IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29439-2014 (O&M)
Date of decision: 08.01.2020

A.P. Jagga

….Petitioners

Versus

State of Punjab and another

….Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Tanu Bedi, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. K.P.S. Dhillon, Advocate
for respondent No.2.

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ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of FIR No.7 dated 05.01.2014 under Sections 405, 420, 120-B of the Indian Penal Code (for short 'IPC'), registered at Police Station City Kharar, District SAS Nagar (Mohali) and all the consequential proceedings arising therefrom.

Brief facts of the case are that the petitioner is a practising lawyer and a legal retainer of some banks and other financial corporations. The impugned FIR was registered on a complaint given by Senior Branch Manager, Vijaya Bank, Branch Kharar, against one Neelam Sahni, proprietor of M/s Ganpati Enterprises and her guarantor and mortgagor Sanjeev Kumar, with the allegations that they have embezzled the loan amount of Rs.10.83 lacs, availed by them from the complainant-Bank on 09.04.2008 and despite there being a mortgage on land, by concealing it from the Bank, without obtaining permission, they have further sold the land and therefore, they have committed the offence under Sections 403, 406, 420 IPC. It is further stated in the FIR that Neelam Sahni, proprietor of M/s Ganpati Enterprises applied for a loan of Rs.9.00 lacs from Vijaya Bank, Branch Kharar and Sanjeev Kumar stood as guarantor by mortgaging his immoveable property measuring 07 marla 02 sarsahi situated in Punjab Enclave, Lohgarh Village, Tehsil Dera Bassi, District SAS Nagar (Mohali), as per jamabandi for the year 2004-2005 and had deposited original title deed dated 14.03.2005, which was registered in the office of sub-Registrar, Kharar for the purpose of equitable mortgage. It was further alleged that the complainant-Bank through its Advocate (petitioner) get the necessary verification done in the office of sub-Registrar and Halqa Patwari and it was discovered that Sanjeev Kumar had sold 03 marla 05 sarsahi of land, out of 07 marls 02 sarsahi, in favour of one Baljeet Kaur, by way of sale deed dated 04.10.2006 and mutation had been sanction in her favour. Sanjeev Kumar has further sold 03 marla 05 sarsahi of land in favour of Smt. Anju Bhardwaj, vide registered sale deed dated 18.10.2006 and thus, Sanjeev Kumar had sold the entire mortgaged land before raising loan.

The police, before registration of the FIR, conducted an inquiry and submitted a report that Neelan Sahni, Sanjeev Kumar, the then Bank

Manager B Ram Krishan Punja and petitioner Ashok Paul Jagga, have connived with each other and thereafter, report of Deputy District Attorney (Legal) was obtained. The Deputy District Attorney (Legal), on 11.12.2013, opined that from the investigation, offence under Section 406, 420, 120-B IPC is made out against the aforesaid four persons, but action against Manager B Ram Krishan Punja and petitioner Ashok Paul Jagga be initiated, after conducting the investigation in depth, however, without conducing any further investigation, FIR was registered.

Learned counsel for the petitioner submits that the petitioner is on bail and legal scrutiny report (for short 'LSR') submitted by the petitioner was, in fact, a fake document and this fact is proved from report of the FSL, Mohali, which reads as under: -

> *"RESULT OF EXAMINATION*
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> *I have carefully and thoroughly examined the red enclosed question signature and initials stamped and marked Q1 to A5 and have compared them with the relevant standard signature and initials from the original documents in all aspect of handwriting identification and detection of forgery with the help of scientific aid and it has been concluded that*
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> *1. The person who wrote the red enclosed standard signature stamped and marked A1 to A3 and S1 to S84 did not write the red enclosed questioned signature similarly stamped and marked Q1.*
>
> *2. The person who wrote the red enclosed standard initials*

stamped and marked A4 to A46 did not write the red enclosed questioned initials similarly stamped and marked Q2 to A15."

Learned counsel for the petitioner further submits that as per this report, it is apparent that the standard signatures of the petitioner do not tally with the signatures on the LSR, allegedly submitted by him and therefore, no evidence has come on record that the petitioner has prepared the report dated 26.03.2008, which, in fact, is a fabricated document. It is argued that even contents of the LSR would show that at Sr.3.2, it is opined, on the basis of the documents that 7-2 sarsahi is freehold land and at Sr. No.5.9, it is opined that the land was original agricultural land, which later on came in boundary of MC, Zirakpur and there is an endorsement with rubber stamp on the sale deed 'Urban Area'. Again, at Sr. No.5.12, it was opined that the property is free from encumbrance in view of the non-encumbrance certificate from the last 13 years and also on account that there was no entry of any encumbrance by the Patwari in the jambandis. Learned counsel has further referred to the contents at Sr. No.5.19, wherein it is stated that the original sale deed is in favour of Sanjeev Kumar, the current title holder; original non-encumbrance certificate; certified copies of the jambandis of the land and original affidavit in the format. It is thus submitted that there was no conspiracy on the part of the person, who has prepared this LSR and it is based on the original documents as well as on verification from record of the Patwari, wherein there was no such encumbrance on the land in dispute.

Learned counsel for the petitioner has relied upon **Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, 2012 (4) RCR**

(Criminal) 601, wherein the Hon'ble Supreme Court, with regard to liability of an Advocate, giving legal opinion in the banking sector, has held as under:-

> *"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.*

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.

*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.*

*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.*

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.

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."*

Learned counsel for the petitioner has thus argued that there was no *mens rea* on the part of the petitioner, as it is apparent from the contents of the FIR itself that the bank has levelled allegations only against the principal borrower and the surety that they, by selling the mortgaged property, have committed the offence and there is no allegation against the petitioner, who had allegedly given the legal opinion, which, otherwise, does not make out any offence, though he has disputed and denied that the said report was submitted by him.

Learned counsel for the petitioner has next argued that in compliance of the order dated 20.08.2019, the petitioner has even filed an affidavit that he, as an Advocate, has never given any opinion to the bank with regard to loan transaction of co-accused Neelam Sahni and Sanjeev Kumar and has not charged any fee from the complainant-Bank for submitting the disputed report, which further shows that the petitioner has never submitted this LSR and the same is fake and fabricated document. It is further argued that the petitioner is nominated in the FIR on the basis of inquiry report, which is not based on any scientific investigation and by only adding one word that accused Neelam Sahni and Sanjeev Kumar have connived with the Bank Manager B Ram Krishan Punja and petitioner A.P. Jagga, who had allegedly given the LSR, he is nominated despite a specific opinion given by the Deputy District Attorney (Legal) that further investigation in depth be carried out with regard to role of the petitioner and the Bank Manager, straightway the FIR has been registered. It is also argued that even in the report under Section 173 Cr.P.C., nothing has come on record that the petitioner has acted in conspiracy with the main accused in any manner.

Reply by way of affidavit of Deputy Superintendent of Police, Sub Division Kharar, District SAS Nagar is on record, in which it is stated that the petitioner had given his handwriting in compliance of the Court order and thereafter, the same was sent to the FSL, Mohali with the question signatures on the LSR, admitted signature and specimen signatures. It is further stated that result of examination suggests that the standard signatures and the question signatures do not tally with each other.

Learned counsel for respondent No.2-Bank has not filed any independent reply, however, has reiterated the arguments of learned State counsel, who has not disputed that as per the FSL report, the signatures of the petitioner do not tally with the disputed signatures on LSR.

In reply, learned counsel for the petitioner has relied upon **Smt. Mohana Raj Nair Vs. Central Bureau of Investigation and others, 2013 (6) AIR Bom. R 136**, wherein, in similar circumstances, legal opinion was given by the Advocate, who was empanelled by the Bank and criminal proceedings were initiated against her. The Bombay High Court, while relying upon judgment of the **Narayana Rao**'s case (supra), has held that it is expected from the investigating agency to take a fair approach in the investigation so that they may not suffer unnecessarily. Learned counsel has further relied upon **P. Venkateswara Rao Vs. State-CBI, Hyderabad, rep. by Special Public Prosecutor, High Court, Hyderabad, 2012 (8) RCR (Criminal) 2102,** wherein the Andhra Pradesh High Court has held that the legal professionals undertake the activity of investigating into genuineness of the documents/title deeds and make their search reports as per the registers in the registration offices, MC office and the revenue offices and it is for the party, who seeks the loan from a bank to furnish all the relevant documents/title deeds and it is ultimate duty of the bank officials and the Branch Head/Field Officer of the concerned Branch to make search of the said offices to find out the genuineness of the documents. It is further held that in the absence of any equitable negligence, which has come during the investigation, the prosecution of an Advocate is liable to be quashed.

Learned counsel for the petitioner has also relied upon **Kulwant Singh Vs. CBI, New Delhi and another, 2014 (3) RCR (Criminal) 292**, wherein this Court has held that if opinion of an Advocate is based on forged title deeds produced by the accused persons, seeking loan from the bank, on the basis of which the bank had sanctioned the loan, if there is no evidence of conspiracy between the Advocate and the accused to commit the offence, mere professional negligence on the part of the Advocate do not expose him to criminal liability and the proceedings qua the petitioner/Advocate were quashed.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

(a) A bare perusal of the FIR shows that the complainant-Bank sought registration of the FIR against principal borrower Neelam Sahni and guarantor Sanjeev Kumar with the allegations that Sanjeev Kumar has mortgaged 07 marla 02 sarsahi of land in the year 2008, whereas prior to that he had sold the land to two other persons and therefore, they have committed cheating with the Bank, by not repaying the loan. There is no whisper about any conspiracy on the part of the petitioner with the said accused persons and therefore, it is apparent that the complainant never wanted prosecution of the petitioner, who had allegedly given LSR to the bank.

(b) A perusal of the FSL report, comparing the standard and admitted signatures of the petitioner, with the disputed signatures on LSR, shows that the same do not tally with each other and this fact is clearly admitted in the affidavit of DSP, Sub Division Kharar, District SAS Nagar.

(c) It is own case of the petitioner that he has never prepared the said LSR and it is fake document and in support thereof, he has filed a specific affidavit that he has never issued the said LSR and never taken any fee from the complainant-Bank in this regard. A perusal of the LSR, if taken to be submitted by the petitioner, shows that the opinion is formed on the basis of original documents i.e. sale deed in favour of Sanjeev Kumar, original non-encumbrance certificate, certified copies of the jamabandis and the original affidavit submitted by him that the property is free from all encumbrances. It is also reported in the LSR that in the non-encumbrance certificate for the last 13 years there being no entry of any encumbrance by the Patwari in the jamabandis, an opinion was formed that it was free from all encumbrances and therefore, the LSR does not reflect that while submitting it, the standard norms of preparation the same were not followed.

(d) The DDA (Legal) had made a clear opinion that against the petitioner and Bank Manager, action may be initiated after conducting investigation in depth, that too, to say, the investigation regarding any criminal conspiracy of the petitioner with the principal borrower and the surety. It is admitted case, as not denied in the affidavit of the DSP that no further investigation in this regard was conducted and therefore, in view of judgment of the Hon'ble Supreme Court in **K. Narayana Rao**'s case (supra), which is followed by different High Courts subsequently, it is apparent that there is no evidence against the petitioner that he was part of the conspiracy.

Therefore, finding that nothing is attributed against the petitioner in the FIR by the complainant-Bank; a perusal of the LSR does not suggests any conspiracy, as the opinion is based on the original documents; FSL report clearly shows that the standard signatures of the petitioner do not tally with the signatures on the LSR; there is nothing on record to show that the Bank had paid any legal remuneration to the petitioner for preparing the LSR, as the same is stated to be an outcome of the fraud and the petitioner has filed a specific affidavit that he has not taken any fee in this regard and also in view of the fact that despite an opinion given by DDA (Legal) that before registration of the FIR, role of the petitioner be probed in depth, FIR was immediately registered without conducting any further investigation, hence, in the absence of any evidence regarding any conspiracy between the petitioner and principal borrower and the guarantor, I find that this case is squarely covered by judgment of the Hon'ble Supreme Court in **State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335** for quashing FIR qua the petitioner.

Accordingly, the present petition is allowed and FIR No.7 dated 05.01.2014 under Sections 405, 420, 120-B IPC, registered at Police Station City Kharar, District SAS Nagar (Mohali) and all the consequential proceedings arising therefrom are quashed qua the petitioner.

[ARVIND SINGH SANGWAN]
JUDGE

08.01.2020
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No