office of the Sub Registrar till 30.08.2013 and had thus, falsely stated that he had tallied the certified copy with the title deed.

vi. Investigation further revealed that the loan proposal of the company was jointly appraised by Rajiv Kumar Dogra (Senior Manager Incharge of the Loan Department) and Sh. Puneet Garg (Manager Credit) and in doing so, they allegedly committed lapses and did not verify the statement of account in the name of the company maintained with ING Vyasa Bank which was submitted by the applicant/borrower.

vii. The CERSAI search report in respect of offered collateral security was not generated which could reveal the outstanding loan liability of Rs.4 Crores against Ishma Arora and Nitin Kumar Arora. The aforesaid Rajiv Kumar Dogra and Puneet Garg accepted affidavits from Ishma Arora and Nitin Kumar Arora to the effect that they have not taken, nor have given guarantee in respect of any such loan (of Rs.4 Crores). The proposal was recommended *vide* process note dated 18.09.2013 and was sanctioned by accused Udbhas Guha on 23.09.2013.

viii. After the sanction of cash credit limit, CERSAI search report was generated by Neha Dubey (Bank Officer) in respect of property as C-7/12, Krishna Nagar, Delhi - 110051, Krishna Nagar and she handed over the same to Puneet Garg. It was revealed that property was already mortgaged with Bank of Baroda, Bank of Maharashtra and Central Bank of India. The accused persons released drawing power ('DP') on 28.09.2013, intentionally not verifying the factum of mortgage of property with other banks and not placing CERSAI report on the loan record.

ix. During the investigation, it has also been revealed that Ishma Arora and Nitin Kunnar Arora submitted forged 'no objection certificate' from other banks. Stock statement dated 25.09.2013 was also submitted without giving proper details of debtors and creditors and without verification of its genuineness, drawing power (DP) was released. Accused Puneet Garg falsely recorded the note about physical checking of stocks in furtherance of conspiracy with the accused persons.

x. In March 2014, on coming to know that identical copy of title deed of collateral security was also mortgaged with Central Bank of India, Ghonda Branch, Nitin Kumar Arora who dishonestly offered to replace the title deed of property C-7/12, (Northern half portion), Krishna Nagar, Delhi, with the forged title deeds of three other properties.

xi. Investigation revealed that the property C-7/12 (Northern half portion), Krishna Nagar, Delhi - 110051 was mortgaged with six other banks and

Ishma Arora and Nitin Kumar Arora have allegedly used different PAN Cards to open accounts with the said banks.

xii. From cash credit account of the company, on 30.09.2013 an amount of Rs.15,61,268/- was remitted to current account of M/s. S. K. Enterprises (proprietor - Sandeep Khera) maintained with ICICI Bank, Anand Vihar branch. Thereafter the amount of Rs. 9 Lakhs was withdrawn In cash on the same day and an amount of Rs.5,75,000/- was transferred to the account of M/s. Bankey Bihari Trading Company (proprietor - Ishma Arora), despite the fact that Sandeep Khera has no business of fabrics and clothes in the name of M/s. S. K. Enterprises. Thus, it has been alleged that Sandeep Khera facilitated Ishma Arora, Nitin Kumar Arora in diverting the funds.

xiii. The cash credit facility was utilized and thereafter, they defaulted and account was classified as a non-performing asset on 31.05.2014, causing a total loss of Rs.3,87,64,154/- to the bank.

3. Learned Senior Counsel appearing on behalf of the petitioner submitted that the role assigned to the present petitioner in the chargesheet filed in the present case is as follows:

i. The petitioner submitted a false title deed with the complainant bank, i.e., Punjab National Bank, without verifying and tallying the original with the certified copy of the sale deed, as the title opinion submitted with the bank was dated 29.08.2013, whereas the date of delivery mentioned in the certified copy of the sale deed issued by the office of the sub-registrar was 30.08.2013.

ii. It was further alleged that the petitioner, dishonestly and fraudulently mentioned that the title deed tallies verbatim with the contents of the certified copy obtained from the registrar's office, whereas the investigation revealed that there are differences in the title deed mortgaged with the bank and the one obtained from the registrar's office, inasmuch as that there was a handwritten detail of two pay orders of Rs. 20 lacs each on page no. 5 of the certified copy and there was no such detail on the deed mortgaged with the bank.

4. It was submitted that based on above allegations, the learned Special Judge framed charges under Sections 420/467/468/471/120B of the IPC and Section 13(1)(d) of the PC Act against the petitioner by observing;

> "32. Similarly, accused Sudhir Kumar (empaneled Advocate) has submitted his opinion without properly obtaining the certified copy of the property offered as collateral security and the excuse of typographical mistake cannot be accepted at this stage. There are apparent differences in the sale deed submitted to the bank (forged one) and in the certified copy of the sale deed received from the Sub-Registrar office and this should have been reported by the accused in his opinion. Whether the act of the accused Sudhir Kumar amounts to negligence or to criminal misconduct, is a matter of evidence and cannot be decided at this stage. However, the strong suspicion arises against accused Sudhir Kumar about his involvement in the matter by way of conspiracy."

5. Learned Senior Counsel submitted that in August 2013, the petitioner in his capacity as an empanelled lawyer for Punjab National Bank, was assigned the task of conducting a title search of 'Northern portion of D.LF. Freehold Built-up Property bearing Plot No. C-7/12 (Block No. C-7, Plot No.12), measuring 229 Sq. Yds. (i.e. 191.47 Sq. Mtrs.), situated at 'Krishna Nagar', in the area of village Ghondii, Illaqa-Shahdara, Delhi-110051, standing in the name of Smt. Ishma Arora W/o Sh. Nitin Arora R/o H-4/12, Krishna Nagar, Delhi-110051', and submit a non-encumbrance report. In furtherance of the said task, the petitioner inspected the records pertaining to the said property at the office of the Sub-Registrar on 27.08.2013 and applied for certified copy of Sale Deed dated 08.07.2012, executed in the name of Ishma Arora. Thereafter, the petitioner obtained the original title deed of the said property and tallied it with the certified copy and found that the details of property, registration details, photographs of the seller(s) and buyer tallied with each other. After verifications of the particulars and on the basis of the inspection of the concerned records done by the petitioner on 27.08.2013, in the Sub Registrar office, he submitted his title opinion dated 29.8.2013 along with the certified copy of sale deed dated 08.07.2012, in the Punjab National Bank on 30.08.2013.

6. Learned Senior Counsel submitted that apart from the allegations that the report submitted by the petitioner was false, there is no material on record to show that he was involved in a conspiracy to commit the alleged offence and there is no evidence to demonstrate that the petitioner benefitted monetarily by preparing the alleged false report. It was submitted that apart from routine statements of two witnesses who state that the report was false and prepared in furtherance of a criminal conspiracy, there is nothing on record to point towards the petitioner's involvement in the offence.

7. Learned Senior Counsel further submitted that the petitioner duly inspected the records at the office of the sub-registrar and found that the aforesaid property was registered in the name of Ishma Arora. Therefore, it would be incorrect to say that he submitted the title opinion without verifying the official record.

8. It was submitted that even in the title opinion, the petitioner had enlisted certain precautions which should be taken by the bank while creating the mortgage, which are as under:

"a. Original documents as mentioned above may be taken by the branch.
b. Physical possession of the property must be verified by the Bank since the actual facts must confirm to the details mentioned in the documents.
c. It must be ensured by the affidavit from the owner(s) that

i. The documents now submitted with the Bank are the only set of title deeds and no other set of documents is available with any other person.
ii. No prior mortgage on property is any manner by any previous or present owner and the property is free from all encumbrances, charges, lien, mortgage, litigation, dispute, criminal investigation, court litigation, any dues to any govt. authority etc.
iii. No agreement of sale or rent is currently executed, or is alive by previous or present owner in favour of any person.
iv. That no unauthorized construction has been added to the property and he shall be responsible personally to the Bank for any loss caused on this count."

9. In sum and substance, learned Senior Counsel submitted that the learned Special Judged erred in framing charges against the present petitioner, especially when the role assigned to him in the chargesheet is limited to submitting the title opinion, which, he argued was submitted after inspection of records. If at all there were some details of a pay order missing on the copy of the sale deed, it would anyway have no impact, so far as the title and the registration with the office of the sub-registrar are concerned. It was argued that if at all there were some lapses while tallying the sale deeds, the same would only amount to lack of reasonable care and by no measure, make the petitioner a party to the alleged criminal conspiracy.

10. In support of his contentions, learned Senior Counsel appearing on behalf of the petitioner placed reliance on the following judgments:

i. CBI v. K. Narayana Rao, (2012) 9 SCC 512.
ii. S. Ram Yadav v. CBI, Writ Petition (Crl.) No. 763 of 2011.
iii. A. Kumar Sharma v. CBI, Crl.MC No. 2704 of 2013.
iv. Rajeshwar Kumar Gupta v. CBI, Crl.MC No. 2734 of 2015.

v. Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368.

11. Learned Special Public Prosecutor ('SPP') appearing on behalf of the Central Bureau of Investigations submitted that the learned Special Judge was right to frame charges against the present petitioner, based on the *prima-facie* material on record. It was submitted that the title opinion submitted by the present petitioner was an integral part of the process and the bank relied on it while extending the credit. It was submitted that had the bank had the requisite information about the discrepancies in the title of the collateral property, the loss would not have been caused.

12. Learned SPP submitted that in his title opinion, the petitioner, to a pointed question about whether the contents of the title deed tally 'verbatim' with the contents of the certified copy, answered 'yes'. It was submitted that the role played by the petitioner is sufficient ground for charges to be framed against him. The question of whether the petitioner's lapses in tallying the title deed with the certified copy were in furtherance of a criminal conspiracy or not is a matter of trial and cannot be adjudicated without leading evidence.

13. In support of his contentions, learned SPP placed reliance on the following judgments:

i. Bhawna Bai v. Ghanshyam & Ors., Criminal Appeal No. 1820/2019.

ii. Dinesh Tiwari v. State of Uttar Pradesh & Another, (2014) 13 SCC 137.

iii. Kanti Bhadra Shah & Anr. v. State of West Bengal, (2000) 1 SCC 722.

iv. Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. v. Central Bureau of Investigation, AIR 2018 SC 2039.

v. State of M.P. v. S.B. Johari and Ors., MANU/SC/0025/2000.

vi. State of Madhya Pradesh v. Yogendra Singh Jadon and Ors., MANU/SC/0117/2020.

vii. Central Bureau of Investigation, Hyderabad v. K. Narayan Rao, (2012) 9 SCC 512.

14. Heard learned counsel for the parties.

15. A perusal of the chargesheet filed in the present case reflects that the role assigned to the present petitioner, in connection with the commission of the alleged offence is as under:

> "16.6 Investigation has further revealed that accused Sudhir Kumar, Panel Advocate, in conspiracy with other accused persons, submitted a false Legal Search Report dated 29.08.2013 to the bank in which he dishonestly and fraudulently mentioned that title deed tallies verbatim with the contents as stated in the certified copy obtained from the registrar's office and that the said title deeds are Original, genuine and not duplicate or fake. Investigation has revealed that there are apparent differences in the title deed mortgaged with the bank and the certified copy obtained from Sub Registrar's office so much so that in page no.5 of the certified copy there are handwritten details of two pay orders of Rs.20 Lacs each, while there is no such detail in page no.5 of the tide deed. It has also been revealed that accused Sudhir Kumar, Advocate had not received the certified copy from the office of Sub Registrar till 30.08.2013 and had thus fraudulently mentioned that he has tallied the certified copy with the tide deed."

16. The only lapse on part of the petitioner, as alleged, is that there is a discrepancy pertaining to the handwritten details of two pay orders on the certified copy which were not there on the title deed submitted with the bank, whereas the petitioner, in his title opinion mentioned that both tally 'verbatim', which admittedly, they do not. It is not the case of the prosecution that the opinion given by the present petitioner was incorrect with respect to the details of ownership mentioned in the title deed submitted with the bank in comparison to certified copy of the same. The case of the prosecution is that on the basis of the said title deed, the co-accused Ishma Arora had taken loans from other banks. The essence of the opinion given by the petitioner was that the title deed submitted with the bank matched with the certified copy and therefore, the same was not fake. The said fact has not been disputed by the prosecution. Non-mentioning of details of the two pay orders in the copy of the tile deed submitted with the bank would not affect the authenticity of the contents of the deed, which was to be verified by the petitioner herein. It is not the case of the prosecution that the title deed submitted with the bank was fake.

17. Apart from the aforesaid, there are no other allegations against the present petitioner. There is no other material on record to show that the petitioner had any other role to play in the alleged offence or that he benefitted in any manner from commission of the alleged offence. Further, There is no material on record to demonstrate that he deliberately submitted a title opinion with false information in furtherance of the said conspiracy. Admittedly the petitioner was not named in the present FIR. The Hon'ble Supreme Court of India, in Central Bureau of Investigation, Hyderabad v. K. Narayan Rao (*supra*), while dealing with similar situation with regard to the role of a panel advocate observed as under:

> "**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. 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.
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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. 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."

The present case is squarely covered by the aforesaid judgment, inasmuch as in the present case also, as already discussed, nothing has come on record linking the present petitioner with any conspiracy and apart from the aforesaid legal opinion, no overt act has been attributed to the present petitioner indicating his involvement in any manner with respect to the alleged conspiracy.

18. This Court is of the opinion that the said lapse, is not sufficient *prima-facie* evidence to point towards the petitioner's involvement in the alleged criminal conspiracy. The Hon'ble Supreme Court, in Dilawar Balu Khurane v. State of Maharashtra, (2002) 2 SCC 135 has observed that while framing charges, the Judge has to ascertain whether the materials on record disclose 'grave suspicion' against the accused, which cannot be explained. Evidence has to be weighed only for the limited purpose of finding out whether a *prima-facie* case is made out against the accused. It has been held as under:

> "12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large **if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure**, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609])." **(emphasis supplied)**

19. In view of the aforesaid legal position and in view of the limited role assigned to the petitioner, this Court is of the opinion that the material on record is not enough to give rise to 'grave suspicion' against the petitioner and does not justify charges framed against him. Accordingly, the present petition is allowed and the impugned order dated 01.10.2019 passed by Ms. Anju Bajaj Chandna, Special Judge (PC Act), CBI-02, Rouse Avenue in CC No. 266/2019, titled CBI v. Ishma Arora & Ors, arising out of FIR No. RC2192015E0009 registered at PS EO-I, N. Delhi, District DSPE is set aside. The charges framed against Sudhir Kumar, the present petitioner, for offences under Section 120B read with Sections 420, 467, 468, 471 of the IPC and Section 13(1)(d) of the PC Act *vide* order dated 01.10.2019 by Ms. Anju Bajaj Chandna, Special Judge (PC Act), CBI-02, Rouse Avenue are set aside and consequently, the present petitioner is discharged.

20. The present petition is allowed and disposed of accordingly alongwith the pending application(s), if any.

AMIT SHARMA
JUDGE

FEBRUARY 15th, 2023/*ab*