IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43160 of 2016

Arising Out of PS. Case No.-366 Year-2008 Thana- GANDHIMAIDAN District- Patna

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Ram Balak Prasad S/o late Baiju Mahto Resident of 104, R P Tower , Near Jagat Trade Centre, Fraser Road, P.S. Kotwali , District Patna.

... ... Petitioner/s

Versus

1. State Of Bihar
2. Chief Manager, UCO Bank, Exhibition Road, Patna, District Patna PIN-800001.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Siddhartha Prasad, Advocate
For the Opposite Party/s : Mr.Mitwesh Kumar Khare, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

6 13-01-2026 Heard learned for the petitioner and learned A.P.P. for the State.

2. The petitioner has prayed for quashing of the order dated 21.01.2016 passed by the Learned A.C.J.M., Patna in connection with Gandhi Maidan P.S. Case No. 366/2008 whereby and whereunder the Learned Magistrate has taken cognizance against the petitioner for the offences punishable under section 406, 409, 420, 467, 468, 471 and 120 (B) of the Indian Penal Code.

3. The present F.I.R bearing Gandhi Maidan P.S Case No. 366/2008 dated 03.12.2008 , under section 406, 409, 420, 467, 468, 471, 474 and 120 (B) of the Indian Penal Code has

been lodged on the basis of written report contained in letter dated 28.11.2008 submitted by the then Chief Manager, U.C.O Bank, Exhibition Road, Patna who was authorized to lodge this complaint alleging therein that the then two Chief Managers of Exhibition Road, Patna Branch, the then Sr. Manager of the same Branch and the two Managers of the above said Branch of the Bank entered into a criminal conspiracy in connivance with the borrower & guarantors named in the F.I.R and abused their official positions to provide undue advantage to the borrowers and guarantors for getting Cash Credit Limit of Rs 10 Lakhs for M/s Jai Mata Di, Rs 5 Lakhs for M/s Tyre Emporium, Rs 10 Lakhs for New Adarsh Medical Hall &Rs 4.5 Lakhs for M/s India Motors. The said borrower & guarantors had offered their properties as Collateral Securities for their loan accounts and the same were fraudulent in nature as the Title Deeds of the properties were fake as opined by the Empanelled Solicitors/Lawyers of the Bank, due to which the bank suffered a loss of Rs.29.54 Lakhs and these accounts have been classified as Non-Performing Assets.

4. It is the case of the petitioner that he is an Engineer by profession and has been granted License of a Registered Valuer by Ministry of Finance, Government of India and he is

just a Registered Valuer and does valuation of the property as assigned by various Banks & other Financial Institutions. He was just assigned the job of valuation of property by the Bank which the petitioner did on the basis of documents provided to him and the calculation were done by the petitioner on the basis of market price of the land in the said locations and the estimated cost of development over the land, to obtain the final valuation of the property. The petitioner often had to visit the location of the property for the same and he had submitted his valuation report on 13.02.2004 wherein no misconduct anywhere in the valuation of property was made out.

5. The learned counsel for the petitioner submits that the petitioner was assigned the job to valuate one of the four properties mentioned in the FIR and the same was done by him and the report of the same was on the basis of the photocopy of the Registered Sale Deed handed over to the petitioner by the Bank which was submitted to the bank by the Borrower as Collateral Security and therefore for this it is the Borrower's and the Bank's responsibility to check the genuineness of the Sale/Title Deed. He next submits that it is not the duty of the of petitioner to check the authenticity of the Sale/Title Deed and that the services of lawyer/advocate is sometimes taken by the

bank to find out the genuineness of Sale/Title Deed and in the present case also Legal Opinion of Mr. Narendra Saran (Advocate) dated 05.03.2004 was taken, who had certified the genuineness of right, title, interest or sale deed of the borrower.

6. The learned counsel for the petitioner further submits that from the information received by one Chandra Shekhar Tilak under the Right to Information Act, 2005 from three leading nationalised banks at different dates, it is crystal clear that that the role of the Valuer is limited only to the extent of ascertaining the market value of the value offered as security and nothing beyond that and it is the bank officials and the panel advocate of the bank who are responsible for finding out the genuineness of Sale/Title Deed offered by the borrower as security.

7. He further submits that whenever any proposal for loan is made to the bank by any borrower it is the Bank Authorities including the Manager and the Field Officer who processes the proposal and ask him about the properties which can be furnished by the borrower as collateral security, and thereafter the branch manager does the physical survey of the collateral security and after being satisfied the Branch Manager gets the Title verified by an Advocate, therefore it is not the duty

of the valuer to find out the genuineness of the title of the property.

8. Lastly, he submits that in the entire investigation there is not even a whisper as to whether the valuation done by the petitioner is bad or undervalued or overvalued. It is categorically submitted that the Branch Manager gets the Title verified by an Advocate, therefore it is not the duty of the valuer-petitioner to find out the genuineness of the title of the property. He further submits that in the entire investigation there is not even a whisper as to whether the valuation done by the petitioner is bad or undervalued or overvalued.

9. It is the submission of the learned counsel for the petitioner that the entire allegation in the written report it is apparent that borrower/Guarantor has submitted forged sale deed in the bank as collateral security meant for equitable mortgage. The petitioner has merely assessed the value of the property which was mortgaged by the borrowers on the basis of aforesaid sale deed. The petitioner has clearly mentioned in the aforesaid report which was submitted in the Bank (Annexure-3) that he is not responsible to the genuineness of the Title Deed or the document as furnished by the borrowers.

10. The learned APP for the state has opposed the

present application.

11. From the perusal of the present F.I.R it appears that the Bank was defrauded to the tune of Rs. 29,54,000/- on account of forged title deed of the collateral deed submitted to the bank.

12. A Coordinate bench of this Court in the case of ***Vijay Kumar Singh vs The State Of Bihar*** passed in ***Criminal Miscellaneous No.27162 of 2011*** order dated 10.12.2013 had held as under -

> *"Considering the rival submission of the parties, it is clear that the bank was defrauded basically by the loanee Manoj Kumar, who pledged a fraudulent deed as a collateral security and the petitioner being valuer was not supposed to certify the genuineness and otherwise of the title of the loanee over the land which was given to the bank as collateral security.*
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> *This is not the case of the bank that any entrustment was made to the petitioner, hence, no case under Section 406 IPC is made out against the petitioner nor there is any evidence that the petitioner deceived the Bank, by fraudulently or dishonestly inducing the Bank to deliver any property or deceived the Bank to do or omit to do anything, as the quantum of valuation of the land as assessed by the petitioner is not in dispute. Hence, the petitioner cannot be held liable for dishonestly inducing the Bank to deliver the loan amount. Hence, no case under Section 420 IPC is made out against the petitioner. Offence under Section 467 IPC is also not made out against the petitioner as the alleged sale deed which was purported to be the valuable security, is alleged to be pledged or given by way of security by the loanee Manoj Kumar. Offence under Section 468 IPC is made out as the offence under this Section gets constituted only when some one commits forgery by using a document or electronic record for the purpose of cheating. Hence, forgery, if any, has been done by the loanee. Offence under Section 471 IPC is made out against the loanee who*

has knowingly submitted a forged sale deed by way of collateral security.

The offence of abetment has been defined in Section 107 of the Indian Penal Code which reads as follows:

> *"107. Abetment of a thing.--A person abets the doing of a thing, whoFirst.-Instigates any person to do that thing; or Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing."*

Section 107 of the IPC clearly suggests that a person abets the doing of a thing if he instigates any person to do that thing or engages with one or more other person or persons in any conspiracy for the doing of that thing or intentionally aids, by any act or illegal omission, the doing of that thing but the prosecution case does not reflect that the petitioner in any way abetted or assisted the loanee.

Section 120A of the IPC defines the offence of criminal conspiracy which reads as under :

> *"120A. Definition of criminal conspiracy.--When two or more persons agree to do, or cause to be done,- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."*

There is nothing on record to suggest that the petitioner indulged in conspiracy with the loanee. The petitioner claims that he visited the site of the land in question along with Chartered Accountant, Neel Kanth, the then Manager, Canara Bank and Arunjay Kumar, Advocate and then valuated the land shown by the bank authorities and the petitioner was not supposed to verify the title of the land in question and the petitioner can only be charged with the accusation of criminal conspiracy, once the conspiracy to commit an illegal act is proved, where the act of one conspirator becomes the act of the other.

In the present case, there is neither any direct nor circumstantial evidence to suggest that the petitioner was part of the conspiracy. Similar view was taken in the case of CBI, Hyderabad Vs. K. Narayana Rao (supra) where the bank was defrauded after sanctioning of the housing loan to 22 borrowers where the thrust of accusation was against an advocate of the bank where it has been held in paragraph nos. 27 to 31, in the following words:

> *"27……. **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 can not 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 practicing 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.***
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> *28. In Jacob Mathew vs. State of Punjab & Anr. (2005) 6 SCC 1 this court laid down the standard to be applied for judging. To determine whether the person charged has been negligent or not, he has to be judged like an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices.*
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> *30. **Therefore, the liability against an opining advocate arises only when the***

lawyer was an active participant in a plan to defraud the Bank. In the given case, there is no evidence to prove that A-6 was abetting or aiding the original conspirators.
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 of IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link of 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."

In the light of the above discussion and considering the materials on record, this court is of the view that no offence, as charged, is made out against the petitioner. Hence, allowing the present prosecution to continue will be an abuse of the process of the court. Accordingly, to secure the ends of justice, the order issuing processes dated 5.1.2011 after taking cognizance passed by the learned Chief Judicial Magistrate, Patna in Patna Kotwali P.S. Case no. 393 of 2008 including the entire prosecution is hereby quashed."

13. A coordinate Bench of this Court while dealing with the allegation against a valuer in the case of ***Navin Chandra Jha vs The State of Bihar*** passed in ***Criminal***

Miscellaneous No.4127 of 2015 had held as under -

> 3. *Learned counsel for the petitioner has submitted that petitioner is merely valuer of the property. He has no concern to check the genuineness of the document which has been produced by the borrower with respect to property in question. Counsel for the petitioner pointed out valuation report submitted by the petitioner in the Bank which has been enclosed as Annexure-3 wherein it is clearly mentioned that valuer is not responsible for the genuinity of any Title Deed or document related to the property under valuation as furnished by the borrower/banker. This valuation work is undertaken by the valuer based upon the request from Sr. Manager, Canara Bank. It has further been submitted that there is no any allegation that valuation done by this petitioner was incorrect. The alleged Title Deed which was submitted by the borrower in the Bank was found to be forged.*
>
> 4. *In the instant case there is allegation that Mr. Kakoli Banerjee and Nav Kumar Banerjee were partners/borrowers of the Canara Bank. They were running a partnership firm in the name and style G. Pharmaceuticals for the purpose of business of medicine. They were sanctioned loan facilities of cash credit limit of Rs.15,00,000/-. One Jai Raj Prasad Gupta became the personal guarantee of the aforesaid property. The borrowers have executed equitable mortgage by means of sale deed No. 7090 of land and building situated in Mauza Mirchai Bari, Thana No. 328, Tauzi No. 1239, Ward No. 09 (old) 33 (new) Plot No. 1168 (old) 274 (new), appertaining to Khata No.27, Plot No. 1168. The valuation of said property was assessed which comes to Rs.16,00,000/- as per the report of the Bank's approved valuer, NavinChandra Jha, (Chartered Engineer).*
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> 5. *The informant has alleged that the aforesaid loan became NPA. The Bank has tried his level best to contact all the borrowers, partners and guarantor, but they were found absent. Afterwards, genuineness of the so called original sale Deed No. 7090 kept in the Bank meant for equitable mortgage, was verified and the same was found fake, forged and fabricated.*

> 6. ***<u>In this manner from the entire allegation in the written report it is apparent that borrower/Guarantor has submitted forged sale deed in the bank as collateral security meant for equitable mortgage. The petitioner has merely assessed the value of the property which was mortgaged by the borrowers on the basis of aforesaid sale deed. The petitioner has clearly mentioned in the aforesaid report which was submitted in the Bank (Annexure-3) that he is not responsible for any genuinity of the Title Deed or the document as furnished by the borrowers.</u>***
> 7. *In such circumstances, the impugned order dated 13.2.2014 passed by the learned Chief Judicial Magistrate, Katihar, in Katihar P.S. Case No. 154 of 2010, G.R. No. 1133 of 2010 along with the entire criminal proceeding against the petitioner is hereby quashed."*

14. This Court in the case of ***Navin Chandra Jha vs The State of Bihar*** passed in ***Criminal Miscellaneous No.11619 of 2019,*** had also quashed the order taking cognizance.

15. The Hon'ble Supreme Court in the case of ***Pepsi Food Limited and Anr. vs. Special Judicial Magistrate and Others*** reported in ***(1998) 5 SCC 749*** it has been held as under:-

> *"Summoning of an accused in a Criminal Case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the Complainant has to bring only two witnesses to support his allegation in the Complaint to have the criminal law set into motion.* ***<u>The order of the Magistrate summoning the accused must reflect that he has applied his mind to the fact of the case and the law applicable thereto. He has to examine the nature of allegations made</u>***

> ***in the Complaint and evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the Complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examined if any offence is prima facie committed by all or any of the accused."***

16. The Hon'ble Supreme Court in the case of ***G. Sagar Suri vs. State of Uttar Pradesh*** reported as ***(2000) 2 SCC 636*** had held that before issuing process, a criminal court has to exercise a great deal of caution.

17. From the aforesaid, it is abundantly clear that the present petitioner who was merely a valuer, can not be fastened with criminal liability since ascertaining the genuineness and vetting the veracity of the forged document was beyond his official duty. Therefore, the continuation of the criminal prosecution against the petitioner would be an abuse of the process of law. Furthermore, this Court has perused the order taking cognizance dated 21.01.2016 and the same appears to have been mechanically passed without application of mind and is therefore unsustainable.

18. Considering the aforesaid discussions, the

impugned order taking cognizance dated 21.01.2016 passed by the Learned A.C.J.M., Patna in connection with Gandhi Maidan P.S. Case No. 366/2008 is quashed and set aside.

19. This application is allowed.

(Sandeep Kumar, J)

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