

a Kumar Sharma Vs. Cbi

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Court : Delhi

Decided On : Feb-09-2015

Judge : V.P.Vaish

Appellant : a Kumar Sharma

Respondent : Cbi

Advocate for Def. : Mr. Narender Mann, Mr. Manoj Pant

Advocate for Pet/Ap. : Mr. J.P. Sengh, Mr. Raaj Malhotra

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

21. t November, 2014 Date of Decision:

9. h February, 2015 % + CRL. M.C. 3302/2013 A KUMAR SHARMA Through:
Petitioner Mr. J.P. Sengh, Sr. Adv. with Mr. Raaj Malhotra Advocate. versus CBI
Through:Respondent Mr. Narender Mann, Spl.P.P. with Mr. Manoj Pant,
Advocate. CORAM: HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1 By the present petition the petitioner seeks quashing of the charge sheet RC-49(A)/2003/CBI/ACB/New Delhi under Section 120B/420/467/468/471 of the Indian Penal Code (hereinafter referred to as IPC) titled as CBI v. D.N. Upadhayay

& Others, presently pending in the court of learned Special Judge CBI, Patiala House, New Delhi and all the proceedings pursuant therefrom.

2. The brief case of the prosecution is that on 27.02.1997, M/s. Madhusudan International Pvt. Ltd. (a partnership firm then) applied for a credit facility which included Import LC DA (90 days) Rs.100 lakhs (Rupees One hundred lakhs) and cash credit of Rs.25 lakhs (Rupees Twenty lakhs) from the Central Bank of India (hereinafter referred to as complainant bank). For this, a residential plot admeasuring 400 sq. yards situated at E-1, Dairy Road, Adarsh Nagar Extension, Delhi (hereinafter referred to as Adarsh Nagar Property) which was owned by Mr. Suraj Bhan Gupta, father of Mr. S.C. Gupta (accused No.4, in the charge sheet and also a partner of the above said partnership firm) was offered as a collateral security. The valuation report of the said property was given by valuer Mr. S.S.K. Bhagat on 06.03.1997, who assessed it at Rs.1,00,78,000/- (Rupees One crore and seventy eight thousand only). Mr. Suraj Bhan Gupta was also one of the guarantors for the credit taken from the complainant bank. On 08.03.1997, the said credit facility was processed by Mr. Ravinder Kapoor (accused No.2 in the charge sheet), Senior Manager of the Bank on the basis of report of the projected sales given by the borrowers. On 10.03.1997, the said borrowers requested the bank to extend limit of OD and to reduce the margin on book debt. The parties further requested to allow them inter changeable limits against book debt and Cash Credit and convert their current account into CC account which was also recommended by accused No.1 and accused No.2. The search report of the above said property was given by M/s. S.R. Yadav & Company on 11.03.1997 and on 12.03.1997 Mr. D.N. Upadhyay (accused No.1 in the charge sheet-AGM, complainant bank) sanctioned a Cash Credit Limit as CH (H)-15 Lakhs (Rupees Fifteen lakhs) on certain terms and conditions Over Draft against book debts- 10 lakhs (Rupees Ten lakhs). Import LC (DA)-90 (days) -100 lakhs (Rupees One hundred lakhs). Both the partners M.L. Vij (accused No.3 in the charge sheet) and accused No.4 gave an undertaking on 25.03.1997 to follow the terms and conditions of the sanctions communicated to them and consequently signed loan documents. Mr. Suraj Bhan Gupta stood as a guarantor and submitted the original title deed of his Adarsh Nagar property. Thereafter, on 10.11.1997 the borrowers requested the complainant bank to allow them to convert their partnership firm into

a Private Limited Company and transfer the credit facilities to new company i.e., M/s. Madhusudan International Pvt. Ltd. (hereinafter referred to as Madhusudan Company) which was accepted the complainant bank. Thereafter, Madhusudan Company was registered with the Registrar of Companies, Delhi and Haryana on 05.02.1998 with accused No.3 and 4 as its Directors. Later on, accused No.3 submitted a proposal of enhancement of credit facilities on 26.05.1998. The company also requested for change of collateral security and offered the residential flat of accused No.3 in place of property earlier mortgaged. No action was taken on this letter.

3. Thereafter, the accused persons namely Mr. M.L. Vij (accused No.3) and Mr. S.C. Gupta (accused No.4) entered into a criminal conspiracy with Mr. DN Upadhyay (accused No.1), Mr. Ravinder Kapoor Senior Manager of the bank (accused No.2), Mr. Vijay Manchanda, (accused No.5 in the charge sheet), Mr. B.R. Bajaj (accused No.6 in the charge sheet), Mr. V.P. Aneja (accused No.7 in the charge sheet) approved valuer, Mr. Anil Sharma (accused No.8 in the charge sheet), advocate and some private persons, to cheat the bank by submitting forged/fake document.

4. During the course of investigation it was revealed that in pursuance to the said criminal conspiracy accused No.5 a partner of one SLF Housing Company Limited executed a sale deed, dated 09.06.1998 in favour of SLF India Ltd. through Mr. B.R. Bajaj (accused No.6) regarding a plot measuring 25 sq.yds. (situated at C-1, Ambedkar Road, Ghaziabad). Adding 9 before 25 square yards, the area of the said property was purportedly shown to be 925 square yards. This plot was also offered as collateral security by Madhusudan Company at the time of enhancement. Initially, Ghaziabad property measuring 4050 Square Meter was allotted to M/s. SLF Housing Company in the year 1986 for Rs.30,70,000/- (Rupees Thirty lakhs and seventy thousand) which was to be paid in four installments by accused No.5. However, after paying one installment of Rs.7,60,000/(Rupees Seven lakhs sixty thousand) accused No.5 moved to the High Court of Allahabad against Ghaziabad Development Authority (hereinafter referred to as GDA) agitating the increase in price by GDA. Thereafter, GDA executed a lease deed in favour of M/s. SLF Housing Company on 31.03.2002.

The property situated at Ghaziabad was valued at Rs.64,75,000/- (Rupees Sixty four lakhs seventy five thousand) by accused No.7 vide his report dated 11.06.1998.

5. On 04.07.1998 the loan of Madhusudan was sanctioned by the complainant bank. Thereafter, the company again requested the complainant bank for enhancement of its limits on 06.07.1998. While making this request, the accused No.3 and 4 requested for substitution of collateral security from Adarsh Nagar Property belonging to Mr. S.B. Gupta to Ghaziabad Property. The enhancement was sanctioned by accused No.1 at CC(H) Rs.40,00,000/- (Rupees Forty lakhs), ODBD Rs.40,00,000/- (Rupees Forty lakhs) Foreign Inland LC (DA90days) Rs.90,00,000/- (Rupees Ninety lakhs) and Inland LC (DA90days) Rs.30,00,000/- (Rupees Thirty lakhs). The loan was disbursed on 07.07.1998. On 14.07.1998, the charge with regard to the Ghaziabad property was created with the Registrar of Companies and the security documents were executed on the same day. The petitioner being a panel Advocate submitted his report dated 21.07.1998 on the status of Ghaziabad Property. On 29.06.1999, Madhusudan Company was accommodated an amount of Rs.50.89 lakhs (Rupees Fifty lakhs eighty nine thousand) against the OD limit of Rs.40,00,000/- (Rupees Forty lakhs) in spite of the fact that the performance of the account was not satisfactory. Later on the valuation of the above said property was carried out by Shri J.

P. Verma, who stated that the area of the plot did not match with existing plot bearing No.C-1, Ambedkar Marg which was already sold to M/s. SLF India in the year 1997 and further opined that the value of the property should be considered as NIL.

6. The complainant bank also obtained a search report from Mr. V.K. Goel, FCA on 01.04.2002 wherein it was stated that the charge was created on 14.07.1998 and registered on 06.08.1998 in respect of property with an identical measurement.

7. The complainant bank filed a suit on 17.05.2002 for recovery of Rs.1,14,75,675/- (Rupees One crore fourteen lakhs seventy five thousand six hundred seventy five) against the borrowers and guarantors. The complainant

bank also filed a written complaint on 04.09.2003 with CBI on the basis of which an FIR bearing No.RCDAI-2003-A-0049 was registered on 10.09.2003. Investigation was carried by the CBI and charge sheet was filed. In the said charge sheet the petitioner was impleaded as accused No.8.

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

9. 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.RC-DAI-2003-A-0049 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 a statement the petitioner was named in the charge sheet dated 10.09.2003. The petitioner submitted his search report on 21.07.1998, by which date the bank had already sanctioned the loan to Madhusudan initially in 1997, enhanced it on 04.07.1998 and eventually disbursed it on 07.07.1998. The necessary documents were submitted by the borrower and the charge was already created with respect to the Ghaziabad property on 14.07.1998, till which date the petitioner was in no way involved. The petitioner was asked simply to give a non encumbrance report, based upon the documents submitted to him and was not required to conduct a physical inspection of the site as it was the bank officials who were supposed to visit the site premises and physically verify it. The bank awarded credit facilities without going through the search report of the petitioner.

10. Learned Senior Counsel further submitted that there is neither evidence of collusion between the petitioner and other accused 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 to the accused. The expectation of a forensic enquiry by the petitioner is farfetched and much beyond the brief given to him. The petitioner suggested deposit of original title deeds, valuation of the property with the site plan and unequivocal undertaking that the borrowers had not created any charge, lien, mortgage etc. which was not conducted by the complainant bank.

The allegations against the petitioner have been made simply to cover up the neglect of the bank.

11. It was lastly submitted that any 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.

12. In support of his submission, learned senior counsel for the petitioner has relied upon judgments in *In Re. K.A. Pleader* AIR1934 Patna 598, *Hira Lal Jain v. Delhi Administration* (1973) 3 SCC398 *K. Ramakrishna and Others v. State of Bihar and Another* (2000) 8 SCC547 *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, A.P. v. M. Krishna Mohan & Anr.* AIR 2008 SC368 *Nita Deep Rastogi v. CBI CrI.Rev.P. 77/2008*, decided on 21.01.2009 (Delhi High Court), *S.Swaminathan v. State of Delhi* 2008 CrLJ1957 *Anur Kumar Jain v. CBI* 178(2011) DLT501(DB), *CBI, Hyderabad v. K. Narayana Rao* (2012) 9 SCC512 and *Smt. Mohana Raj Nair v. CBI and Ors.* Criminal Writ Petition No.727 of 2012, dated 24.09.2013 (Bombay High Court).

13. Per contra, learned Special PP for CBI contended that the petitioner entered into a conspiracy with the other accused persons to cheat the bank by submitting forged/fake documents. He also gave a non-encumbrance certificate dated 21.07.1998 wherein he certified that the said non-existing property is free from all encumbrances. When the perusal of the sale deed itself shows discrepancies there was no reason for the petitioner not to highlight the same in his report. The petitioner used guarded words while doing so, but the fact reveals that he was the one who facilitated in creating of a property as equitable mortgage, value of which is NIL today. It was the petitioners duty to check the sale deed also but he failed to do so. The sale deed handed over to the petitioner was also false which he could have pointed out however he chose not to do so.

14. I have carefully considered the submissions made by learned senior counsel for the petitioner and learned Special P.P. for 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 advocates 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 Honble Supreme Court in CBI, Hyderabad v. K. Narayana Rao, (2012) 9 SCC512 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.

19. In view of the 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.

20. Similarly, in *Nita Deep Rastogi v. CBI*, Crl.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 of 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.

21. 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.

22. In *K. Ramakrishna and Others v. State of Bihar and Another*, (2000) 8 SCC547 the Honble 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.

23. In the case before this court the allegations against the petitioner are that he failed to point out the discrepancies in the sale deed and even so that the deed was false. He gave a non-encumbrance certificate dated 21.07.1998 wherein he certified that the said nonexisting property was free from all encumbrances which he could have observed as not to be the case on perusal of the deed. No doubt the petitioner has committed an error in not noticing these facts however as I have observed above, in light of the decisions in CBI v K.Narayana Rao (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 an absence of tangible evidence.

24. It was also alleged that the petitioner entered into a conspiracy with the other accused to cheat the bank by submitting forged/fake documents stating that the property was free from all encumbrances. However no material is produced on record to the effect that the petitioner was part of any conspiracy pursuant to which a fraud was committed on the bank. In the absence of any prima facie evidence, the submission that the petitioner was engaged in a conspiracy seems like a blatant allegation against him. A perusal of the record shows that the legal search report dated 21.07.1998 was submitted by the petitioner and the said loan was sanctioned by the accused in 1997, enhanced on 04.07.1998 and disbursed on

07.07.1998. Furthermore, the charge was created on the property in question on 14.07.1998. Clearly, the bank gave the credit facilities and created a charge on the said property much 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 disbelieve the averment of the petitioner that the complainant bank sanctioned credit facilities without going through his search report.

25. At this juncture, it is relevant to mention here that another panel advocate with the complainant bank Mr. S. Ram Yadav, Advocate, who was accused No.6 in the charge sheet arising out of case FIR No.RC-DAI-2003-A-0050, 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.

26. In view of the above discussion, the petition is hereby allowed. Consequently, the Charge Sheet bearing No.RC-49(A)/2003 dated 10.09.2003 against the petitioner under Section 420/468/467/471/120- B of the IPC read with Section 13(1)(d) and Section 13(2) PC Act and the proceedings emanating therefrom 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 other coaccused persons. Crl. M.A. No.12206/2013 The application is dismissed as infructuous. (VED PRAKASH VAISH) JUDGE FEBRUARY 9h, 2015 hs

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