

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 2936 of 2022**
With
R/CRIMINAL MISC.APPLICATION NO. 19412 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

AJAY RUMENDRA MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR ANSHIN DESAI, SR. ADVOCATE ASSISTED BY MR. NANDISH H THACKAR(7008) for the Applicant(s) No. 1 in CRMA No.2936 of 2022

MR C.B. UPADHYAY, ADVOCATE in CRMA No.19412 of 2022

MR RC KODEKAR(1395) for the Respondent(s) No. 2

MR. VN. SEVAK(3791) for the Respondent(s) No. 3

MS MAITHILI MEHTA, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 29/01/2024
COMMON CAV JUDGMENT

- Rule.** Learned advocates appearing for the respective respondents waive service of rule for the respective

respondents.

2. As common issue raised in present applications and facts are also common, as a result, both the applications were heard together and disposed of by this common order.

3. This Court has heard learned Senior Counsel Mr. Anshin Desai assisted by Mr. Nandish Thackar, Mr. C.B. Upadhyay, learned counsel appearing for the applicants, Mr. R.C. Kodekar, learned Special Public Prosecutor for the respondent no. 2-CBI and Ms. Maithili Mehta, learned Additional Public Prosecutor for the respondent No.1-State.

4. Both the applicants are practicing lawyers, doing their practice at Surat, Gujarat State and panel advocates for State Bank of India. In the year 2014, M/s. Gauri International Pvt. Ltd and its directors namely D.K. Nakrani & V.V. Balal had applied for cash credit facilities with the SBI Bank, branch at Surat. The cash credit facilities to the tune of Rs.150 crores were sanctioned after scrutinizing the financial data and other documents submitted by the borrower company. The then Branch Manager Mr. Omprakash Verma had undertaken the entire exercise for sanctioning the loan. The said cash credit limit was encashed and released in favour of borrower company. The borrower company is engaged in textile business and they were irregular in making the payments of cash credit and failed to pay the outstanding with interest. The bank inquired into the entire loan transaction and found that the company and its directors and others committed a fraud by submitting fabricated/fake documents, inflating value of

immovable properties and the properties given as a collateral security is not identifiable and the funds have been diverted and was not having been utilized for the purpose for which they were sanctioned. In such circumstances, the authorized officer of the Bank had submitted private complaint to the respondent CBI, inter-alia, alleging that, the accused and officials of the bank in connivance with each other, committed the offence of criminal conspiracy, cheating, forgery of valuable security, forgery for the purpose of cheating, using a forged documents as genuine and criminal misconduct by public servant, abusing their official position. The FIR being RC0292018A0010 dated 29.06.2018 came to be registered with CBI/ACB Gandhinagar Police Station for the offences punishable under Section 120B, read with Sections 420, 467, 468 and 471 of the Indian Penal Code and Section 13(2) read with Section 13(1D) of the Prevention of Corruption Act, 1988, against 8 persons and other unknown persons.

Pursuant to the said FIR, the investigation concluded and chargesheet came to be filed against 23 accused including present applicants. In the said chargesheet, the applicants have been arraigned as accused nos. 21 and 22. The allegations made in the chargesheet against the applicants read as under:

"(c) The petitioners respectfully submits that the respondent no.2 has made too general and vague allegation in the charge-sheet that no prudent man would believe it to be true. The petitioner craves leave to reproduce the allegations/averments made in the charge-sheet with a view to implicate the petitioner in the entire offence, as under;

"Investigation revealed that branch had obtained two Title Investigation Reports each of the aforementioned two immovable properties from Panel Advocate Shri Ajay R Mehta and Shri Chandrakant K. Soni. Investigation has revealed that the search was conducted by Panel Advocate Shri Ajay R. Mehta in Sub-Registrar Office, Mahuva on 14.03.2014 and Sub- Registrar Office, Palsana on 27.03.2014, Title Investigation Reports were submitted on 25.03.2014 and 28.03.2014 respectively for both the properties.

.... Investigation has revealed that as per the Government records the property bearing Plot No. 04, R.S. 122/2 Mouje Bagumara & Plot No. 04, Block No. 223, Mouje Tarsadi is recorded as a whole bearing Plot No.4 however in subsequent registered sale deeds by which company became owner is executed for Plot No. 04-A & 04-B. Plot No. 4 divided into Plot No. 04-A and 04-B but Sub-Division approval was not obtained from concerned government authorities and empaneled advocate has submitted Title Investigation Report without mentioning the requirement of sub division Plot No. 04 Into Plot No. 04-A and 04-B. Shri O.P Verma (A-1) has not verified the contents of the TIR. The same is clear violation of Bank's guidelines conveyed vide circular No. CPPD/12/13-14 which stipulates "verification of TIR by Bank's dealing officials to determine the acceptability of the property offered as security"

It is further alleged that;

"Investigation has revealed that Title Investigation Report of Collateral Securities situated at Bagumara was obtained on 28.03.2014 from Bank's empaneled advocate Sh. Chandrakant K. Soni & Sh. Ajay R. Mehta. TIR of collateral securities situated at Village Tarsadi, was obtained on 25.03.2014 from Bank's empaneled advocate Sh. Ajay R. Mehta and on 27.03.2014 from Sh. Chandrakant K. Soni, after the sanction of CC limit of Rs. 15.00 Crores to M/s Gauri International Pvt. Ltd. The basis principle of obtaining Title Investigation Report before sanction was ignored by Credit Cell, Zocc. The Credit Cell has stipulated the TIR is under process and was to be submitting before disbursement of CC limit, was against the Bank's guidelines. The same was clearly a violation of Circular No. F/3/13-14 dated 13.07.2013 and Circular No. CPPD/12/13-14 dated 30.07.2013, which stipulates that "Verification of

TIR obtained from the Panel Advocate by the Branch/Operating officials to determining the acceptability of property offered as Security"

From the aforesaid allegations, it is the case of the prosecution that the TIR submitted by the petitioner merely did not have the averment with regard to the permission required from the Government with regard to the Sub-Division of Plots. It is pertinent to note that alleged error in the TIR, does not, in any manner, attribute criminal misconduct on the part of the petitioner. It is further submitted that even as per the case of the prosecution, the Credit Cell had already disbursed an amount of Rs. 15 Crore prior to the submission of TIR by the petitioner. Further, even as per the case in the charge-sheet, it is at the most violation of the circulars of the Bank and nothing more. Thus, looking to the peculiar circumstances, no criminal liability can be fastened upon the petitioner and therefore, the proceedings against the petitioner deserve to be quashed."

5. In the aforesaid background facts, the applicants have preferred these quashing petitions under Section 482 of the Code of Criminal Procedure, 1973 invoking inherent jurisdiction of this Court.

6. Mr.Anshin Desai, learned Senior Counsel appearing with Mr.C.B. Upadhyaya and Mr.Nandish Thackar, raised the following contentions:

(1) That the applicants are practicing advocates since many years and having blotless career and are empaneled in various banks and had issued a Title Clearance Certificate in so many cases and till date, no such allegations ever made against them. The title reports which were submitted by the applicants having been prepared on the documents submitted by the bank. In the title reports, the properties which were mortgaged as a collateral security having been specifically

mentioned and nothing being suppressed. The facts of sub division of the property being Plot Nos.4-A and 4-B bearing Survey No.122/2, do not change in nature of property and it is not the duty of the applicants' advocates to obtain the approval of the sub division of the plots from the concerned Government Authority and non-mentioning of the sub division of the plots in the reports would not itself give rise to inference that the title clearance reports were submitted in connivance with the co-accused to commit an offence of cheating and criminal breach of trust. That the submission of the reports, after sanctioning of the cash credit limit does not attract any penal provisions of the Indian Penal Code and it was the duty of the concerned bank officer to follow the necessary guidelines and circular for determining the acceptability of the property offered as a security.

(2) In the aforesaid background facts, it was submitted that the alleged error pointed out by the bank authority in the title investigation report does not in any manner attribute a criminal misconduct on the part of the applicants and thus, no criminal liability can be fastened upon the applicants.

(3) The applicants have been implicated on the charge that they were part of the alleged conspiracy and in connivance with the co-accused, they have issued the title investigation report so as to extend them the financial benefits. It is in this context, it is submitted that the FIR and chargesheet case papers lacks the

ingredients of offence criminal conspiracy as defined under Section 120A of the Indian Penal Code. That there is no material or averments with regard to the applicants that they have issued a false certificate and misled the bank to disburse the amount of cash credit and therefore, when certificates have no infirmities and having been issued on the basis of documents submitted by the bank, the applicants cannot be liable for the default committed by the co-accused, who are the beneficiary of the entire transaction. Nothing brought on record to indicate that the applicants have gained any benefits out of the alleged transaction.

(4) In order to attract the ingredients of offence criminal conspiracy, there must be an evidence direct or circumstantial to show that there was an agreement between the applicants and the co-accused to defraud the bank and on the basis of said agreement, the title investigation reports were submitted by the applicants. In this context, it was submitted that there is no evidence to establish the association of the applicants with co-accused and in absence of such kind of evidence, the allegations made in the FIR as well as the chargesheet case papers, if they are taken face value and accepted as it is, do not *prima-facie* constitute any offence or make out a case against the applicants.

(5) Lastly it was submitted that the allegations made against the applicants are absurd, inherently improbable and having been made with ulterior motive.

7. In support of the aforesaid contentions, learned counsel Mr.Desai has heavily relied on the judgment of the Apex Court rendered in the case of **CBI, Hyderabad Vs. K.Narayana Rao (2012) 9 SCC 512** to contend that the criminal liability against an advocate arises only when the lawyer had acted in a plan to defraud the bank. Thus, therefore, so far role attributed to the present applicants are concerned, they being impaneled on the bank, issued title investigation report on the basis of documents submitted by the bank and once the entire description of the property referred in the reports by the applicants, then, the matter ends as it is none of the business of the advocates to mention the necessity of sub-division of the plots and as such non-mentioning of the said facts do not in any manner violate the guidelines of the bank. The only duty to be performed by the advocates is to submit the report as sought by the bank. At what stage report be required it is up to the bank officials to inform the applicants. The applicants having no knowledge that the report was sought before sanction of the CC Limit. In such circumstances, it is submitted that, there is no evidence to suggest that from the very inception of the offence, the applicants-advocates entered into an agreement with the co-accused to defraud the bank for financial benefit.

8. In view of the aforesaid contention, learned senior counsel has submitted that, the continuation of the proceedings against the applicants will damage their reputation in the society as well as in the professional field and when allegations made in the complaint and chargesheet

papers does not disclose any commission of offence, the criminal proceedings amounts to an abuse of process of law and Court and same is require to be quashed and set aside.

9. On the other hand, Mr. R.C. Kodekar, learned standing counsel appearing for and on behalf of CBI, Mr. Vivek Sevak, learned counsel appearing for and on behalf of SBI Bank and learned State counsel Ms. Chetna Shah have jointly submitted that, the applicants are facing the charges of criminal conspiracy alleged to have been conspired by the principal accused to defraud the bank. That there are serious infirmities in the title investigation reports allegedly submitted by the applicants and therefore, there is a *prima-facie* evidence against the applicants that the applicants in connivance with the bank officials and others committed an offence of criminal misconduct by violating the bank guidelines for extending peculiar benefit to the private parties which has caused huge financial loss to the bank and thus, therefore, the contention raised for quashing of the criminal proceedings cannot be examined at this stage and same would be subject of trial and at this stage, it is not justifiable on the part of the Court to enquire as to the reliability or genuineness or otherwise of the allegations. In such circumstances, it is submitted that no extraordinary circumstances exist to exercise jurisdiction of this Court and applications may not be entertained.

10. It is no more res-integra that exercise of power under Section 482 to quash a criminal proceeding is only when an allegation made in the FIR or chargesheet do not constitute the ingredients of the offence alleged and same is require to be

exercised in exceptional case. The Apex Court in its various judgments time and again while dealing with the quashing of the criminal proceedings has observed that, the inherent powers is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into weapon of harassment or prosecution and same has to be exercised to prevent abuse of process of any Court or otherwise to secure the ends of justice.

11. In light of the settled position of law and considering the peculiar facts and circumstances of the present case, the issue falls for my consideration is whether the case is made out for exercising inherent powers to quash the questioned criminal proceedings?

12. Having considered the contentions raised by the respective parties and on perusal of the allegations made in the FIR and chargesheet, this Court is of considered view that, the applicants have made out a case to exercise jurisdiction under Section 482 to quash the criminal proceedings. The reasons for the conclusion are that;

- (i) The applicants were not named in the FIR;
- (ii) The applicants being empanelled advocates, at the instance of the bank and the documents provided to them had issued title investigation report in respect of properties which were mortgaged by the principal accused for security. The investigation revealed that the bank had obtained two title investigation

reports for two properties land bearing Survey No.122/2, Block No.154, Sub-plot no.4A and land Block No.223, Part-4, Plot No.4A, Village: Tarsadi. The said two properties were purchased by the borrower company after the sanction of C.C. Limit and said facts was having been concealed by the officer of the bank Mr. Omprakash Verma. So far role attributed to the applicants are concerned, the search was conducted by the applicants and reports thereof were submitted by them on 25.03.2014 and 28.03.2014. In the report, the facts of sub-division of plot no.4 having not been mentioned and bank officer was also failed to verify the contents of the reports. In such circumstances, it is alleged against the applicants as well as bank officers that non-mentioning of the requirement of sub-divisional approval is clear violation of bank guidelines issued in relation to determine the acceptability of the property offered as a security;

- (iii) The aforesaid charges leveled against the applicants would not fall under the act of misconduct or in any manner the applicants involved and participated with the borrower company and its directors and others to commit the offence. There is no evidence to establish the involvement of the applicants in commission of the common design to defraud the bank. In order to prove the charges of criminal conspiracy, there

must be evidence that the applicants and borrower company and its directors in connivance with the bank officials agreed to defraud the bank by availing the C.C. Limit. The alleged circular is applicable to the officers of the bank. The applicants who have issued the two reports on the basis of documents submitted by the bank. If the bank would have submitted the facts of division of the plots and pointed out the physical facts of the plots, the applicants could have opined on this aspect. It is not their responsibility to inspect the site. It was the bank officers to inspect the site and submit all the reports for necessary investigation. It needs to be noted that, the two plots which were mortgaged have been sold by the bank in an auction sale and as such, the auction purchaser did not have taken any dispute with regard to the title of the property. In such circumstances, merely non-mentioning the facts about the sub-division of the plots in the reports by the applicants would not in any manner attribute any criminal liability;

- (iv) Upon scrutiny of the entire chargesheet case papers, except violation of the bank circular, nothing being alleged that the applicants were part of the alleged conspiracy. The applicants have been roped in the offence by invoking the offence of criminal conspiracy. The prosecution failed to produce material substantiating the said allegations

leveled against the applicants. On reading of entire case papers, *prima-facie* there is no material or evidence to show the participation of the applicants in commission of alleged offence at the different stages i.e. from filing of loan application to the stage of disbursement, having not been established. This Court is conscious that the conspiracy is always hatched in a private or in a secrecy and it is impossible to establish a conspiracy by direct evidence and the existence of a conspiracy and its object can be inferred from the circumstances and the conduct of the accused. In the facts of the present case, the chargesheet came to be filed against 23 persons. The applicants have been arraigned in the chargesheet as accused no.21 and 22. The investigation was conducted in relation to the loan application, documents submitted by the borrower company, preliminary assessment made by the bank, pre-sanction visit, credit information report, the description of the properties mortgaged as a collateral securities, opinion on the titles, opinion on value of the property and powers of the bank officials. In the entire chargesheet, nowhere it is alleged that, the applicants were part of said criminal conspiracy conspired by the borrower company and others and the only allegation leveled against them is about non-mentioning of subdivision of the plots in the reports. Therefore, considering the aforesaid circumstances as referred

in the chargesheet case papers which has been thoroughly investigated by the agency, this Court is of *prima-facie* view that, necessary ingredients to constitute the alleged offence against the applicants are not disclosed.

13. The applicants are lawyer by profession and since long they are rendering their services to the public sector banks and private banks. In these background facts, one of the contention raised is that, the liability of an advocate who gave a legal opinion would arise only when such advocate could be shown to have an active participant in the alleged conspiracy to defraud the bank. The reliance has been placed on the Supreme Court judgment delivered in the case of *CBI vs. K. Narayanrao (supra)*. Considering the role attributed to the present applicants and allegations leveled against them, the present case is fully covered by the ratio laid down in the said case by the Apex Court. It is relevant to mention para-27 to 31 of the said judgment which reads thus:

"27. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an advocate's work. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to

him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings, viz., either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.

28. In **Jacob Mathew v. State of Punjab**² this Court laid down the standard to be applied for judging. To determine whether the person charged has been negligent or not, he has to be judged like an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices.

29. In **Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra**³ 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 A6 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 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 2 (2005) 6 SCC 1 3 (1984) 2 SCC 556 are entitled

to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein."

14. In light of the settled principles of law as propounded by the Apex Court and applying the same to the facts of present case, in considered opinion of this Court, the applicants have made out a case for this Court to exercise its inherent powers under Section 482 of Cr.P.C. The allegations leveled against the applicants do not constitute any offence or make out a case to stand for trial and thus, therefore, that continuation of the proceedings against the applicants would amount to abuse of process of law and Court. In such circumstances, the present case is squarely covered by the parameters (i) and (iii) of the case of *State of Uttar Pradesh vs. Bhajan Lal (1992 supp 1 335)*.

15. In the result, the applications stand allowed. The FIR and consequential proceedings arising therefrom (CBI SP Criminal Case No.11 of 2021 pending before learned Special Judge (CBI), Court No.5, Ahmedabad) are hereby quashed qua the present applicants. Accordingly, rule is made absolute.

16. The observations made hereinabove are *prima-facie* in nature and confined to the adjudication of the present applications and trial Court shall not get influenced by the said observations during the course of trial. Direct service is permitted.

Sd/-

(ILESH J. VORA,J)

TAUSIF SAIYED