

A. Kumar Sharma Vs CBI

Court: Delhi High Court

Date of Decision: Feb. 9, 2015

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 161, 482

Penal Code, 1860 (IPC) - Section 109, 120B, 120-B, 420, 467

Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2)

Citation: (2015) 2 JCC 959

Hon'ble Judges: V.P. Vaish, J.

Bench: Single Bench

Advocate: J.P. Sengh, Senior Advocate and Raaj Malhotra Advocate, for the Appellant; Narender Mann, Spl. P.P. and Manoj Pant, Advocates for the Respondent

Final Decision: Dismissed

Judgement

V.P. Vaish, J.

By the present petition the petitioner seeks quashing of the charge sheet/ arising out of FIR No. RC-DAI-2003-A-0050

under section 120-B/420/467/468/471 of the Indian Penal Code (hereinafter referred to as "IPC") pending before Special Judge, CBI, Patiala

House Courts, New Delhi and the proceedings emanating therefrom.

2. The brief case of the prosecution is that on 01.09.1997, one Mr. Des Raj Manchanda (since deceased) and his son Mr. Vijay Kumar

Manchanda (accused No. 1 in the charge sheet) applied for cash credit limit of Rs.100 lakhs (Rupees One hundred lakhs) in the Central Bank of

India, Janpath Branch, New Delhi (hereinafter referred to as the "complainant bank"). The said application of accused No. 1 and his father was

processed by Mr. Ravinder Kapoor (accused No. 2 in the charge sheet) and the cash credit facility was sanctioned by Mr. D.N. Upadhyay

(accused No. 3 in the charge sheet) on 08.10.1997. Even though M/s. Raj Raxine Pvt. Ltd. (hereinafter referred to as the "company") did not

fulfill the terms and conditions stipulated by the sanctioning authority, yet accused No. 2 and 3 released the credit facilities in favour of the

company. The cash credit account of the company became overdrawn w.e.f. 30.06.1998 and there was no credit in the company's account

during July and August 1998.

3. Accused No. 1 and his father after utilizing the amounts sanctioned to their company constituted a partnership firm named M/s. Raj PU Foam

Industries (hereinafter referred to as the "partnership firm"). On 29.09.1998, the accused No. 1 and his father applied to the complainant bank for

fresh credit facilities to the tune of Rs. 140 Lakhs (Rupees One hundred and forty lakhs), Letter of Credit (LC) Limit of Rs. 40 Lakhs (Rupees

Forty lakhs) and a term loan of Rs. 7 Lakhs (Rupees Seven lakhs). As collateral security, the accused No. 1 and his father offered property

bearing No. A-11/3, Site IV, Industrial Area, Shahibabad, Ghaziabad (hereinafter referred to as "Ghaziabad Property") and a flat at 1626,

Naiwala, Karol Bagh, New Delhi (hereinafter referred to as "Karol Bagh Property") to be mortgaged with this account. The said limits were

sanctioned by accused No. 2 and 3 on 13.11.1998 despite the fact that the accused No. 1 and his father had cheated and caused a wrongful loss

to the Central Bank of India of more than Rs. 1 crore (Rupees One crore) and the loan was disbursed by the complainant bank for the second

time on 16.11.1998.

4. The complainant bank obtained its main legal search report from Advocate S. Ram Yadav on 02.01.1999 who is on the panel of the

complainant bank. In furtherance to the report of advocate S. Ram Yadav, bank sought further clarification from the petitioner in respect of the

Karol Bagh Property lying as collateral security with it. The petitioner submitted his search report on 15.01.1999.

5. On 02.07.1999 and 30.06.2000, the accounts of accused No. 1 company and partnership firm were declared as Non-Performing Asset

(NPA) respectively. On 28.03.2001, the complainant bank prepared an audit report stating that the Ghaziabad property and Karol Bagh property

were hypothecated with the complainant bank, without deposit of title deeds. Consequently, the complainant bank filed a written complaint dated

04.09.2003 with the Superintendent of Police, CBI, Anti Corruption Branch. On the basis of this complaint, a RC/FIR bearing No. DAI-2003-A-

0050 dated 10.09.2003 was registered against the accused persons for offence under Sections 120B read with 420, 468, 471 IPC and Section

13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as "PC Act"). Investigation was completed and a

charge sheet was filed on 28.04.2006 wherein the petitioner was impleaded as accused No. 7. The matter was listed before the learned Special

Judge, CBI who vide orders dated 31.03.2009 and 08.04.2009 proceeded to frame charges against the petitioner. Against the said orders the

petitioner preferred a criminal revision petition before this court which was dismissed with a liberty to file a fresh petition.

6. It is against the said charge sheet and the proceedings emanating therefrom that the petitioner has preferred the present petition.

7. Mr. J.P. Sengh, learned senior counsel for the petitioner submitted that the petitioner was neither named in the complaint filed by the

complainant bank dated 04.09.2003 nor in the FIR bearing No. DAI-2003-A-0050 dated 10.09.2003. It was only during recording of

statements under Section 161 Cr.P.C. that some bank officials stated that the petitioner furnished a "clear report" without proper examination. On

the basis of such statements the petitioner was named in the charge sheet dated 28.04.2006. The petitioner submitted his search report on

15.01.1999, by then the bank had already disbursed the loan initially in 1997 and then again on 16.11.1998. There is no evidence of collusion

between the petitioner and other accused persons nor is there any evidence which could lead to the conclusion that the petitioner gave a report to

cause loss to the complainant bank and benefit accused No. 1 and 4. The petitioner was shown a copy of the sale deed dated 30.10.1998 and as

such he did not have the necessary means to come to an adequate conclusion as to whether the copy of the sale deed shown to him was forged or

fabricated. A bare perusal of the report of the petitioner dated 15.01.1999 reveal that sufficient protections and safeguards were suggested by him

which were intentionally not complied with by the complainant bank. Petitioner in his legal search report suggested that the accused should deposit

title deeds along with he suggested several other safeguards to be adopted by the bank so as to secure the interests of the complainant, however

accused No. 2 and 3 sanctioned the credit limit without deposit of the said documents by the accused and without considering the suggestions

made by the petitioner.

8. It was further contended that CBI has so far examined 48 witnesses and none of the witnesses has averred anything against the petitioner.

Inadvertence in a search report cannot make the advocate criminally liable especially when all the evidence goes to show that there could have

been no connivance or conspiracy between the advocate and the borrowers. The bank awarded credit facilities without going through the search

report of the petitioner, which was submitted subsequently.

9. It was lastly contended that the petitioner in his search report further suggested that the latest mutation in the municipal record must be obtained

from the party alongwith an undertaking. However, none of the precautions suggested by him were taken into consideration by the complainant

bank.

10. In support of his submission, learned senior counsel for the petitioner has relied upon judgments in In Re: K., a pleader and Another, , Hiralal

Jain Vs. Delhi Administration, , K. Ramakrishna and Others Vs. State of Bihar and Another, , "Punjab and Sind Bank v. State Bank of India"

E.S.A. No. 258 of 2000 decided on 27.07.2001, State through SPE and CBI, AP Vs. M. Krishna Mohan and Another, , "Nita Deep Rastogi v.

CBI" Crl.Rev.P. 77/2008, decided on 21.01.2009 (Delhi High Court), S. Swaminathan Vs. State of Delhi, , Shri Anur Kumar Jain Vs. Central

Bureau of Investigation, , Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, and "smt. Mohana Raj Nair v. CBI and Ors."

Criminal Writ Petition No. 727 of 2012, dated 24.09.2013 (Bombay High Court).

11. Per contra learned Special PP for CBI contended that the petitioner, in search report, gave clear findings with respect to the Karol Bagh

property and stated therein that the said property was fit to be taken as security. The petitioner did not carry out mandatory legal search from the

office of Sub-Registrar and gave a factually false report that the said property had been earlier purchased by Mr. Desh Raj Manchanda (since

deceased) vide registration No. 6268 dated 17.07.1986, while the said registration number pertains to some other property. As per the sale deed

given to the bank, the property was purchased by Mr. Deshraj Manchanda who executed a General Power of Attorney (for short "GPA") in

favour of his son accused No. 1, who sold the property to M/s. Raj PU Foam Industries through his father Mr. Deshraj Manchanda which clearly

shows that the property was sold to the actual owner by the GPA holder. This fact was not made clear by the petitioner. The petitioner had

prepared a false scrutiny report in collusion with accused No. 1.

12. It was further contended that the petitioner did not carry out the mandatory legal search. As per the bank loan policy, legal search report must

trace the title of each property backwards to at least 13 years (30 years where the advance is purely against the security) which the petitioner

failed to carry out.

13. It was lastly contended that every aspect of the title should be discussed. Where the Equitable Mortgage is to be created on a leasehold

property, the lease must be carefully scrutinized to see the power of the lessee to create mortgage thereof and if the same is made subject to the

consent of lessor, the said consent should be obtained beforehand. It should be ensured that the remaining time of the lease is sufficient to recover

the loan advance which was also not conducted by the petitioner.

14. I have carefully considered the submissions made by learned senior counsel for the petitioner and learned Special P.P. for the CBI. I have also

gone through the material on record.

15. Rendering of a legal opinion for granting loan has become an integral component of an advocate's work in banking sector. A lawyer, on his

part, has a responsibility to act to the best of his knowledge and skills and to exhibit an unremitting loyalty to the interest of his clients. He has to

exercise his knowledge in a manner that would advance the interest of his clients. However, while acting so the advocate does not assure to his

client that the opinion so rendered by him is flawless and must in all possibility act to his gains. Just like in any other profession, the only assurance

which can be given and may even be implied from an advocate so acting in his professional capacity is that he possesses the requisite skills in his

field of practice and while undertaking the performance of task entrusted on him, he would exercise his skills with reasonable competence. The

only liability that may be imputed on an advocate while so acting in his professional capacity is that of negligence in application of legal skills or due

exercise of such skills.

16. The Hon'ble Supreme Court in Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, observed:

26. The High Court while quashing the criminal proceedings in respect of the respondent herein has gone into the allegations in the charge-sheet

and the materials placed for his scrutiny and arrived at a conclusion that the same do not disclose any criminal offence committed by him. It also

concluded that there is no material to show that the respondent herein joined hands with A-1 to A-3 for giving false opinion. In the absence of

direct material, he cannot be implicated as one of the conspirators of the offences punishable under Section 420 read with Section 109 IPC. The

High Court has also opined that even after critically examining the entire material, it does not disclose any criminal offence committed by him.

Though as pointed out earlier, a roving enquiry is not needed, however, it is the duty of the Court to find out whether there is any prima facie

material available against the person who has been charged with an offence under Section 420 read with Section 109 IPC.

27. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an advocate's work.

In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some

special skills. 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 cannot 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 practising 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.

17. In view of dictum of the Apex Court it is clear that an advocate while fulfilling his professional obligations cannot be held liable for an offence in

regard to which no direct evidence has been adduced against him. The liability in criminal law for the offences committed against a bank arises only

when the lawyer is an active participant in a plan to defraud the bank. Merely because his opinion may not be acceptable, he cannot be criminally

prosecuted particularly, in the absence of tangible evidence against him.

18. Similarly, in "Nita Deep Rastogi v. CBI", CrI.Rev.P. 77/2008, decided on 21.01.2009, this court while dealing with a case of an advocate on

panel of Central Bank of India held that apart from the statement that the report was false, there was no material to show that the petitioner therein

was in criminal conspiracy with any of the accused to commit the offence alleged. It was further observed that there was no material to show that

the petitioner therein met the accused therein at any point in time and there was no allegation that the petitioner gained any pecuniary benefit as a

result of preparing such a report. It was also observed that apart from the statement that the report was false, there was no material to show that

the petitioner therein was involved in criminal conspiracy with any of the accused to commit the offence as alleged. The report in itself was not held

to be a substantive or even a circumstantial evidence to bring home the charges against the petitioner therein for committing the offence of criminal

conspiracy. The court also made an observation that although the petitioner could have exhibited greater professional care and competence, yet in

her failure to exercise the same she could not have been held criminally liable.

19. It is a settled law that the High Court is competent to quash the proceedings under Section 482 Cr.P.C. in appropriate cases to prevent the

abuse of process of court or to secure ends of justice. The inherent power is to be exercised by the High Court, ""ex debito justitiae"" which means,

to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if

any attempt is made to abuse that authority so as to result into injustice, the court has power to prevent abuse. It would be an abuse of process of

the court to allow any action which would result in injustice and prevent promotion of justice. In the exercise of its powers the court would be

justified to quash any proceeding if it finds that initiation/continuance of it amounts to an abuse of the process of court or the quashing of these

proceedings would otherwise serve the ends of justice. High Court in its inherent powers is not only competent to quash the proceedings in which

there is a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence, it can also quash proceedings

where the allegations in the FIR or the complaint, even if they are taken at their face value, do not constitute the offence alleged.

20. In *K. Ramakrishna and Others Vs. State of Bihar and Another*, the Hon"ble Supreme Court while assessing the extent of inherent powers of

the High Court under Section 482 of Cr.P.C. held,

3. The inherent powers of the High Court under Section 482 of the Code of Criminal Procedure can be exercised to quash proceedings, in

appropriate cases either to prevent the abuse of process of any court or otherwise to secure the ends of justice. Ordinarily the criminal proceedings

which are instituted against the accused must be tried and taken to logical conclusions under the Code of Criminal Procedure and the High Court

should be reluctant to interfere with the proceedings at an interlocutory stage. However, there may be cases where the inherent jurisdiction to

quash proceedings can and should be exercised. Where there is a legal bar against the institution or continuance of the criminal proceedings in

respect of the alleged offence, the High Court should not be reluctant to exercise the inherent jurisdiction. Similarly where the allegations in the FIR

or the complaint, even if they are taken at their face value do not constitute the offence alleged, or without appreciating the evidence but only

merely by looking at the complaint or the FIR or the accompanying documents, the offence alleged is not disclosed, the person proceeded against

in such a frivolous criminal litigation has to be saved.

21. In the case before this court, the allegations against the petitioner are that he did not verify the property for a minimum period of 13 years and

gave his comments based on the last title deed and also the lease deed was not properly scrutinized. No doubt the petitioner has committed an

error in not noticing the fact, however, as I have observed above in light of the decisions in "*CBI v. K.Narayana*" (Supra) and "*Nita Rastogi*"

(Supra) 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. It was also alleged that the petitioner had prepared a false scrutiny report in collusion with

accused No. 1 however this allegation is not substantiated with any material on record. In fact, a perusal of the record shows that the legal search

report dated 15.01.1999 was submitted by the petitioner and the said loan was sanctioned by the accused No. 2 and 3 first on 08.10.1997 and

then again on 16.11.1998. Clearly, the bank gave the credit facilities even before the legal search report was submitted by the petitioner. It cannot

be said that the bank acted on the report of the petitioner. This fact leaves no reason to disbelief the averment of the petitioner that the complainant

bank sanctioned credit facilities without going through his search report.

22. At this juncture, it is relevant to mention here that a similarly placed co accused S. Ram Yadav, Advocate, who was accused no. 6 in the same

charge sheet, challenged the order on charge by filing a writ petition bearing no. W.P. (Crl.) 763/2011 before this court. Vide order dated

16.05.2013 this court allowed the said petition and quashed the order on charge qua the petitioner therein.

23. In the light of the above discussion, the petition is hereby allowed. Consequently, the charge sheet and subsequent proceedings emanating

therefrom against the petitioner in case FIR No. RC-DAI- 2003-A-0050 dated 10.09.2003 under Sections 420/467/468/471/120-B of IPC read

with Section 13(1)(d) and Section 13(2) PC Act or in the alternative under Section 109 read with Section 420 of I.P.C. registered at P.S.

CBI/ACB/New Delhi are hereby quashed qua the petitioner only. It is made clear that any observation made herein above shall not affect the case

of prosecution against the co-accused.

Crl. M.A. No. 10362/2013

The application is dismissed as infructuous.