Petitioner Vs. Respondent

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Court : Chennai Madurai

Decided On : Aug-09-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : Crl.O.P(MD)Nos. 12078, 12097 & 10521 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

V.M. Velumani, J.

The petitioner, who is arrayed as Accused Nos.2 and 1 in two crime numbers, apprehends arrest at the hands of the respondent police for the alleged offences punishable under Section 120(b) read with Sections 419, 420, 467, 468 and 471 IPC., in Crime Nos.5 and 4 of 2016 respectively on the file of the respondent police and hence, seeks anticipatory bail.

2. The case of the prosecution in Crl.O.P.(MD)No.12078 of 2016 / Crime No.4 of 2016 is that the petitioner/A2 was working as Assistant Manager [Legal] in HDFC Bank Ltd., at Tirunelveli and Tuticorin Branches. A1 was working as Receptionist. A3 and A4 are the husband and wife. A5 is the father of A1. A6 is the close friend of A1 and A3. On 01.02.2013, A3 applied for housing loan to the tune of Rs.45,00,000/-. A3 produced his xerox copies of Voter I.D. and Bank Pass Book.

Further, he gave documents of 23 acres and 63 cents of agricultural land in S.Nos.892/1, 892/2, 893/1A and 893/1B3 as security. A3 identified the agricultural land. At the time of inspection, the petitioner / A2 gave opinion and based on the inspection and opinion of A2, a sum of Rs.42,00,000/- was sanctioned to A3 towards housing loan. Due to old age of A3, his wife / A4 was also added as borrower. She executed a Power of Attorney in favour of A3 and all the documents required for sanction and disbursement of loan was signed by A3 and A4. On 31.03.2013, a cheque for a sum of Rs.42,00,000/- was issued to A3 by the de-facto complainant bank. A3 paid only three instalments and after that, he failed to pay further instalments. When the officials of the Bank went to the address given by A3 and A4, it was found that the address given by A3 and A4 is a bogus one and they did not reside in the said place at any point of time. When the de-facto complainant contacted the cellphone number given by A3, a person, who attended the phone call informed the official of the de-facto complainant that the said phone belonged to him and not to A3. When the officials verified the bank account of A3, in Tamilnad Mercantile Bank, Athur, where the cheque amount was deposited, it was found that except the cheque issued by the de-facto complainant towards housing loan, no transaction took place in the said account. A3 deposited the cheque issued by the de-facto complainant Bank and withdrew the amount. The de-facto complainant inspected the agricultural land, which was shown as security by A3 and it was found that it belongs to one Mohaideen and did not belong to A3. A6 was enquired, who took the officials of the Bank to the said land and informed that he is a friend of A5. A1, A3 and A5 conspired together and obtained loan and cheated the Bank. When the officials inspected the property mentioned in the loan document as security, it was found that the value of the property is only Rs.45,000/- per acre. The petitioner and other accused conspired together and produced forged documents like, sale deed, sale agreement and availed loan thereby cheated the de-facto complainant Bank.

3. The case of the prosecution in Crl.O.P.(MD)No.12097 of 2016 / Crime No.5 of 2016 is that the petitioner/A1 was working as Assistant Manager [Legal] in HDFC Bank Ltd., at Tirunelveli and Tuticorin Branches. A2, who is daughter of A3, is the close friend of A1. One Sivakumar, a resident of Erwadi, working in Saudi Arabia applied for housing loan. A sum of Rs.25,00,000/- was sanctioned. On verification

of certain documents, the loan was kept pending. All the documents of Sivakumar relating to loan transaction were in custody of the petitioner/A1. The petitioner/A1 and A2 were aware of the sanction of loan and pendency of disbursement of loan and they colluded with A3 and created documents for purchase of house site. The petitioner/A1 along with other accused forged the documents and signed in the loan agreement as Sivakumar and A3 received the cheque. The petitioner/A1 gave opinion with regard to title of the property and loan agreement was signed in the name of Sivakumar and cheque was issued to A3. A3 encashed the cheque and the petitioner/A1 and other accused persons shared the said amount. When the officials searched for the documents, it was found that A1 removed all the documents. They conducted an enquiry. The petitioner/A1 did not appear for enquiry and informed that he resigned his job in the month of July. The de-facto complainant Bank did not accept the resignation and called for enquiry. The petitioner/A1 did not appear for enquiry. A2 resigned and left the job. The petitioner/A1 and A2 are employees of the Bank colluded with A3 impersonated one Sivakumar and forged documents and cheated the Bank for Rs.25,00,000/-.

4. The case of the petitioner is that he was working as Legal Advisor from 11.06.2007 to 18.07.2014 in the de-facto complainant Bank. He wanted to continue his practice as Advocate. The de-facto complainant did not accept his resignation. He submitted his letter of termination of service as per the terms and conditions of the appointment. After six months, the de-facto complainant has given a false complaint. Due to the fact that, the petitioner tendered the letter of termination of his service, when the de-facto complainant refused to accept his resignation. The de-facto complainant never complained against the petitioner, when he was in service. The de-facto complainant gave the complaint against loan defaulters in order to recover the loan. The respondent police informed the de-facto complainant unless any allegation or fraud is alleged, they cannot register the complaint. In the circumstances, to take vengeance on the petitioner, the de-facto complainant has made false allegations and accusation against the petitioner implicating him in the complaint. There is no material to substantiate his complaint against the petitioner. The respondent police did not register the case. The de-facto complainant filed petitions under Section 166(3) Cr.P.C. before the learned Judicial Magistrate No.I, for compelling the police to register the case. The learned

Judicial Magistrate without applying his mind, mechanically forwarded the three complaints. Against the said order, the petitioner has filed a revision before the Additional District Judge, Tirunelveli and the same is pending.

5. According to the de-facto complainant, the value of the property involved in Crime No.4 of 2016 is not upto the value of the loan amount. The complaint in Crime No.5 of 2016 is that loan amount has been improperly disbursed. The petitioner is Law Officer and he is not in charge of disbursement of loan. The petitioner as Law Officer, has nothing to do with valuation or identification of the property or for disbursement of loan. The de-facto complainant has not given complaint against the persons, who have authority to sanction and disbursement of loan. The petitioner is an innocent person and he has not committed any offence as alleged by the prosecution.

6. The learned counsel for the petitioner relied on the following Judgments and submitted that the Advocate, who gave a legal opinion on the basis of the documents placed before him by the Bank, cannot be held criminally liable on the ground that he gave false opinion.

(i) Central Bureau of Investigation, Hyderabad Vs. K.Narayana Rao [2012 (9) SCC 512],wherein in paragraphs 26 to 30, it has been held as follows:

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.

28. In Jacob Mathew v. State of Punjab [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.

29. In Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra [1984 (2) SCC 556], this Court held that: (SCC p. 562, para 8)

8. 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.

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.

(ii) Surendra Nath Pandey and others Vs. State of Bihar and others [Crl.A.No.1012 of 2015, decided on 03.08.2015], wherein in paragraphs 4 to 6, it has been held as follows:

4. The High Court by the impugned judgment has refused to quash the First Information Report (FIR) on the ground that the same prima facie discloses commission of the offences against the Appellants who the panel advocates of the Bank. A reading of the FIR would go to show that the allegations levelled against the Appellants is that as panel advocates 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 obtaining of loan by the concerned persons. On investigation of the FIR, a charge-sheet has been submitted, a copy of which is enclosed to the present Appeal Paper Book. A reading of the charge-sheet does not refer to any specific finding of investigation.

5. Taking into account the contents of the FIR, we are left with the impression that the said allegations are bald and omnibus and do not make any specific reference to the role of the Appellants in any alleged conspiracy. In Central Bureau of Investigation, Hyderabad Vs. K.Narayana Rao, to which one of us (Ranjan Gogoi, J.) was a party, it has been held that by this Court that a criminal prosecution on the basis of such bald and omnibus statement/allegations against the panel advocates' of the Bank ought not to be allowed to proceed as the same constitute an abuse of process of the Court and such prosecution may in all likelihood be abortive and futile. ......

6. Taking into account the aforesaid facts and the ratio of the law laid down by this Court in Central Bureau of Investigation Vs. K.Narayana Rao (supra), we are of the view that the High Court was plainly wrong in refusing to interdict the proceedings against the Appellants. We, therefore, set aside the order of the High Court and quash the proceedings in G.R.No.710 of 2006 arising out of Agiaon (G) P.S. Case No.20 of 2006 pending before the Chief Judicial Magistrate, Bhojpur, Ara, insofar as the two Appellants Surendra Nath Pandey and Suresh Prasad are concerned.

(iii) S.Udayakumar Vs. State, Rep. by Inspector of Police, CCIW CID/Chengai East Unit, Admiralty House, Government Estate, Chennai [2008 (1) LW (Crl.) 320],wherein in paragraphs 6 to 8, it has been held as follows:

6. There is no dispute to the fact that the petitioner was the Legal Advisor for Tamil Nadu State Co-operative Bank during the period from 1986 to 2004. After all, the petitioner, who is a Lawyer by profession, is expected to offer his opinion based on the documents produced before him by the financial institution concerned. On a perusal of the opinion given by the petitioner, it is found that he has given his legal opinion based on the xerox copies submitted to him. He has also very scrupulously cautioned the bank to accept the valuable security in the form of land offered by the borrower subject to the production of all original title deeds. It appears that subsequent to the opinion given by him, the Bank has forwarded the original sale deeds and patta relating to the properties in S.No.107/A1 and 107/4 Madipakkam Village, Saidapet Taluk, Kancheepuram District to the petitioner and he, having perused those documents, has certified that he has verified the originals thereof.

7. An advocate is not a detective of forged documents or an expert to give opinion as to the forgery or otherwise of a document. The petitioner, having received the documents alleged to be originals, perused them and certified that he verified the original documents also. A meticulous concoction of a document would outsmart the original thereof in its form and execution. It is only an expert or a detective in the field unearthing forgery of documents can bring to light the duplicacy or concoction applying his expertise. A Legal Advisor is not supposed to play the role of a document expert.

8. Of course, the witnesses on the side of the prosecution have spoken to the fact that the petitioner offered his legal opinion. None of the witnesses has come out with a revelation that the petitioner fraudulently and dishonestly induced the Bank to part with heavy loan. There is no material to show that the petitioner played a supportive role in forging the document offered as valuable security by K.Varadappa Naicker.

(iv) P.Venkateswara Rao Vs. State C.B.I., Hyderabad [2012 (3) CCR 32],wherein in paragraphs 4 and 5, it has been held as follows:

4. It is most unfortunate to note that legal professionals undertake the activity of investigating into genuineness of the documents/title deeds and making search of records and registers in registration offices, municipal offices and revenue offices. It is for the party who seeks loan from the bank to furnish all the relevant title deeds, encumbrance certificates and extracts of relevant registers from the registration office, municipal office and revenue office. Thereupon, it should be duty of the bank officials and more particularly Branch head and field officers of the bank to make search of the said offices to find out genuineness of the above documents and extracts from the respective offices and to submit search report on genuinity of the documents and records submitted by the party. It is only thereupon the legal professional should undertake legal work by way of scrutinising the records and documents and also search report of the field officer of the bank and finally to give legal opinion on all the said documents and report. Instead, the bank's circular made duty of the panel advocate multifarious by casting duty on him to do every manual work which the party or the bank staff/officers should undertake. It is high time that the legal professionals should dissociate themselves from the said manual and clerical activity of the bank and restrict themselves to pure legal work. Otherwise, there is every possibility of the legal profession losing its dignity and nobility. It is high time for the Bar Council of India as well as the Bar Council of the State of Andhra Pradesh to take up the issue in order to preserve dignity of the legal profession.

5. This Court had earlier occasions dealing with similar criminal petitions relating to other cases and other advocates and this Court is consistent in holding that even if there are any deviations or non-compliance of any banks' circulars in this regard, such instances would not lead to criminal liability for the above offences (un-reported orders of this Court in Crl.P.No.1037 of 2007, dt.30.03.2007, Crl.P.No.2347 of 2008, dt.09.07.2010, Crl.P.No.471 of 2009, dt.21.10.2010 and Crl.P.No.472 of 2009, dt.21.10.2010). It is not the prosecution case that apart from violation of guidelines in Bank circular by A-2 as panel advocate, there is any more meeting of minds or meeting of the accused to attract criminal conspiracy

punishable under Section 120-B I.P.C. Assuming for a moment for the sake of argument that there was professional negligence on the part of A-2 in giving legal opinion, it is not the prosecution case that it was a culpable negligence. Therefore, continuation of prosecution proceedings in the lower Court against A-2 would amount to abuse of process of law, as the prosecution is not able to make out prima facie case against A-2 for the above offences mentioned in the charge sheet.

7. The learned counsel for the Intervenor reiterated the averments made in the complaints and submitted that the petitioner was an employee of the HDFC Bank Ltd., and assigned with separate password to access the main computers used for processing the loan application. The petitioner accessed the computers and logged into the loan document file and sanctioned loan amount to the co-accused and also disbursed the loan amount to the third party, other than the party applied for loan and submitted the documents and issued cheque to the co-accused. The petitioner is also involved in Crime No.3 of 2016. The petitioner also filed Cr.M.P.No.450 of 2016 in Crime No.3 of 2016 before the Principal and Sessions Court, Tirunelveli, and obtained an order of anticipatory bail. After obtaining anticipatory bail, he did not comply with the condition imposed by the Court. Therefore, the de-facto complainant has filed Crl.O.P.(MD)No.10521 of 2016 before this Court, for cancellation of anticipatory bail granted to him in Cr.M.P.No.450 of 2016, dated 28.04.2016. Huge amount is involved in these cases. Further, the petitioner is the prime accused, who had executed his master plan by using the other accused persons, had committed forgery and misappropriated several lakhs of rupees and thereby, caused loss to the de-facto complainant Bank. The petitioner is not only a Legal Advisor, but also disbursed the loan amount and filed documents. The investigation is only in preliminary stage and other accused persons are absconding and therefore, the custodial interrogation of the petitioner is necessary. If anticipatory bail is granted to the petitioner, he will tamper evidence and hamper the course of investigation.

8. According to the petitioner in Crl.O.P.(MD)No.10521 of 2016/de-facto complainant, the learned Principal and Sessions Judge, Tirunelveli, by order dated 28.04.2016, in Cr.M.P.No.450 of 2016 granted anticipatory bail to the petitioner by

imposing one of the conditions among other conditions that he should sign before the respondent police daily at 10.30 a.m., for one month. But, the petitioner did not comply with the condition imposed by the Court below. Therefore, the learned counsel for the Intervenor prayed for dismissal of Crl.O.P.(MD)Nos.12078 and 12097 of 2016 and thereby, allowing Crl.O.P.(MD)No.10521 of 2016.

9. The learned Government Advocate (Criminal side) for the respondent submitted that the petitioner along with other accused persons colluded together and cheated the de-facto complainant Bank. The other accused persons are absconding. He further submitted that the learned Principal and Sessions Judge, Tirunelveli, by order dated 28.04.2016, in Cr.M.P.No.450 of 2016, granted anticipatory bail to the petitioner imposing certain conditions. But, the petitioner did not comply with the condition imposed by the Court below. He also submitted that investigation is going on. If anticipatory bail is granted to the petitioner, he will tamper with the evidence and hamper the course of investigation.

10. The contention of the learned counsel for the petitioner is that as a Law Officer, the petitioner has given only opinion with regard to title to the property. As per the Judgments relied on by the learned counsel for the petitioner, the petitioner cannot be made criminally liable. He has nothing to do with the offence and he is not responsible for sanction and disbursement of loan. The contentions of the learned counsel for the petitioner are untenable. The specific allegation made against the petitioner is that he colluded with other accused persons and by impersonation and forgery, got Rs.42,00,000/- and Rs.25,00,000/- sanctioned as housing loan. On verification, it was found that the document in the custody of the petitioner with regard to Crime No.5 of 2016 was utilized by the petitioner and others and they shared the loan amounts and the specific allegation made against the petitioner is that he removed the loan document from the file of the Bank.

11. As far as Crime No.4 of 2016 is concerned, the allegation made against the petitioner is that he colluded with other accused persons, defrauded the Bank to the tune of Rs.42,00,000/-. The Judgments relied on by the learned counsel for the petitioner are not applicable to the facts of the present case, as the allegation made against the petitioner is that he was an employee, working as Assistant

Manager [Legal] and he did not give any opinion with regard to title to the property, as an Advocate. Further, the allegations against the petitioner are that he is the Mastermind in hatching the plan to defraud the Bank. He actively participated in forgery and stealthily removed all the loan documents by using the password to which only authorised employees had access. Further allegation is that he shared the amounts defrauded with other Accused persons. Hence, the judgments relied on by the learned counsel for the petitioner are not applicable to the facts of this case.

12. After elaborate arguments by the learned counsel for the petitioner, Intervenor and the Government Advocate (Criminal side), the learned counsel for the petitioner produced a copy of the order passed by this Court, dated 19.07.2016, made in Crl.M.P.(MD)Nos.5490, 5491 and 5745 of 2016 in Crl.O.P.(MD)Nos.11255, 11256 and 12028 of 2016. These Crl.O.Ps. are filed by the petitioner to quash the FIR in Crime Nos.4, 5 and 3 of 2016. This Court admitted the Crl.O.Ps., and ordered that The investigation in these cases shall proceed except as against the petitioner herein. In view of the order of this Court, the learned counsel for the petitioner contended that the petitioner is entitled to anticipatory bail. This contention is untenable. In view of the facts and reason given above, the petitioner is not entitled to anticipatory bail. Considering the serious nature of allegations made against the petitioner and others and considering the fact that the investigation is pending and also considering the fact that the petitioner after obtaining anticipatory bail in Crime No.3 of 2016, did not comply with the condition imposed by the Court below, Crl.O.P.(MD)Nos.12078 and 12097 of 2016 are dismissed.

13. Considering the contentions of the learned counsel for the petitioner in Crl.O.P.(MD)No.10521 of 2016/de-facto complainant and the learned Government Advocate (Criminal side) that the accused person after obtaining anticipatory bail in Crime No.3 of 2016, did not comply with the condition imposed by the Court below, Crl.O.P.(MD)No.10521 of 2016 is allowed.