

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.1078/2013

Yash Vidyarthi

Vs.

Central Bureau of investigation,

New Delhi

Shri Atul Shreedharan, learned counsel for the applicant.

Shri Rajendra Singh Chouhan, learned counsel for the respondent/CBI.

ORDER

(Passed on 15/05/2015)

This application filed under section 482 Cr.P.C. is directed against the order passed by the learned Additional Sessions Judge and Special Judge, Indore in Criminal Revision No.941/2010 dated 19.11.2012 whereby the learned Additional Sessions Judge dismissed the revision filed against the order of Judicial Magistrate First Class, Indore in Special Case No.01/2007 dated 01.11.2010.

2. Brief facts giving rise to this application are that the respondent/CBI filed a charge-sheet against the present applicant along with other co-accused in Crime No.RC3(E)2005 EOW-II/DLI dated 11.03.2012 under sections 120-B, 419, 420, 467, 468

and 471 of IPC. The facts so far as the present applicant is concerned are that the present applicant is a practicing lawyer. He is also a Panel Advocate for conducting search and preparation of search report in respect of properties that are offered by various customers of the bank who apply for obtaining loan from the bank and in this case one B.S. Verma who was director M/s Him-Texas Industries Ltd. approached State Bank of Indore for obtaining loan for his business establishment. He offered four properties for mortgage to the bank which are as follows:

1. Land, factory, building, machinery situated at Plot No.C-1, C-2 Sector-C Industrial Area, Govindpura, Bhopal which was in the name of Him-Texas Industries Ltd.;
2. Residential land at Khasra No.166/2/2/3/1 area 0.37 acre and Khasra No.166/2/2/3/2 area 0.37 acre total area 0.74 acre situated at village Khajurikalan, Patwari Halka No.19 Tehsil Hazoor, Bhopal;
3. Land situated at Khasra No.218, 219/9 area 0.23 acre = 10,000 sq. ft. at village Dhamkheda, Patwari Halka No.21, Tehsil Hazoor, Bhopal. It was recorded in the name of Ravinder Kumar Mishra;
4. One other property which was located at Indore, details of which is not necessary for disposal of this application

because the present applicant did not conduct any search in respect of this property and also did not produce any search report.

3. In respect of first three properties described above the present applicant submitted search report on 22.12.2003. There is no dispute in respect of property described at Sr. No.1 & 3 above. Only dispute arose in respect of property described at Sr. No.2. The relevant search report in respect of this property in its search report the present applicant observed as below :-

“Tracing of the title of the party for the last 15 yrs.

That the land of Khasra No.166/2/2 (1.11 acre) originally belongs to Mohd. Kamar, Mohd. Anwar and Mohd. Asgar and they had transferred the same to Mohd. Munnawar Khan, Anjum Khan and nazma Khan through a registered Sale Deed registered at the office of Sub-Registrar, Bhopal vide Book No.1-A, Vol. No.14903, S.No.1340 on 4.8.1999.

The above said land was partitioned between Mohd. Munnawar Kha, Anjum Khan and Nazma Khan between themselves and land of Khasra No.166/2/2/3/1 (0.37 acre) came in to the share of Mohd. Munnawar Khan and the land of Khasra No.166/2/2/3/2 (0.37 acre) came in to the share of Smt. Anjum Khan as shown in the Rin Pustika No.245118 and 245119. Smt. Anjum Khan had executed a General Power of Attorney in respect of her said land in favour of her husband Mohd. Munnawar Khan and had empowered him to do all necessary acts in connection with the said

land. The GPA was Regd. at the office of Sub-Registrar, Bhopal vide Book No.4-A, Vol. No.835, S.No.570 on 7.3.00.

Shri Mohd. Munnawar Khan for himself and GPA to Smt. Anjum Khan had transferred the said land to Shri Bijendra Singh Verma through a Regd. Sale Deed Regd. at the office of Sub-Registrar, Bhopal vide Book No.1-A, Vol. No.17722, S.No.2085 on 8.1.02 and thus the said Shri Bijendra Singh Verma had become lawful owner.”

4. During investigation it was found that this property was further transferred by the said B.S. Verma to different persons which was described in the charge-sheet as below :-

“(a) Investigation has further revealed that B.S. Verma had further sold the 0.36 acre out of 0.74 acre of Khasra No.166/2/2/3/1 and 166/2/2/3/2 + 0.18 acre out of 0.37 acre of Khasra No.166/2/2/3/3 = total 0.54 acre to his wife smt. Blossom Singh Verma as per Sale Deed No.17942/2511 Gha on dated 04.03.2002.

The said sale deed is registered with Sub Registrar as well as on index.

(b) Investigation has further revealed that B.S. Verma had further sold the 0.38 acre out of 0.74 acre of Khasra No.166/2/2/3/1 and 166/2/2/3/2 to his employee, Madhukar Shivji Shah as per Sale Deed No.17845/2154 Gha on dated 17.01.2002.

The said sale deed is registered with Sub Registrar but index is not traceable.

(c) Smt. Blossom Singh verma had further sold her property 0.186 acre which was purchased by her vide Sale Deed No.17672/1874 Gha on dated

14.06.2001 as shown in (ii) above to their employee Shri Madhukar Shivji Shah vide Sale deed No.17672/1874 Gha on dated 13.12.2001. The Sale Deed is registered however, entry on index is not traceable.”

5. In view of the above findings during the investigation according to the respondent following act on part of the present applicant which was alleged to be criminal in nature was found against the present applicant :-

“(vi) Yash Vidyarthi, Panel Advocate of State Bank of Indore who had submitted his search report on dated 22.12.2003 and declared B.S. Verma as lawful owner of said land had submitted a false legal search report as B.S. Verma had already ceased to be the owner of the property in question and in this record is entered in the index register of sub-registrar, Bhopal.”

6. The main contention of learned counsel for the applicant in this case is that the report by the present applicant was submitted on 22.12.2003 while the loan was sanctioned by the headquarters of the bank on 06.12.2003 prior to receiving of the report by the present applicant. Subsequent to this, as per the account produced by the present applicant, loan was disbursed on 12.12.2003 and amount of Rs.74,70,575 was paid to Indian Bank. This shows that the bank did not wait for the report of the present applicant and disbursed the loan. Even under these circumstances,

against the concerning officer of the bank no incriminating evidence was found by the respondent and his name was kept in column No.2 of the charge-sheet that is as witness. When there was no incriminating evidence against him, this application cannot be found guilty for having section 120-B IPC for criminal conspiracy with the co-accused. He also placed reliance on judgment of the Hon'ble Apex Court in **Central Bureau of Investigation, Hyderabad Vs K. Narayanan Rao** in Criminal Appeal No.1460/2012 judgment dated 21.09.2012; (2012) 9 SCC 512. In that case, the petitioner was a practicing lawyer and also a panel advocate and his duty was to verify documents and give legal opinion in respect of customers who apply for housing loan. It was alleged that he gave false legal opinion in respect of 10 housing loans. In para 26 and 27 of the judgment the Hon'ble Court observed that :-

“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.”

7. This case was followed by Division Bench of this Court in Harikishan Tuteja Vs. State of Madhya Pradesh in M.Cr.C. No.7954/2013 dated 16.08.2013.

8. Applying the principle laid down in the case of K. Narayanan Rao (supra) and Harikishan Tuteja (supra), it is apparent that while preparing the search report, the present applicant failed to notice that the main accused B.S. Verma transferred the property to his wife and to one of the employee who was not allegedly having sufficient means to purchase the property. No evidence is available in the charge-sheet, copies of which have been filed by the applicant, that when the present applicant conducted search in as around December 2003 such

information could have been extracted by the applicant through available records, indexes, etc. There is also no evidence to establish his link or connection with other accused. Learned advocate for the petitioner argued that his report in respect of the main property on which the factory was situated was found correct but in respect of this property which has lesser value it was found incorrect. Had he been interested in helping the main accused he would have prepared a false report in respect of the main property. The argument has force and seems convincing.

9. During the arguments, the learned counsel for the respondent failed to show that any investigation was made to ascertain whether it was possible for the present applicant to ascertain from the records available in the office whether the property was subsequently transferred in different names or not and whether he failed to take into account such records which were available.

10. Taking all these factors into consideration, in my opinion, at the most it may be said that there was a gross negligence on the basis of which it cannot be said that he was criminally associated with the co-accused and participated in the criminal conspiracy or with the bank officials. It is not apparent that only on the basis of his report the property was hypothecated and a loan was sanctioned and in this view of the matter, I find that this application deserves

to be allowed and accordingly allowed.

11. As a result, the proceeding arising out of Crime No.RC3(E)2005 EOW-II/DLI registered by CBI/EOW-II, New Delhi under sections 120-B r/w 420, 467, 468 & 471 IPC & section 13(2) r/w 13(1)(d) of PC Act, 1988, so far as they relate to the present applicant are quashed. The present applicant is discharged from offences under aforesaid sections of IPC and Prevention of Corruption Act.

12. With above direction and observation, the application stands disposed of.

**(ALOK VERMA)
JUDGE**