Kalptaru Medicose Thru. Narayan Prasad Sahu Vs Food and Drug Administration Thru. Ashok Goyal

1603 of 2015

Court: MADHYA PRADESH HIGH COURT

Date of Decision: March 28, 2017

Acts Referred:
Code of Criminal Procedure, 1973, Section 397, Section 401 - Calling for records to exercise powers of revision - High Courts powers of revision#Indian Penal Code, 1860

Hon'ble Judges: Prakash Shrivastava

Bench: Single Bench

Advocate: Manoj Saxena, Sudhanshu Vyas

Judgement

1. By this revision petition u/S.401/397 of the Cr.P.C, the petitioner has challenged the order dated 14/9/2015 passed in ST No.25/2012 framing

charge against the petitioner u/Ss.420/34, 467/34, 468/34, 471/34 and 474/34 of the IPC.

2. A complaint was filed by the Manager Dewas Shajapur Regional Gramin Bank against the co-accused Anarsingh S/o Prahlad Singh,

Mohansingh S/o Prahlad Singh, Girnarsingh S/o Bapusingh, Omsingh S/o Kumersingh, Ramu Singh S/o Prahlad Singh and Durjan Singh S/o

Prahlad Singh alleging that these six co-accused persons had applied for loan and had produced Bhu Adhikar and Rin Pustika, Khasra B/1 and

P/2, family identity card etc and search was got done through the authorised Advocate of the bank and after receiving the report, loan was

sanctioned to these six co-accused persons, but thereafter it was found that the documents which were submitted by the co-accused persons were

fabricated documents, therefore, these six co-accused persons had cheated the bank and had obtained loan by committing fraud. FIR was

registered and investigation was done. Since the petitioner had carried out the search and submitted the search report, therefore, he was also made

one of the accused and challan has been filed against him also and by the impugned order dated 14/9/2015 charge has been framed against the

petitioner along with the other co-accused persons.

3. Learned counsel for petitioner submits that the petitioner has not been named in the FIR and he had submitted the report on the basis of the

document furnished by the co-accused persons and the search report on the basis of which the petitioner has been implicated does not find place

in the charge sheet and that there is no material in the charge sheet to connect the petitioner with the alleged offence.

4. As against this, learned counsel for respondent has supported the impugned order.

5. Having heard the learned counsel for parties and on perusal of the record, it is noticed that in the complaint dated 27/1/2007 submitted by the

Manager of the Bank, no allegations were made against the petitioner nor he was named therein. The petitioner"s name does not find place in the

FIR. During the course of investigation, the statement of R.M. Naigaonkar, Manager of the Bank has been recorded who has also stated that the

verification was done by the petitioner on the basis of the land record submitted by the co-accused persons who had applied for loan as also the

document supplied by the concerned Halka Patvari and the ration cared issued by the gram panchayat, Kheda and Panchayat Secretary. There is

no allegation against the petitioner that he had any role in preparation of the fabricated documents submitted to the bank by the co-accused

persons. The petitioner has been implicated solely on the basis of the verification report submitted by him. It has been pointed out that the

verification report was based upon the document submitted by the coaccused persons. Though the sole connecting link of the petitioner with the

alleged offence is the search report submitted by the petitioner, but no such search report has been filed by the prosecution before the trial court

along with the challan.

6. Counsel for State on 6/2/2017 had sought time to get the original challan examined by the SHO and to file an affidavit clearly stating if the

search report was filed along with the challan. The affidavit of the SHO dated 20th February, 2017 is on record clearly stating that neither the

original nor photocopy of the search report is enclosed with the challan.

7. In the aforesaid circumstances, there was no material before the learned Addl. Sessions Judge to come to the conclusion that the charge for

commission of offence u/Ss. 420/34, 467/34, 468/34, 471/34 and 474/34 of the IPC was made out against the petitioner. Inspite of the

opportunity by this court, counsel for State also could not point out any material from the challan showing that petitioner is connected with the

alleged offence.

8. The Supreme Court in the matter CBI, Hyderabad Vs. K.Narayana Rao reported in 2012(IV) MPJR (SC) 179 considering the similar case

where an Advocate was sought to be prosecuted on the allegation of submitting the false legal opinion has held that:-

16] We have already extracted the relevant allegations and the role of the respondent herein (A-6). The only allegation against the respondent is

that he submitted false legal opinion to the Bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual

ownership of the properties. As rightly pointed out by Mr. Venkataramani, learned senior counsel for the respondent, the respondent was not

named in the FIR. The allegations in the FIR are that A-1 to A-4 conspired together and cheated Vijaya Bank, Narayanaguda, Hyderabad to the

tune of Rs. 1.27 crores. It is further seen that the offences alleged against A-1 to A-4 are the offences punishable under Sections 120B, 419, 420,

467, 468 and 471 of IPC and Section 13(2) read with Section 13 (1)(d) of the Prevention of Corruption Act, 1988. It is not in dispute that the

respondent is a practicing advocate and according to Mr. Venkataramani, he has experience in giving legal opinion and has conducted several

cases for the banks including Vijaya Bank. As stated earlier, the only allegation against him is that he submitted false legal opinion about the

genuineness of the properties in question. It is the definite stand of the respondent herein that he has rendered Legal Scrutiny Reports in all the

cases after perusing the documents submitted by the Bank. It is also his claim that rendition of legal opinion cannot be construed as an offence. He

further pointed out that it is not possible for the panel advocate to investigate the genuineness of the documents and in the present case, he only

perused the contents and concluded whether the title was conveyed through a document or not. It is also brought to our notice that LW-5 (Listed

Witness), who is the Law Officer of Vijaya Bank, has given a statement regarding flaw in respect of title of several properties. It is the claim of the

respondent that in his statement, LW-5 has not even made a single comment as to the veracity of the legal opinion rendered by the respondent

herein. In other words, it is the claim of the respondent that none of the witnesses have spoken to any overt act on his part or his involvement in the

alleged conspiracy. Learned senior counsel for the respondent has also pointed out that out of 78 witnesses no one has made any relevant

comment or statement about the alleged involvement of the respondent herein in the matter in question.

21] In the earlier part of our order, first we have noted that the respondent was not named in the FIR and then we extracted the relevant portions

from the chargesheet about his alleged role. Though statements of several witnesses have been enclosed along with the charge-sheet, they speak

volumes about others. However, there is no specific reference to the role of the present respondent along with the main conspirators.

22] 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 does 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 offence punishable under Section 420 read with Section 109 of 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 any prima facie material

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

23] 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.

24] 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.

25] In Pandurang Dattatraya Khandekar vs. Bar Council of Maharashtra & Ors. (1984) 2 SCC 556, this 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.

26] 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.

27] 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 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.

28] In the light of the above discussion and after analysing all the materials, we are satisfied that there is no prima facie case for proceeding in

respect of the charges alleged insofar as respondent herein is concerned. We agree with the conclusion of the High Court in quashing the criminal

proceedings and reject the stand taken by the CBI.

29] In the light of what is stated above, the appeal fails and the same is dismissed.

9. This Court also in a case where a practising advocate was sought to be prosecuted along with the co-accused persons for offence u/Ss.120-B,

419, 420, 467, 468 and 471 of the IPC on the basis of the allegation of false legal opinion and search report following the judgment of the

supreme court in the matter of K.Narayana Rao (supra) and the division bench judgment of this court in the matter of Harikishan Tuteja Vs. State

of MP M.Cr.C. No.7954/2013 dated 16/8/2013 has held as under:-

8] Applying the principle laid down in the case of K. Narayanan Rao (supra) and Harikishan Tuteja (supra), it is apparent that while preparing the

search report, the present applicant failed to notice that the main accused B.S. Verma transferred the property to his wife and to one of the

employee who was not allegedly having sufficient means to purchase the property. No evidence is available in the charge-sheet, copies of which

have been filed by the applicant, that when the present applicant conducted search in as around December 2003 such information could have been

extracted by the applicant though available record, index etc. There is also no evidence to establish his link or connection with other accused.

Learned advocate for the petitioner argued that his report in respect of the main property on which the factory was situated was found correct but

in respect of this property which has lesser value it was found incorrect. Had he be interest in helping the main accused he would have prepared

false report in respect of the main property . The argument has force and seems convincing.

9] During the arguments, the learned counsel for the respondent failed to show that any investigation was made to ascertain whether it was possible

for the present applicant to ascertain from the records available in the office whether the property was subsequent to transfer in different names or

not and whether he failed to take into account such record which was available.

10. Taking all these factors into consideration, in my opinion, at the most it may be said that there was a gross negligence on the basis of which it

cannot be said that he was criminally associated with the coaccused and participated in the criminal conspiracy or with the bank officials. It is not

apparent that only on the basis of his report the property was hypothecated and loan was sanctioned and in this view of the matter, I find that this

application deserves to be allowed and accordingly allowed.

10. It is the settled position in law that if on the basis of the material on record, the court could form an opinion that the accused might have

committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the

accused has committed the offence. It is also well settled that if two views are possible and one of them gives rise to suspicion only, as

distinguished from grave suspicion, the trial judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial

will end in conviction or acquittal.

11. In the present case, the counsel for State has failed to point out any material from the challan to show that the petitioner had any role to play in

the commission of the aforesaid alleged offences. Even the search report submitted by the petitioner is not available in the charge sheet for a

scrutiny if the same suffers from any error and even if the search report submitted by the petitioner had any error, then merely on that basis and

nothing more the petitioner cannot be implicated though he may be said to have committed a negligence in submitting such a report.

12. In the aforesaid circumstances, I am of the opinion that the trial court has committed an error in passing the order dated 14/9/2015 and framing

charge against the petitioner. Accordingly, the revision petition is allowed. The order dated 14/9/2015 is set aside and the prosecution of the

petitioner u/Ss. 420/34, 467/34, 468/34, 471/34 and 474/34 of the IPC in ST No.25/2012 is quashed and the petitioner is discharged from the

above offences.