



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.146/2024

Swapnil s/o Mohan Dubewar,  
aged about 40 Yrs., Occ. Advocate,  
R/o 52, Vyankatesh Krupa, Gopal  
Nagar, Nagpur.

... Applicant

- Versus -

1. The State of Maharashtra,  
through Police Station Officer,  
Police Station Ambazari, Nagpur.

2. Sunil S/o Kisanji Pise,  
aged Major, Occ. Private,  
R/o Parsodi, Near Water Tank,  
Umred Road, Nagpur.

... Non-applicants

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Mr. D.V. Mahajan, Advocate for the applicant.  
Mr. A.R. Chutke, A.P.P. for non-applicant No.1.  
Mr. Anirudha Ananthakrishnan, Advocate for non-applicant  
No.2.  
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CORAM: VINAY JOSHI & MRS.VRUSHALI V. JOSHI, JJ.  
DATED: 27.8.2024.

ORAL JUDGMENT (Per Vinay Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. This is an application seeking to quash criminal prosecution namely R.C.C. No.5020/2021 arising out of Crime No.0174/2019 registered by non-applicant No.1 for the offence punishable under Sections 420, 467, 468 and 471 read with Section 34 of Indian Penal Code.

3. At the instance of report dated 26.4.2019 lodged by informant Sunil Pise crime has been registered. Precisely it is the prosecution case that co-accused Yashwant Ingle was owner of huge land. Layout was prepared and plots were sold to several persons right from the year 2005. Despite that co-accused Yashwant has mortgaged the said land in favour of Pusad Urban Co-operative Bank for raising huge loan of Rs.4 Crores. The applicant, who is practising Advocate, has given title report to facilitate the loan proposal and, therefore, crime has been registered against main accused Yashwant Ingle as well as applicant for aforesaid offences.

4. At the inception, learned Advocate appearing for the applicant would submit that during pendency main accused Yashwant Ingle died. Moreover, Yashwant Ingle has already cleared the entire bank loan for which the creditor bank has issued release deed dated 19.8.2023. It is also updated to us that trial Court has not yet framed charges against the applicant. In the wake of above position, we have gone through the entire record with the assistance of both sides.

5. Learned Advocate for the applicant would submit that role of applicant is quite restricted to the extent of issuance of title report, from which it cannot be construed that he has conspired with main accused as he had no knowledge about the transaction. It is brought to our notice from the police papers itself that in the year 2005 plots were sold to several persons, however, mutation was not carried out which probably weighed in issuing title report in the name of co-accused. The applicant has also shown us a public notice dated 5.1.2017 at the time of issuance of title report.

6. It is canvassed that the applicant has merely issued a legal opinion cum title report which was based on available documents. It is submitted that at the most his act can be termed as negligence in professional duty but it cannot be stated that applicant has conspired to commit an offence. In support of said contention reliance is placed on the following judgments.

- (i) Surendra Nath Pandey and another V/s. State of Bihar and another, (2020) 18 SCC 730,
- (ii) Bhaskar Banerjee V/s. Central Bureau of Investigation and another, 2022 SCC OnLine Cal 710,
- (iii) Mohana Raj Nair V/s. Central Bureau of Investigation, Anti Corruption Branch and others, 2013 SCC OnLine Bom 1279,
- (iv) Adv. Nitin Umesh Sawant V/s. State of Goa, through the Public Prosecutor, High Court, Panaji, Goa and others, 2014 SCC OnLine Bom 1722,
- (v) Central Bureau of Investigation, Hyderabad V/s. K. Narayana Rao, (2012) 9 SCC 512 and
- (vi) A. Kumar Sharma V/s. CBI, 2015 SCC Online Del 7206.

7. The applicant's learned Advocate laid special emphasis on the decision in the case of Central Bureau of

Investigation, Hyderabad (supra) which was mostly followed in later decisions. It has been ruled that legal opinion rendered by an Advocate may be by negligence or improper legal advice but criminal liability cannot be fastened on that basis. Panel Advocate of bank can be made liable only if there is something more than mere issuance of title deed. Unless there is evidence to show that the lawyer in question aided or abetted the other conspirator he cannot be fastened with the criminal liability.

8. We have gone through the entire material from which we are unable to draw an inference that the applicant has conspired with the main accused for issuance of title report. Rather the applicant's contention appears to be probable since the revenue record remained in the name of original owner only. Needless to say that the criminal law is to be strictly interpreted and thus by taking overall view of the matter, we see no material to infer about the conspiracy. By the time main accused has died and entire loan has been repaid. In view of the decision rendered by Supreme Court in case of Central Bureau of Investigation,

Hyderabad (supra) the case against applicant even if accepted as it is, it does not make out a *prima facie* case to put the applicant on trial. In the circumstances, continuation of prosecution would amount to abuse of the process of Court.

9. In view of above, application is allowed. We hereby quash and set aside criminal prosecution namely R.C.C. No.5020/2021 arising out of Crime No.0174/2019 registered by non-applicant No.1 for the offence punishable under Sections 420, 467, 468 and 471 read with Section 34 of Indian Penal Code.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)