



2024:CGHC:44444-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 262 of 2021

Ramkinkar Singh, S/o Shivram Singh, Aged About 70 Years R/o. Nawagarh,
Police Station Nagagarh, District Bemetara Chhattisgarh.

... Petitioner

versus

1 - State Of Chhattisgarh, Through - Police Station Dadhi, Bemetara, District
Bemetara Chhattisgarh

2 - State Bank of India Through Its Branch Manager Branch Chhirha,
Bemetara, Tahsil And District Bemetara, Chhattisgarh.

... Respondents

For Petitioner : Mr. Anshul Tiwari, Advocate.
For Respondent No. 1/State: Mr. Shashank Thakur, Deputy Advocate
General
For Respondent No. 2 : Mr. P.R.Patankar, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Amitendra Kishore Prasad, Judge

Order on Board

14/11/2024

1. By this petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, the Cr.P.C.), the petitioner has prayed for the following relief(s):

"It is therefore most humbly prayed that the Hon'ble Court may kindly be pleased to allow the instant petition and the

impugned order dated 20.01.2021, passed by the Additional Session Judge, Bemetara in Criminal revision No. 4/2020 and the order dated 07.12.2019, passed by Judicial Magistrate First Class, Bemetara, in Criminal Case No. 284/2019, so far as it relates to the petitioner is concerned, may kindly be set-aside, the entire charge sheet, F.I.R. and the criminal proceedings may also kindly be quashed, so far as it relates to the petitioner is concerned, in the interest of justice.”

2. The facts, in brief, as projected by the petitioner is that the petitioner is a Senior Advocate practicing at District & Session Court, Bemetara for last more than 38 years. He has falsely been implicated only on the ground that, being empanelled Advocate of the State Bank of India, Branch Chhiraha, District Bemetara, he issued the requisite non-encumbrances certificate and certified qua the lands had by the borrower that they have clear, marketable title to the property free from all encumbrances against which the borrower had applied for loan and accordingly he was granted loan under the scheme of Kisan Credit Card.
3. An FIR of the incident was lodged on 02.08.2018 by Tileshwar Singh Paikra, the Branch Manager of SBI Chhiraha, Branch Dadhi, Bemetara, District Bemetara , against one Hariram Chandrakar. The FIR was lodged inter-alia on the allegations that, the main accused Hariram Chandrakar had borrowed the loan from the Bank under the Kisan Credit Card by playing fraud. It was alleged that Hariram Chandrakar was resident of Gram Panchayat Gidhhwa. He had applied for grant of loan under the Kisan Credit Card and has mortgage his agriculture land for the security of loan. Under the scheme of Kisan Credit Card for grant of loan the certificate that the land which is sought to be mortgage is free from all encumbrances and title of the said land is free and clear is required. It is alleged that the main accused was granted loan to the tune of Rs. 3 lakhs and the same was transferred to his Kisan Credit Account and the same

has been withdrawn. It has been alleged that the petitioner who is empanelled Advocate of SBI has issued the non-encumbrance certificate and certified qua the lands held by the borrower that he has clear and marketable title to the property free from all encumbrances and against which the borrower had applied for the loan and has granted loan under the scheme. It was further alleged that the borrower failed to repay the loan amount and upon the enquiry it was found that the borrower had no land at village Giddhawa and the documents filed by the borrower, pertains to the mortgage land are found to be forged. On 02.08.2012, the notice to repay the loan was issued. The FIR was lodged inter-alia on the allegations that Hariram Chandrakar has secured the loan by playing fraud.

4. According to Mr. Anshul Tiwari, learned counsel for the petitioner, the petitioner is an empanelled Advocate of the Bank was not named in the FIR. The police has investigated the matter and thereafter filed the charge sheet in the Court of Chief Judicial Magistrate, Bemetara, District Bemetara Chhattisgarh. The charge sheet has been filed against the borrower as well as against the Branch Manager namely O.V.R Murty and subsequently the supplementary charge sheet has been filed against the petitioner. The learned trial Court, vide its order dated 07.12.2019 has framed the charges against the petitioner and other co-accused persons. Being aggrieved by the order framing charges, petitioner preferred a revision before the learned revisional Court. The learned revisional Court without appreciating the grounds and without appreciating the judgment cited by the petitioner, has dismissed the revision without application of mind. The question as to whether a legal professional can be rendered criminally liable for negligence or improper legal advise has been considered by the Apex Court in ***CBI, Hyderabad***

v. K. Narayana Rao, reported in (2012) 9 SCC 512 wherein it has been held that liability against an opining Advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. The impugned order passed by the Judicial Magistrate as well as the Session Court are illegal, erroneous and contrary to law and are liable to be set-aside.

5. On the other hand, Mr. Shashank Thakur, learned Deputy Advocate General appearing for the State/respondent No. 1 submits that from the perusal of the contents of the aforesaid FIR, it would show that upon inquiry of the matter, it has been found that the borrower had taken loan on the basis of false and fabricated documents and the search report prepared by the petitioner. It has been alleged in the complaint that upon inquiry about the borrower it has been reflected that no one is residing in the name of borrower Hariram Chandrakar in the village and when the case was given to the petitioner on second time on dated 27/10/2015 for the purpose of research, he has certified that the immovable property is in the name of borrower. It has been further reflected that upon verification/matching of the documents submitted by the borrower with the documents obtained from the Tahsil office, Bemetara, it is found that no land property is situated in village Gidhawa in the name of borrower Hariram Chandrakar. Hence, a prima-facie case is established against the petitioner and prima-facie it is established that the petitioner has prepared false search report of the land mortgaged by the co-accused/Hariram Chandrakar. The investigation has been conducted strictly in accordance with law, wherein, the statement of the witnesses have been recorded and the evidences/documents have been collected, which prima-facie reveals an offence against the petitioner and accordingly, the charge sheet has been filed before the court below alongwith the relevant documents and records. Further, on filing of

charge sheet, the learned trial Court taken cognizance upon the evidences and found prima-facie offence against the petitioner and accordingly framed charges upon him for offences punishable under Sections 420, 467, 468, 471 of Indian Penal Code, 1860 vide order dated 07.12.2019 against which the petitioner had preferred criminal revision, which was registered as Criminal Case No. 04/2020, wherein, the learned revisional Court, after appreciating the evidences and hearing both the parties, has upheld the order of framing of charges dated 07.12.2019 passed by learned J.M.F.C. Bemetara and rejected the criminal revision vide order dated 20.01.2021. Mr. Thakur submits that the order dated 20.01/2021 is a well reasoned order. The instant petition is devoid of merits and liable to be dismissed. After framing of charges the trial has been initiated against the petitioner. Since the trial has been initiated against the present petitioner by the learned trial Court, therefore, the petitioner has an efficacious and alternative remedy to defend his case and establish his innocence before the learned Trial Court, however, without availing such remedy the petitioner has directly filed this petition seeking pre-trial finding from this Hon'ble Court, which is not tenable and liable to be dismissed. Reliance is placed by Mr. Thakur on the decision of the Apex Court in the case of **Tejbir & others Vs. State of Haryana & another** reported in (2011)3 SCC (Cri) 404 : (2011) 11 SCC 556, as well as **State of Haryana Vs. Bhajanlal** (AIR 1992 Supreme Court 604).

6. Mr. P.R.Patankar, learned counsel for the respondent-Bank would also make similar submission as has been made by learned State counsel. He further submits that four of the prosecution witnesses have been examined and the trial has proceeded against other co-accused persons.

7. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
8. A learned Single Judge of this Court, vide order dated 09.03.2021 had granted interim relief to the petitioner to the effect that the further proceedings of the Criminal Case No. 284/2019 pending before the Judicial Magistrate First Class, Bemetara, shall remain stayed so far it relates to the petitioner.
9. The allegation against the petitioner is that being an Advocate, he had given the search report on the basis of which loan was disbursed and later it was found that the same was disbursed to a person who was not having the property which was mortgaged in his own name.
10. A query was put to the learned counsel for the respondent No. 2-Bank as to whether the petitioner has been removed from the panel or is still continuing in the panel of the Bank, Mr. Patankar submits that the petitioner is still continuing and has not been removed.
11. From perusal of the materials available on record, it transpires that the petitioner has only given a search report and there is nothing on record to hold that there was active connivance between the petitioner and other co-accused persons who have defrauded the respondent-Bank. The petitioner would be 74 years of age as on date. Even it cannot be said that the petitioner has performed his duties in a negligent manner so as to cause financial loss to the respondent Bank. Furthermore, even till date, the petitioner has been retained by the respondent-Bank as their panel Advocate. Had he been negligent or untrustworthy, the respondent-Bank would certainly had removed him from their panel.
12. The Apex Court, in the matter of **K. Narayana Rao** (supra), has

observed as under:

“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 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.

29) In Pandurang Dattatraya Khandekar vs. Bar Council of Maharashtra & Ors. (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.

31) 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.

32) 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.”

- 13.** The name of the petitioner has surfaced in the supplementary charge sheet as he was not named in the FIR. As the prosecution has failed to establish its case that there was any active participation of the petitioner in causing loss to the respondent-Bank, this Court is of the opinion that

the orders passed by the learned trial Court framing charge against the petitioner as well as rejection of the revision petition vide order dated 20.01.2021 deserves to be set aside qua the petitioner especially in light of the order of the Apex Court in ***K. Narayana Rao*** (supra).

14. Consequently, the order dated 20.01.2021 passed in Criminal Revision No. 04/2020 by the learned Additional Sessions Judge, Bemetara, District Bemetara, as well as the order dated 07.12.2019 passed by the Judicial Magistrate First Class, Bemetara in Criminal Case No. 284/2019, and also all the consequential proceedings so far it relates to the petitioner only, are hereby quashed.
15. As a result, this petition stands **allowed**. No order as to cost.

Sd/-
(Amitendra Kishore Prasad)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

HEAD NOTE

Merely because an opinion given by an Advocate has caused financial loss to person / institution, that cannot be a ground for prosecuting him. There has to be some evidence that the said act was done with sole intention to defraud the person/institution and with active participation alongwith other conspirators.