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Raj Bahadur
Vs.
State of M.P. & anr.

04/01/2017

Shri A.R.Shivhare, counsel for the applicant.

Shri Prakhar Dhengula, Panel Lawyer for the respondent no.1/State.

This petition has been filed under Section 482 of CrPC for quashing the FIR and further investigation in Crime No.157/2014 registered by Police Station-Manpur, District-Sheopur for offences punishable under Sections 420 and 467 of IPC.

The prosecution story in short is that the applicant, at the relevant time, was working on the post of Branch Manager, UCO Bank, Dhodhar, District- Sheopur. The applicant was also the Inspecting and Visiting Officer of UCO Bank, Branch- Dhodhar, District-Sheopur. One Omprakash submitted an application for grant of Kisan Credit Card of Rs.1,00,000/-. For obtaining the said facilities, said Omprakash submitted the documents showing to be the only holder of title of Khasra Nos.497, 500. area 4.609 Hectares. Affidavits were also submitted by Omprakash to the effect that he is the only title holder of the land in dispute. A ration card was also submitted by Omprakash showing himself to be the head of the family in which his father's name was mentioned as Bajrang Lal, whereas in the affidavit, his father's name was mentioned as Brijmohan. The applicant, at the

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relevant time, was working as Inspecting/Visiting Officer, UCO Bank, Branch Dhodhar, District-Sheopur. The bank extended the credit facility for crop loans under the Kisan Credit Cards in favor of Omprakash. An amount of Rs.40,000/- was sanctioned for *Kharif* crop and an amount of Rs.60,000/- was sanctioned for *Rabi* crop. The sanction order was issued by the applicant in the capacity of the Manager of the branch.

A complaint was made by one Ghanshyam, brother of Omprakash alleging that the land which was mortgaged for extending the benefit of credit facility for crop loan under Kisan Credit Card to Omprakash, was a joint property and he is having a 1/6th share and without obtaining the permission/consent of the co-owners and on the basis of forged documents, the loan was sanctioned under Kisan Credit Cards in favor of Omprakash. On the basis of allegations made in complaint, the police registered the FIR.

It appears that the applicant is still absconding and has not been arrested. It is contended by the counsel for the applicant that the applicant was merely working on the post of Manager and Kisan Credit Card facility was extended on the basis of the documents which were supplied by Omprakash and the applicant did not know that the documents are forged and, therefore, it cannot be said that the applicant, by sanctioning the loan facility under

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Kisan Credit Card, has committed any offence under Sections 420 and 467 of IPC. As already observed, the investigation is still in progress against the applicant. Being the Manager of the Bank, it was incumbent upon the applicant to consider all the documents before sanctioning the loan. In the affidavit, which was filed by Omprakash, the name of his father has been disclosed as Brijmohan whereas in the Ration Card, the name of his father was disclosed as Bajrang Lal. In the bank also, Omprakash disclosed his father's name as Brijmohan and in all the documents, the name of his father is mentioned as Brijmohan whereas from the Voter ID, issued by the Election Commission of India, the name of his father is Bajrang Lal. Even in the revenue record, the names of all the six brothers namely Shambhu Dayal, Devendra Shankar, Ghansyam, Omprakash, Mahaveer and Raghuveer, all sons of Bajrang Lal, are jointly recorded. Thus, the contention of the applicant that he acted bonafidely and in "good faith" relying upon the declaration and the documents submitted by Omprakash, cannot be accepted. The word "good faith" has been defined under Section 52 of IPC which reads as under:-

"52. "Good faith".-Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

The Supreme Court in the case of **S.K.Sundaram :- IN RE:- (2001) 2 SCC 171** has

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held as under:-

"28. The expression "good faith" in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person concerned has honestly believed the truth of what is said. Good faith is defined in Section 52 of the Indian Penal Code thus:

"52. Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention."

29. See the language of the law in this regard. It starts in the negative tone excluding all except what is allowed to be within its amplitude. Insistence sought to be achieved through the commencing words of the definition "nothing is said to be done or believed in good faith" is that the solitary item included within the purview of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. In Black's Law Dictionary, "reasonable care" is explained as

"such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject-matter and the circumstances surrounding the transaction. It is such care as an ordinary prudent person would exercise under the conditions existing at the time he is called upon to act."

30. So before a person proposes to make an imputation on another the author must first make an enquiry into

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the factum of the imputation which he proposes to make. It is not enough that he does just a make-believe show for an enquiry. The enquiry expected of him is of such a depth as a reasonable and prudent man would make with the genuine intention in knowing the real truth of the imputation which is up in his sleeves. If he does not do so he cannot claim that what he did was bona fide i.e. done in good faith.

31. Dealing with the expression "good faith" in relation to the exceptions enumerated under Section 499 of the Indian Penal Code (relating to the offence of defamation) this Court in Harbhajan Singh v. State of Punjab has stated thus:

"The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the (Penal) Code; and we are governed by the definition prescribed by Section 52 of that Code. So, in considering the question as to whether the appellant acted in good faith in publishing his impugned statement, we have to inquire whether he acted with due care and attention. There is no doubt that the mere plea that the accused believed that what he stated was true by itself, will not sustain his case of good faith under the Ninth Exception. Simple belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role. If it appears that before making the statement the accused did not show

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due care and attention, that would defeat his plea of good faith.”

Thus it is clear that having failed in conducting the requisite enquiry, it cannot be said that the applicant had sanctioned the loan facility in favor of Omprakash in “good faith”.

As the investigation is still pending, therefore, for the reasons mentioned above, this Court is of the considered view that it is not a fit case where the investigation can be quashed.

Accordingly, this petition fails and is hereby dismissed.

AKS

(G.S.Ahluwalia)
Judge