IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 1218 of 2018

Sabyasachi Mukherjee
Vs.
Central Bureau of Investigation

For the petitioner	:	Mr. Snehatosh Majumder Mr. Sattwik Majumder
For the CBI	:	Mr. Amajit De
Heard on	:	27.08.2025
Judgment on	:	09.12.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order no. 70 dated 16th January, 2018 passed by learned judge, CBI court Alipore, in special case no. 2 of 2013, petitioner Sabyasachi Mukherjee has preferred the instant Application. Before the trial court the present petitioner along with two other accused persons namely accused no. 1 and 5 preferred an application for discharging them from the said proceeding under section 227 of the Cr.P.C. The learned Court below after hearing the parties while allowed the prayer of accused no. 5 for discharge but disallowed the prayer made by others including the present petitioner.

2. Petitioner's contention is that the petitioner was an empanelled Advocate of Vijaya Bank and he was entrusted to do legal scrutiny and to render his opinion in respect of a flat, which arose because one Saradendu Kundu had approached the said bank for a loan of Rs. 10 lakhs for purchasing the said flat from the then owner Shri Tapan Kumar Kundu. Petitioners further contention is that the petitioner's tasks was to find out the validity of the title of the claimed owner Shri Tapan Kumar Kundu as well as to find out the marketability of such title, whether or not the said property was free from any prior charge/mortgage. The said Tapan Kumar Kundu prior to approach the bank had entered into an agreement for sale with aforesaid proposed purchaser. As was customary the bank referred the proposed purchaser to the petitioner along with the documents in respect of the said property.

3. Petitioner's further contention is that petitioner scrutinized the title document of shri Tapan Kumar Kundu which in this case was the certified copy in original of judgment and decree passed in Partition suit no. 53 of 1948 and it was found that one Anil Kumar Kundu had been allotted the said proposed property, namely 51/B Shmabhu Nath Pandit Road along with structure standing thereon, who became absolute owner of the same. The property had been mutated thereafter in favour of Tapan Kumar Kundu Son of said Anil Kumar Kundu which was substantiated by the original mutation certificate dated 18.09.1981. The original municipal property tax receipt dated 09.06.2004 and 11.10.2004 showing updated payment for the year 2004 and 2005 were also shown to him and said Tapan Kumar Kundu was found to be in possession of the original of the plan dated 02.08.1982 on the strength of which he has constructed further two stories on the existing building. The agreement for sale dated 04.01.2005 by and between said proposed seller Anil Kumar Kundu and the proposed buyer was found to be in order.

4. The petitioners further case is that he has caused a search to find out whether or not the property sought to be transferred had any prior charge or mortgage for the period from 1992 to till date i.e. 2005 and found that there was no prior charge or mortgage and therefore petitioner herein had rendered his opinion in the format of “Legal Scrutiny Report” in vogue at Vijaya Bank at the material point of time on 24.12.2005. Thereafter in the regular course of the business the bank approved and disbursed a loan of Rs. 10 lakhs in favour of aforesaid proposed buyer Saradendu Kundu and the bank draft was issued in favour of proposed seller Tapan Kumar Kundu.

5. Petitioner’s further contention is that thereafter it appears sometime in 2009-2010 that the authorities in the bank received a complain that the accused no.1 Biswanath Shetty, while posted as senior branch manager, during the period 15.12.2004 - 02.05.2007 allegedly entered into criminal conspiracy with many persons and cheated Vijaya Bank to the tune of Rs. 3,19,40,000/- by sanctioning and disbursing loan on 31 instances to the borrowers on the basis of false and forged documents. The matter was investigated by the chief vigilance officer of the said bank, who filed complain on 01.03.2010. In the said complain it has been specifically alleged that proposed buyer Saradendu Kundu had taken loan of Rs. 10 lakhs on the basis of forged voter Identity card and false agreement. Said Tapan Kumar Kundu had signed the sale deed even though the said building was already mortgaged with Punjab National Bank. However before such detection the said amount of Rs. 10 lakhs was paid to Shri Kundu by Bank draft.

6. Being aggrieved by the order impugned Mr. Majumder learned Counsel appearing for the petitioner submits that from the said complaint it is clear that the bank had no allegation against the present petitioner, who is a lawyer and who has only scrutinized the title documents of Shri Tapan Kumar Kundu. Infact no fault was found in the legal scrutiny report dated 24.12.2005 submitted by the petitioner so far as the title of Tapan Kumar Kundu to the said property was in question. The petitioner herein was in no way concerned with the so called forged voter I card. Agreement for sale could not be castigated as a 'false agreement', when the said agreement was admittedly made between two consenting adults for valuable consideration with an intent to perform the agreement by executing and registering a sale deed. Admittedly the deed of sale was executed.

7. Mr. Majumder further argued that the only issue that could cast a shadow of suspicion on the petitioner is that if there was in existence of registered deed of mortgage between Tapan Kumar Kundu and Punjab National Bank (PNB) in the Public domain which would be detectable by a search of the concerned offices as well as the office of the Registrar of Assurance, Kolkata . In this context he argued that defacto complainant namely the bank was well aware that the mortgage of the subject property given by Mr. Kundu to PNB was under section 58(f) of The Transfer of Property Act i.e. depositing the title deed of the immovable property. Mr. Majumder strenuously argued that the investigation officer has founded the case against the petitioner due to lack of knowledge about the provisions laid down in section 58(f) of the Transfer of Property Act.

8. The petitioner's counsel further submits that therefore, the petitioner preferred the aforesaid application under section 227 of the Cr.P.C. on the following grounds:-

(i) Opinion of Advocate are based on documents that were sent to him

(ii) No where in his report the accused petitioner has stated that he has gone through the partition deed

(iii) The accused was not informed by the bank or the party, (who was unknown to him) that the mortgage exists and the proceeding are pending in DRT.

(iv) The brief of the accused/petitioner was for perusal and scrutiny of the documents sent and not to enquire into any other documents which may be in existence.

(v) The report was based on the format of queries of the bank.

(vi) From the documents submitted, one cannot but come to the conclusion that the party has marketable title.

(vii) The documents and the statements under section 161 Cr.P.C. does not disclose a prima facie triable case against the accused/petitioner.

(viii) The accused was not named in the FIR.

9. However, learned Trial court disallowed the petitioner's prayer which is speculative and based on impossible proposition of not verifying original records of the arbitration case. Therefore the order impugned is bad in law and is not liable to be sustained.

10. Mr. Amajit De learned Counsel appearing on behalf of the CBI, submits that the property in question for which the housing loan was applied for had already been mortgaged with Punjab National Bank. The petitioner submitted in his legal scrutiny report on 24.12.2005 before submissions of housing loan application dated 10.03.2006 and had mentioned that the property in question was free from all legal encumbrances without proper verification. He had also mentioned that he had scrutinized original documents including original sanctioned plan issued by Kolkata Municipal Corporation (KMC) but in reality it was not done. Investigation revealed that during the said period, the said original sanction plan and original registered copy of award of compromise were in the custody of PNB, Bhawanipur Branch as the property in question was already mortgaged with PNB, by accused no. 2 Saradendu Kundu and accused no. 3 Tapan Kumar Kundu for taking a loan of Rs. 8 lakhs during the year 2002.

11. Mr. De further argued that the petitioner has mentioned in this application that he had seen the award of learned arbitrator dated 15.11.1947. However, there is no mentioning of the said award dated 15.11.1947 in his legal scrutiny report. Further in his report he mentioned that he has scrutinized the order passed by the arbitrator in the partition suit dated 21.02.1950, whereas in the instant Application petitioner had mentioned that he had seen judgment in terms of the award dated 21.02.1950 passed by learned 1^{st} sub judge Alipore, which are contradictory. The petitioner without receiving the official communication from the bank for legal scrutiny had submitted his report, with forwarding letter and he did not raise any bill for payment from the bank with regard to the legal scrutiny report prepared by him, which conduct is suspicious.

12. Mr. De further argued that petitioner certified that the property in question was free from all legal encumbrances though PNB had already filed a suit in the Tribunal for the said property during that period which fact has been suppressed in the report. He further argued that vide circular dated 04.04.2005, prior verification of title deeds with the office of sub registrar was made mandatory on the part of the banks' advocate and therefore, the petitioner was mandated to verify the title deed before giving non-encumbrance certificate. The petitioner in criminal conspiracy with the then bank officials and Loanee submitted the incorrect legal opinion, with *malafide* intention. He further argued that the legal scrutiny report is most important report to decide whether loan should be disbursed or not and also for the recovery of the loan in case of loanee fails to repay the loan amount and as such issuance of no encumbrance certificate without proper verification resulted into wrongful loss in public money to the bank. It is well settled that an economic offence if committed with cool calculation and deliberate design with an eye on personal profit that should be dealt with seriously. The oral and documentary evidences on record clearly establishes that a prima facie case has been made out against the petitioner and as there exists grave suspicion against the petitioner, the court below is duty bound to frame charge against him. In this context he relied upon the judgment of ***Sajjan Kumar Vs. CBI*** reported in **(2010) 9 SCC 368.**

13. Mr. De further submits that the trial of the instant matter is at advance stage and till date 8 out of 14 witnesses had already been examined and some important witnesses are yet to be examined and the prosecution has a strong case against the petitioner and at the verge of completion of trial the petitioner is trying to delay the proceeding and therefore, prayed for dismissal of the instant Application.

14. In view of above, the question that falls for consideration by this court is whether the petitioner who is also an advocate and while acted in discharge of his professional duty submitted his legal scrutiny report, conveying his legal opinion that as of that date, Tapan Kumar Kundu i.e. the vendor had marketable title and thereby endorsed non-encumbrance certificate to the bank for granting loan to a borrower but subsequently the same is found to be non acceptable as the property is not free from charge and therefore, whether petitioner can be prosecuted for offence punishable under section 420/467/468/120B of the IPC for not taking due professional care and competence.

15. Before going to further details let me reproduce the relevant portion of the impugned order by which the petitioner's prayer for discharge was turned down by the court below.

> *"Let us take the another application of accused Sabyasachi Mukherjee. He contended that his opinion was based on documents which were sent to him. His duty was not to cause search etc. nowhere in his report he stated that he had gone through the partition deed. Again he was not informed by the bank or by the party, who was unknown to him regarding the fact that the property in question was mortgaged earlier and a proceeding was pending before the Debt Recovery Tribunal. His duty was to peruse and scrutinize the documents which were sent to him by the bank and not to enquire any document which might be in existence. That apart the report was based on the format of queries of the bank. He further contended that from the documents submitted before him one can invariably say that the party had marketable title. In spite of that bank was free to take second legal opinion.*
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> *Firstly this court is not agree with the contention that he had no duty to cause search to find out the clear title in respect of the property to be mortgage before the bank issuing "No Encumbrance" certificate in respect of the property to be mortgage before the bank is a very responsible work. One has to verify the original relevant property documents, has to search available records lying with property Registration office to ascertain whether the said*

property has been transferred subsequently or not and he has also to search records of courts to find out whether any litigation in respect of the said property is pending or not etc. The words "free from encumbrance" has got wide meaning which includes everything which might have clouded the title of the property to be mortgaged. Therefore without doing the above things one cannot issue "No Encumbrance" certificate in respect of the property to be mortgage. Here in the instant case admittedly accused Sabyasachi Mukherjee submitted his Legal Scruting Report in respect of the property mortgaged before the bank, without making the above kind of search. Accused Tapan Kumar Kundu (vendor as well as father of accused Saradendu Kundu) derived his title over the concern property by way of a decree passed in a partition suit. He has not verified the original partition decree rather his report reveals that he had verified the certified copy of the order passed in partition proceedings. This accused person in para 5.12(a) of his report opined that the concern property is free from encumbrance. Again in para 5.12(b) he opined that no charge has been created. This court became astonished having seen this opinion. How can a professional (empanelled lawyer) say this without being satisfied about the non- existence of any mortgage/charge. But in fact the concern property was mortgaged earlier before the Punjab National Bank, Bhawanipore Branch, Kolkata by Tapan Kundu. So the said legal scrutiny report was imperfect.

However perfectness of a legal scrutiny report depends upon the sincerity, professional sill, legal acumen of the concern professional. That apart it also depends upon the availability of records in the property registration office, courts and other officers.

However to my opinion mere submission of imperfect legal scrutiny report does not make any person criminally liable unless it is done in a pre- concert with the other accused persons with a motive to cheat the bank.

At this stage it cannot be ascertained that this accused person had no guilty mind and had no nexus with the other accused persons. Rather materials on record reveal that prima facie material exist against him to proceed with this case. Therefore the application U/Sec. 227 Cr.P.C., dt. 12.09.2017 filed by this accused persons is liable to be rejected. Accordingly the application U/Sec. 227 Cr.P.C. dt. 12.09.2017 filed by the accused Sabyasachi Mukherjee is rejected on contest."

16. From the aforesaid order it is quite clear that in the order impugned on the one hand the court below observed that mere submission of imperfect legal scrutiny report does not make any person criminally liable unless it is done in a pre-concerted manner with the other accused persons with a motive to cheat the bank but on the other hand, in the very next line, he held that there exists prima facie material against the petitioner to proceed with the case, without further elaboration.

17. In the instant case petitioner is not FIR named. The only allegation against him is that he entered into criminal conspiracy with the vendor and the purchaser and thereby submitted his legal scrutiny report. Apart from the report submitted by the petitioner, no other material has surfaced in course of investigation to establish the involvement of the petitioner with the principle accused persons, in defrauding the bank to disburse the loan amount to the purchaser. In the charge sheet also there is nothing to show that the petitioner had made any wrongful gain from the co accused persons or he had any pecuniary benefit for preparing an incorrect legal scrutiny report for the bank. It is no doubt true that the petitioner being a professional person should have been more cautious and careful while furnishing such non-encumbrance certificate. However the report simplicitor does not lead to any presumption that the petitioner had any connection with the actual beneficiaries for releasing of the loan. The allegation made in the FIR and the materials collected during investigation does not suggest anything that the petitioner had any role to defraud the bank. Being an advocate after verifying available documents he gave his legal opinion and there is nothing to show that the petitioner being a lawyer had any active participation in the plan to defraud the bank. In the absence of tangible evidence that the petitioner was associated with other conspirators, it can be said that he might have negligent in discharging his duty and his opinion can be said to be not acceptable and for that reason he may be liable for gross negligence or professional misconduct, if it is established by acceptable evidence but he can hardly be charged with the penal offences as mentioned in the charge sheet.

18. It is not in dispute that petitioner is an advocate and whatever he has done has been done in his professional capacity. Petitioner in support of his innocence contended that the concerned bank has not lodged any complaint against him and furthermore the agreement for sale entered into by and between the vendor and the purchaser has never been declared as false document and on the basis of said agreement, sale deed was also executed. The allegation in order to cast a shadow of suspicion on the petitioner is that when such certificate was issued there existed registered deed of mortgage between Tapan Kumar Kundu and Punjab National Bank which could have been detected by the petitioner. But petitioner's contention is that the said mortgage was under section 58(f) of the Transfer of Property Act by simply depositing the title deed of the immovable property and the Punjab National Bank and Tapan Kumar Kundu were the only privies to the said mortgage transaction which would bear no foot print in any public domain including the registry offices. Regarding the allegation that the petitioner never raised any bill for the said work, petitioners contention is that due to lack of proper investigation the investigating, agency was not aware of the fact that at the material point of time the empanelled valuers and empanelled lawyer used to get their payments from the parties and therefore there was no requirement of raising any invoice on the Bank. Furthermore investigating officer would have known that the petitioner never claimed to have had an physical inspection of the property and in order to ascertain the title and marketability thereof, a lawyer does not inspect the property physically and therefore, in this case also petitioner did not physically inspect the property nor was he required to. The legal scrutiny report was submitted in the banks format and therefore the format set by the bank had to be adhered to. Petitioner's further defence is that the title of Tapan Kumar Kundu is not in dispute in the present case and he never claimed that he had verified the original registered deed of order passed by the arbitrator in the partition case of the property in question. In the instant case there was no original partition deed registered or unregistered, since the arbitrator's award was on the basis of compromise and the court passed degree and no further partition deed was warranted in law and therefore IO's finding that original partition deed was in the custody of Punjab National bank is misnomer. IO has submitted that a DRT proceeding was pending which the petitioner did not take into account is also incorrect in view of the fact that the legal scrutiny report was furnished on 24.12.2005. and the DRT proceeding could not be in existence at least before 31.03.2007. His further defence is that he being a lawyer was not required to embark on a roving enquiry and a door to door search of all the banks in existence public and private to discover whether or not the property in question was already under equitable mortgage. In this context petitioner's specific case is that the concerned bank is the victim of system failure as there is no centralized data Bank of all the banks, from where a bank having been approached for a house loan against some immovable property to be acquired, could gather the information of any existing or prior mortgage in favour of some other bank.

19. In ***Jacob Mathew Vs. State of Punjab & anr.*** reported in **(2005) 6 SCC 1** Supreme Court has laid down the standard to be applied for judging whether the person charged has been negligent or not, has to be judged like an ordinary competent person exercising ordinary skill in that profession and it is not necessary for every professional to possess the highest level of expertise or skills in that branch which he practices.

20. An Advocate certainly has a responsibility to act to the best of his knowledge and skill and to show loyalty to the interest of his clients and must not do anything adverse to the interest of his client but subject to the limitation that he never assured to his client that the legal scrutiny report that he has rendered to the bank is flawless. The only thing that needs to be taken note of in such cases is whether he possesses the requisite skills in his field of practice and while prepared the legal scrutiny report he had exercised his skills with reasonable competence or not.

21. Here regarding petitioner's requisite skill in his field of practice, is not under challenge. In ***Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra*** reported in **(1984) 2 SCC 556** the Apex Court held that there is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct.

22. In the case of ***Surendra Nath Pandey and another Vs. State of Bihar*** reported in **(2020) 18 SCC 730** allegations were levelled against the panel advocates of the Bank that they had furnished false search report/NEC/legal opinion with regard to the properties/land documents in order to cheat the bank and to facilitate in obtaining of loan by the concerned persons. Apex Court after taking into consideration the contents of the FIR and the other facts and circumstances of the case were left with the impression that the allegations were bald and omnibus and do not make out any specific reference to the role of the appellants in any alleged conspiracy

23. In ***CBI Vs. K Narayana Rao*** reported in **(2012) 9 SCC 512** Supreme Court also held that criminal prosecution on the basis of bald and omnibus allegations against the empanelled advocates of the bank ought not be allowed to proceed as the same constitute an abuse of the process of the court and such prosecution may in all likelihood be abortive and futile.

24. In ***A. Kumar Sharma Vs. CBI*** reported in **2015 SCC Online Del 7206**, Delhi High Court on a similar situation relying upon the decision of **K. Narayana Rao** (supra) quashed the proceeding against an empanelled advocate who had submitted a non acceptable search report in alleged collusion with the principle accused observing that mere negligence or want of greater professional care/competence on the part of an advocate would not make him liable for criminal offence in absence of tangible evidence.

25. As I have quoted above, the learned Trial Court though held that mere submission of imperfect legal scrutiny report does not attract criminality unless it is done in a pre concerted manner with the principle accused persons but he did not bother to apply his judicial mind nor thought it necessary to elaborate in the above background as to why there are grounds for proceeding against the petitioner.

26. In the case of ***State of Karnataka Vs. L. Muniswammy and Ors.*** reported in **(1977) 2 SCC 699** the Apex Court made it clear that it is wrong to say that at the stage of framing charges the court cannot apply his judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. The order framing a charge affects a persons liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face trial.

27. It is also well settled that at the stage of framing charge, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused had committed an offence, then it is open to the court to frame charge against the accused person.

28. From the aforesaid discussion I am constrained to conclude that in the instant case, the court below has acted like a mouth piece of the prosecution in framing charge against the petitioner without considering the broad probabilities of the case or the total effect of the evidence and documents produced before the court, which formed basic infirmities in proceeding against the petitioner

29. In view of above **CRR 1218 of 2018** is allowed.

30. The impugned proceeding being special case no. 02 of 2013 arising out of RC case No 07 of 2010 pending before the court of learned Judge, CBI court no.2 Alipore (CBI Vs. Biswanath Shetty and ors.) is hereby quashed, quo the petitioner only namely **Sabysachi Mukherjee**. In this context it is also made clear that the observations made herein shall be restricted to the present petitioner only.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)