Cbi, Hyderabad vs K. Narayana Rao on 21 September, 2012

Equivalent citations: 2012 AIR SCW 5139, 2012 (9) SCC 512, AIR 2013 SC(CRI) 448, (2012) 9 SCALE 228, (2013) 1 ORISSA LR 74, (2012) 4 DLT(CRL) 174, (2013) 1 MADLW(CRI) 175, (2012) 53 OCR 806, 2012 CALCRILR 3 811, (2012) 4 CRIMES 181, (2012) 4 MAD LJ(CRI) 420, (2013) 1 MAD LW 681, (2012) 4 CRILR(RAJ) 1101, (2013) 1 JCR 95 (SC), (2012) 4 KER LT 92, (2013) 2 PUN LR 160, (2012) 4 RECCRIR 601, (2012) 4 CURCRIR 166, (2012) 4 ALL RENTCAS 537, (2013) 1 CHANDCRIC 1, 2012 (3) SCC (CRI) 1183

Author: P.Sathasivam

Bench: P. Sathasivam, Ranjan Gogoi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

1 CRIMINAL APPEAL NO. 1460 OF 2012

(Arising out of S.L.P. (Crl.) No. 6975 of 2011)

Central Bureau of Investigation, Hyderabad .... Appellant(s)

Versus

K. Narayana Rao .... Respondent(s)

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J U D G M E N T

P.Sathasivam,J.

1) Leave granted.
2) This appeal is directed against the final judgment and order dated

09.07.2010 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Petition No. 2347 of 2008 whereby the High Court allowed the petition filed by the respondent

herein under Section 482 of the Code of Criminal Procedure, 1973 (in short "the Code") and quashed the criminal proceedings pending against him in CC No. 44 of 2007 (Crime No. 36 of 2005) on the file of the Special Judge for CBI cases, Hyderabad.

3) Brief facts:

(a) According to the prosecution, basing on an information, on 30.11.2005, the CBI, Hyderabad registered an FIR being RC 32(A)/2005 against Shri P. Radha Gopal Reddy (A-1) and Shri Udaya Sankar (A-2), the then Branch Manager and the Assistant Manager, respectively of the Vijaya Bank, Narayanaguda Branch, Hyderabad, for the commission of offence punishable under Sections 120-B, 419, 420, 467, 468 471 read with Section 109 of the Indian Penal Code, 1860 (in short 'the IPC') and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 for abusing their official position as public servants and for having conspired with private individuals, viz., Shri P.Y. Kondala Rao – the builder (A-3) and Shri N.S. Sanjeeva Rao (A-4) and other unknown persons for defrauding the bank by sanctioning and disbursement of housing loans to 22 borrowers in violation of the Bank's rules and guidelines and thereby caused wrongful loss of Rs. 1.27 crores to the Bank and corresponding gain for themselves. In furtherance of the said conspiracy, A-2 conducted the pre-sanction inspection in respect of 22 housing loans and A-1 sanctioned the same.

(b) After completion of the investigation, the CBI filed charge sheet along with the list of witnesses and the list of documents against all the accused persons. In the said charge sheet, Shri K. Narayana Rao, the respondent herein, who is a legal practitioner and a panel advocate for the Vijaya Bank, was also arrayed as A-6. The duty of the respondent herein as a panel advocate was to verify the documents and to give legal opinion. The allegation against him is that he gave false legal opinion in respect of 10 housing loans. It has been specifically alleged in the charge sheet that the respondent herein (A-6) and Mr. K.C. Ramdas (A-7)-the valuer have failed to point out the actual ownership of the properties and to bring out the ownership details and name of the apartments in their reports and also the falsity in the permissions for construction issued by the Municipal Authorities.

(c) Being aggrieved, the respondent herein (A-6) filed a petition being Criminal Petition No. 2347 of 2008 under Section 482 of the Code before the High Court of Andhra Pradesh at Hyderabad for quashing of the criminal proceedings in CC No. 44 of 2007 on the file of the Special Judge for CBI Cases, Hyderabad. By impugned judgment and order dated 09.07.2010, the High Court quashed the proceedings insofar as the respondent herein (A-6) is concerned.

(d) Being aggrieved, the CBI, Hyderabad filed this appeal by way of special leave.

4) Heard Mr. H.P. Raval, learned Additional Solicitor General for the appellant-CBI and Mr. R. Venkataramani, learned senior counsel for the respondent (A-6).

5) After taking us through the allegations in the charge sheet presented before the special Court and all other relevant materials, the learned ASG has raised the following contentions:

(i) The High Court while entertaining the petition under Section 482 of the Code has exceeded its jurisdiction. The powers under Section 482 are inherent which are to be exercised in exceptional and extraordinary circumstances. The power being extraordinary has to be exercised sparingly, cautiously and in exceptional circumstances;

(ii) The High Court has committed an error in holding that no material had been gathered by the investigating agency against the respondent herein (A-

6) that he had conspired with the remaining accused for committing the offence; and

(iii) There is no material on record to show that the respondent herein (A-

6) did not verify the originals pertaining to housing loans before giving legal opinion and intentionally changed the proforma and violated the Bank's circulars.

6) On the other hand, Mr. Venkataramani, learned senior counsel for the respondent (A-6), after taking us through the charge sheet and the materials placed before the respondent seeking legal opinion, submitted that he has not committed any offence much less an offence punishable under Section 120-B read with Sections 419, 420, 467, 468, 471 and 109 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. He further submitted that based on the documents placed, the respondent herein after perusing and on satisfying himself, furnished his legal opinion for which he cannot be implicated as one of the conspirators for the offence punishable under Section 420 read with Section 109 IPC.

7) We have carefully perused all the relevant materials and considered the rival submissions.

8) In order to appreciate the stand of the CBI and the defence of the respondent, it is necessary to refer the specific allegations in the charge sheet. The respondent herein has been arrayed as accused No. 6 in the charge sheet and the allegations against him are as under:

"Para 20: Investigation revealed that legal opinions in respect of all these 10 loans have been given by Panel Advocate – Sri K. Narayana Rao (A-6) and valuation reports were given by Approved Valuer – Sri V.C. Ramdas(A-7). Both, the advocate and the valuer, have failed to point out the actual ownership of the property and failed to bring out the ownership details and name of the apartments in their reports. They have also failed to point out the falsehood in the construction permission issued by the municipal authorities.

Para 28: Investigation revealed that the municipal permissions submitted to the bank were also fake.

Para 29: Expert of Finger Print Bureau confirmed that the thumb impressions available on the questioned 22 title deeds pertain to A-3, A-4 and A-5.

Para 30: The above facts disclose that Sri P. Radha Gopal Reddy (A-1) and Sri M. Udaya Sankar (A-2) entered into criminal conspirary with A- 3 and abused their official position as public servants by violating the bank norms and in the process caused wrongful gain to A-3 to the extent of Rs.1,00,68,050/- and corresponding wrongful loss to the bank in sanctioning 22 housing loans. Sri P.Y. Kondal Rao(A-3) registered false sale deeds in favour of borrowers using impostors as site owners, produced false municipal permissions and cheated the bank in getting the housing loans. He is liable for conspiracy, cheating, forgery for the purpose of cheating and for using forged documents as genuine. Sri B. Ramanaji Rao(A-4) and Sri R. Sai Sita Rama Rao(A-5) impersonated as site owners, executed the false sale deeds. They are liable for impersonation, conspiracy, cheating, forging a valuable security and forgery for the purpose of cheating. Sri K. Narayana Rao (A-6) submitted false legal opinions and Sri K.C. Ramdas(A-7) submitted false valuation reports about the genuineness of the properties in collusion with A-3 for sanction of the loans by Vijaya Bank, Narayanaguda branch, Hyderabad and abetted the crime. Sri A.V. Subba Rao(A-8) managed verification of salary slips of the borrowers of 12 housing loans in collusion with A-3 and abetted the crime.

Para 33: In view of the above, the accused A-1, A-2, A-3, A-4, A-5, A- 6, A-7 & A-8 are liable for offences punishable under Section 120-B read with Sections 419, 420, 467, 468, 471 and 109 read with Section 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and substantive offences thereof." With the above details, let us consider whether there is prima facie allegation(s) and material(s) in order to pursue the trial against the respondent herein. In the same way, we have to see whether the reasoning and the ultimate conclusion of the High Court in quashing the charge sheet against the respondent herein (A-6) is sustainable. We are conscious of the power and jurisdiction of the High Court under Section 482 of the Code for interfering with the criminal prosecution at the threshold.

9) Mr. Raval, learned ASG in support of his contentions relied on the following decisions:

i) State of Bihar vs. Ramesh Singh, (1977) 4 SCC 39;

ii) P. Vijayan vs. State of Kerala and Another, (2010) 2 SCC 398; and

iii) Sajjan Kumar vs. Central Bureau of Investigation, (2010) 9 SCC 368.

10) The first decision Ramesh Singh (supra) relates to interpretation of Sections 227 and 228 of the Code for the considerations as to discharge the accused or to proceed with trial. Para 4 of the said judgment is pressed into service which reads as under:

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. It the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

11) Discharge of accused under Section 227 of the Code was extensively considered by this Court in P. Vijayan (supra) wherein it was held as under:

"10. ..... 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. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

12) While considering the very same provisions i.e., framing of charges and discharge of accused, again in Sajjan Kumar (supra), this Court held thus:

"19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

20. A Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case.

It is also clear that in exercising jurisdiction under Section 227 CrPC, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

> (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
>
> (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.
>
> (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
>
> (iv) 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.
>
> (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
>
> (vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

> (vii) 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." From the above decisions, it is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, in that event, it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. A judicial magistrate enquiring into a case under Section 209 of the Code is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once. It is also settled law that while exercising jurisdiction under Section 227 of the Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

This provision was introduced in the Code to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analyzing the role of the respondent herein (A-6) from the charge sheet and the materials supplied along with it, the above principles have to be kept in mind.

13) In Rupan Deol Bajaj (Mrs.) and Another vs. Kanwar Pal Singh Gill and Another, (1995) 6 SCC 194, this Court has considered the scope of quashing an FIR and held that it is settled principle of law that at the stage of quashing an FIR or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. By noting the principles laid down in State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335, this Court held that an FIR or a complaint may be quashed if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

14) In Mahavir Prashad Gupta and Another vs. State of National Capital Territory of Delhi and Others, (2000) 8 SCC 115, this Court considered the jurisdiction of the High Court under Section 482 of the Code and held as under:

> "5. The law on the subject is very clear. In the case of State of Bihar v. Murad Ali Khan (1988) 4 SCC 655 it has been held that jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised sparingly and with circumspection. It has been held that at an initial stage a court should not embark upon an inquiry as to whether the allegations in the complaint are likely to be established by evidence or not. Again in the case of State of Haryana v. Bhajan Lal 1992 Supp. (1) SCC 335 this Court has held that the power of quashing criminal proceedings must be exercised very sparingly and with circumspection and that too in the rarest of rare cases. It has

been held that the court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. It has been held that the extraordinary or inherent powers did not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

15) Regarding conspiracy, Mr. Raval, learned ASG after taking us through the averments in the charge sheet based reliance on a decision of this Court in Shivnarayan Laxminarayan Joshi and Others vs. State of Maharashtra, (1980) 2 SCC 465 wherein it was held that once the conspiracy to commit an illegal act is proved, act of one conspirator becomes the act of the other. By pointing out the same, learned ASG submitted that the respondent herein (A-6), along with the other conspirators defrauded the Bank's money by sanctioning loans to various fictitious persons.

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.

17) In order to appreciate the claim and the stand of the respondent herein as a panel advocate, we have perused the legal opinion rendered by the respondent herein in the form of Legal Scrutiny Report dated 10.09.2003 as to the title relating to Sri B.A.V.K. Mohan Rao, S/o late Shri Someshwar Rao which is as under.

"Legal Scrutiny Report Dated 10.09.2003.

To The Branch Manager, Vijaya Bank, Narayanaguda Hyderabad Sir, Sub:- Title Opinion Shri BAVK Mohan Rao S/o Late Shri Someswar Rao.

With reference to your letter dated NIL. I submit my Scrutiny Report as hereunder:-

1. Name and address of the Mortgagor Shri. BAVK Mohan Rao S/o Late Shri Someswar Rao R/o 1-1 290/3, Vidyanager, Hyderabad.

2. Details/Description of documents scrutinized:

|Sl.No. |Date |Name of the documents |Whether | | | | |Original/ | | | | |Certified | | | | |True Copy | |1. |12.05.2003 |C.C. Pahais for the year |Xerox Copy | | | |1972-73 and 1978-79 | | |2. |08.02.1980 |Death Certificate of Shri PV |Xerox Copy | | | |Narahari Rao | | |3. |07.03.1980 |Legal Heir Certificate of Shri|Xerox Copy | | | |PV Narahari Rao | | |4. |24.04.1980 |C.C. of Regd. GPA No. 58/80 |Xerox Copy | |5. |19.09.1980 |Regd. Sale Deed No. 1243/80 |Xerox Copy | | | |with Plan | | |6. |07.12.1998 |Sanctioned Plan vide |Xerox Copy | | | |proceeding No. 2155/98 | | |7. |02.01.2003 |Development Agreement |Xerox Copy | |8. |25.04.2003 |EC No. 6654/2003 for the |Xerox Copy | | | |period from 28.06.1980 to | | | | |31.03.1982 | | |9. |25.04.2003 |EC No. 4136/2003 for the |Xerox Copy | | | |period from 01.04.1982 to | | | | |23.03.1984 | | |10. |21.04.2003 |EC No. 3918/2003 for the |Xerox Copy | | | |period from 24.03.1994 to | | | | |20.04.2003 | | |11 |28.07.2003 |Agreement for Sale |Original |

3. Details/Description of Property:-

Sl.No. Sy. No./H.No. Extent of land Location Boundaries Building Dist.Village All that Flat bearing No. F-5 on First Floor, admeasuring 900 sq. Ft, along with undivided share of land 28 sq yds, out of total admeasuring 870 sq. yds constructed on Plot Nos. 3, 4 and 5 in Sy. Nos. 84 and 85 in the premises of "Guru Datta Nivas", situated at Nerdmet, Malkajagiri Municipality, and Mandal, Ranga Reddy Dist. Hyderabad and bounded by:

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FLAT BOUNDARIES:              LAND BOUNDARIES
NORTH: Flat No. F-6                20-0"

EAST   : Corridor & Stair  Case          Sy.  Nos.  76  and  78  open
                        to sky.
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WEST : Open to sky

4. Brief History of the Property and How the owner/Mortgagor has derived title:

The Pahains for the years 1972-73 and 1978-79 under document No. 1 reveals that Sri. Venkat Naraari Rao is the pattadar and possessor of the land admeasuring Ac. 1-31 guntas in Sy No. 84 and Ac. 1-22 guntas in Sy No. 85 of Malkajgiri, Hyderabad.

The document No. 2 shows that Sri. PV Narahari Rao was expired on 23.01.1980 as per the Death Certificate issued by MCH.

The document No 3 shows that Smt. Saraswathi Bai is only the legal heir of Late Shri PV Narahari Rao.

The document No. 4 shows that Smt. Saraswathi Bai executed a GPA in favour of Sri. CV Prasad Rao, empowering him to deal and sell the above said property. The GPA was registered in the office of sub- Registrar of Hyderabad-East vide document No. 58/80 dated 24.04.1980.

The document No. 5 shows that Smt. Saraswathi Bai sold the Plot Nos. 3, 4 and 5 admeasuring 870 sq yds. situated at Malkajgiri, Hyderabad to Smt. N. Samson Sanjeeva Rao and executed a sale deed in his favour by virtue of document No. 1243/80 dated 19.09.1980 registered in the office of sub-registrar of Uppat, Ranga Reddy.

The document No. 6 shows that Shri N. Samson Sanjeeva Rao obtained permission from Malkajgiri Municipality for construction of Residential building consisting of Ground + 4 floors vide permit No. G1/2155/98 dated 07.12.1998.

The document No. 7 shows that Shri N. Samson Sanjeeva Rao entered into development agreement with Shri PY Kondal Rao for construction of residential flats in the above said plots.

The document Nos. 8, 9 and 10 are the Encumbrance Certificates for the period from 28.06.1998 to 20.04.2003 (23 years) which disclose only the transactions mentioned in document No. 5.

The document No. 11 shows that Shri N. Samson Sanjeeva Rao (owner) along with Shri PY Kondal Rao (builder) agreed to sell the Schedule Property (referred under Item No. III of this opinion) to Shri BAVK Mohan Rao (applicant) for a total sale consideration of Rs. 5,50,000/- and Shri. BAVK Mohan Rao (applicant) also agreed to purchase the said property for the same consideration.

5. Search and Investigation.

5.1	The person who is the present owner of the	Shri NS Sanjeeva Rao (present owner/vendor) and	

	property	Shri BAVK Mohan Rao (purchaser/Vendee)
5.2 to 5.5	xxx	xxx
5.6	Whether there the latest title deed and immediately previous title deed(s) are available in original	The document No. 5 is available in Xerox (original verified)
5.7 to 5.13	xxx	xxx
5.14	Whether the proposed equitable mortgage by deosit of title deed is possible? If so, what are the documents to be deposited? If deposit is not possible, can there be simple mortgage or a registered memorandum or by any other mode of mortgage?	Yes, Equitable mortgage is possible. The original registered Sale Deed executed in favour of Shri BAVK Mohan Rao (applicant) by the Vendors along with all the documents as mentioned in the list in Item No. 2 of this opinion should be deposited.
5.15to 5.20	xxx	xxx

6-8 xxx xxx xxx

9. CERTIFICATE

I am of the opinion that Shri NS Sanjeeva Rao is having clear marketable title by virtue of Regd. Sale Deed No. 1243/1980 dated 19.09.1980 referred document No. 5 of this opinion. He can convey a valid clear marketable title in favour of Shri BAVK Mohan Rao (applicant) in respect of the schedule property (referred under Item No. 3 of this opinion) by duly executing a Regd. Sale Deed in his favour.

Shri BAVK Mohan Rao (applicant) can create a valid equitable mortgage with the Bank by depositing the original Regd. Sale deed executed in his by the vendors and also depositing all the documents as mentioned in the list in Item No. 2 of this opinion. I further certify that:-

1.	There are no prior mortgage/charge whatsoever as could be seen from the encumbrance certificate for the period	

	from 28.06.1980 to 20.04.2003 pertaining to the immovable property covered by the above title deed(s).	Yes
2.	There are prior mortgages/charges to the extent, which are liable to be cleared or satisfied by complying with the following.	NA
3.	There are claims from minors and his/her/their interest in the property to the extent of (specify) the share of minor(s) with name	NA
4.	The undivided share of minor of (specify the liability that is fastended or could be fastened on the property).	NA
5.	The property is subject to the payment of Rupees (specify the liability that is fastened or could be fastened on the property)	NA
6.	Provisions of Urban Land (Ceiling and Regulation) Act are not applicable. Permission obtained.	NA
7.	Holding/Acquisitions in accordance with the provisions of the land:	NA
8.	The mortgage if created will be perfect and available to the bank for the liability of the intending borrower: Shri BAVK Mohan Rao (Applicant)	

The Bank is advised to obtain the encumbrance certificate for the period from 21.04.2003 till the date after obtaining a registered sale deed in favour of Shri BAVK Mohan Rao (applicant) SEARCH REPORT:

> I have verified the title deed of Shri N.S. Sanjeeva Rao in the office of sub-Registrar of Uppal, Hyderabad on 18.07.2003 and found that the sale transaction between parties, schedule property stamp papers, regd. Sale Deed No. 1243/1980 are genuine. The verification receipt is enclosed herewith.
>
> (K. NARAYANA RAO) ADVOCATE" The above particulars show that the respondent herein, as a panel advocate, verified the documents supplied by the Bank and rendered his opinion. It also shows that he was furnished with Xerox copies of the documents and very few original documents as well as Xerox copies of Death Certificate, Legal heir-ship Certificate, Encumbrance Certificate for his perusal and opinion. It is his definite claim that he perused those documents and only after that he rendered his opinion. He also advised the bank to obtain Encumbrance Certificate for the period from 21.04.2003 till date. It is pointed out that in the same way, he furnished Legal Scrutiny Reports in respect of other cases also.

18) We have already mentioned that it is an admitted case of the prosecution that his name was not mentioned in the FIR. Only in the charge-

sheet, the respondent has been shown as Accused No. 6 stating 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 in question.

19) Mr. Venkataramani, learned senior counsel for the respondent submitted that in support of charge under Section 120B, there is no factual foundation and no evidence at all. Section 120A defines criminal conspiracy which reads thus:

> "120A. Definition of criminal conspiracy.- When two or more persons agree to do, or cause to be done,-
>
> 1) an illegal act, or
>
> 2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
>
> Explanation.- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object." Section 120B speaks about punishment of criminal conspiracy. While considering the definition of criminal conspiracy, it is relevant to refer Sections 34 and 35 of IPC which are as under:
>
> "34. Acts done by several persons in furtherance of common intention.- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone." "35. When such an act is criminal by reason of its being done with a criminal knowledge or intention. - Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention."
>
> 20) The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common

experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.

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 charge-sheet 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.

.....J. (P. SATHASIVAM) .....J. (RANJAN GOGOI) NEW DELHI;

SEPTEMBER 21, 2012.

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