(2011) 04 MP CK 0005

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 109 of 2009

Harish Chand Kohli APPELLANT

Vs

Central Bureau of Investigation RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120B, 13(1), 13(2), 419
Registration Act, 1908 — Section 55

Citation : (2011) ILR (MP) 1568

Hon'ble Judges : Vimla Jain, J;Rakesh Chandra Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Smt. Vimla Jain, J.—This revision is directed against the order-dated 03/10/

2008, passed by Special Judge (CBI), Jabalpur in Special Case No. 17/2007, whereby charges of the offences punishable under Sections 120-B read with 420, 471 and 468 of the IPC, were framed against the petitioner, a practising advocate.

2. At the relevant point of time, the petitioner was on the Panel of the Cent Bank Home Finance Ltd. for the purpose of legal scrutiny of the title documents pertaining to properties sought to be kept as security by the persons desirous of obtaining house loans from the Bank. Accordingly, he was required to conduct a search and submit a report as to authenticity of the documents and status of the properties mentioned therein.

3. Allegations against the petitioner as mentioned in the charge-sheet may be summarized thus -

(i) A criminal conspiracy to defraud the finance company by facilitating disbursement of housing loans on the basis of false and fictitious documents was hatched by B.S. Sullere, the then Branch Manager of the company, S.S. Solanki, Field Officer, Pramod Kumar Sharma and Narendra Kumar Sharma, both partners of M/s Akanksha Builders, a firm carrying on business as builders of flats, D. Raja

Rao (Kori) and the petitioner.

(ii) In pursuance of the conspiracy, a housing loan of Rs. 4 lacs was advanced to D. Raja Rao (Kori) on the basis of a legal scrutiny report furnished by the petitioner in respect of the documents which were ultimately found to be false.

(iii) Investigation further revealed that -

(a) In order to secure housing loan of Rs. 4 lacs to purchase Flat No. 206 situated on the 1st floor of Akanksha Aashiyana Apartment, Gorakhpur, Jabalpur, D. Raja Rao (Kori) submitted his application in the prescribed form along with relevant documents on 07/08/2002 whereas the petitioner had already furnished his legal scrutiny report on 05/08/2002 i.e. two days earlier to the date of presentation of loan application.

(b) It was clearly mentioned in the report that Flat No.206 proposed to be purchased by D. Raja Rao for a consideration of Rs. 4,30,000/- from M/s Akanksha Builders under an agreement to sell said to have been executed on 03.06.2002, could lawfully be mortgaged in favour of the finance company as security against the housing loan to be advanced but, on verification, it was found that the said flat had already been sold to D. Raja Rao on 25.07.2002 and as such, the agreement to sell submitted by D. Raja Rao was a forged and bogus document.

(c) The borrower did not pay the loan amount that remained outstanding as an irrecoverable debt in the absence of a valid security.

(iv) Thus, by way of a false search report, the petitioner caused wrongful loss to the bank and wrongful gain to himself and the co-accused.

4. Shri Surendra Singh, learned Senior Counsel has strenuously contended that no offence is made out against the petitioner in view of the following facts -

(A) The FIR did not contain any specific allegation against the petitioner.

(B) Narration of brief history in the report was sufficient to indicate that he had gone through the entire record.

(C) No mens rea could be attributed to the petitioner, who submitted his report on the basis of the corresponding record maintained at Index-II Register in the office of Sub-Registrar, u/s 55 of the Registration Act, 1908 and, therefore, such report was subject to accuracy and correctness of the records maintained in the public office.

(D) He was not expected to know as to whether the documents forwarded by the bank relate to a pending loan application or not.

(E) The Bank was not bound to act upon the search report.

Placing reliance on decision of the Apex Court in Hiralal Jain Vs. Delhi Administration, , learned Senior Counsel has further urged that the petitioner, who was engaged as an advocate for a limited purpose, could not be held liable for the offences.

5. In response, learned Standing Counsel appearing on behalf of CBI has submitted that there are materials suggesting involvement of the petitioner in the conspiracy to defraud the finance company and to commit the corresponding offences. According to him, no interference with the order framing charges is called for as a significant progress in the trial has already been made.

6. Before proceeding to examine the rival contentions of the parties, it may be observed that scope of inquiry at the stage of framing of charge is limited. The Court is only 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 offences.

7. The report in question was, admittedly authored by the petitioner who, as a lawyer, was expected to conduct the search to check status of the property, legal ownership, lien, encumbrance or mortgage etc. so as to ensure that the property sought to be mortgaged was unencumbered and that the borrower had clear marketable title of the property in his favour so that the charge of the bank could be created by way of equitable mortgage of the property for successful recovery of such loan. However, the report that was given even before the presentation of the loan application in the Bank, was ultimately found to be false. Moreover, the date of execution of the agreement to sell in respect of the flat was recorded as 03.08.2002 in place of 03.06.2002. The petitioner, who had given the report under his own signature, was fully responsible for its contents. The merits of the defence that he had conducted the search with due diligence cannot be gone into at this stage.

8. Misleading report, which withholds vital facts for intentionally inducing a person to do or omit to do a thing, prima facie amounts to deception (See. Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others, Further, in another decision rendered in Monica Bedi v. State of A.P., (2011) 1 SCC 294, the Supreme Court has affirmed the conviction of the Head Constable, who had submitted a false enquiry report, certifying particulars of passport application submitted by the co-accused, for the offence punishable under Sections 419, 420 read with 109, 120-B and 468 of the IPC and 13(1)(d) read with 13(2) of the Act.

9. In CBI v. V.K. Bhutiani (2009) 10 SCC 674 , even a favourable report of Central Vigilance Commission was not held to be sufficient for quashing the charges of defrauding/ cheating Bank by resorting to forgery of documents in the nature of valuable securities and for using those documents for getting loan facilities. In the instant case, the report provides a connecting link good enough for framing of charges. As explained by the Supreme Court in Hardeo Singh Vs. State of Bihar and Another,

Framing of charge and to establish the charge of conspiracy cannot possibly be placed at par. To establish the charge of conspiracy there is required cogent evidence of meeting of two minds in the matter of commission of an offence - in the absence of which the charge cannot be sustained - this is, however not so, in the matter of framing of charge since the incidence of the offence shall have to be investigated

10. Absence of direct evidence as regards particular accused relating to conspiracy is without significance as conspiracy is secretly planned and therefore, it can be proved by the circumstantial evidence and inferences are to be drawn from acts or illegal omissions committed by individual members in furtherance of a common design.

11. The decision in Hiralal Jain''s case (supra) is of no assistance to the petitioner as in that case, an advocate was engaged by some persons for identifying them as claimants in an application made on their behalf to claim certain land-acquisition-compensation amount and the advocate believing the statements of the claimants as true filed his vakalatnama agreeing to act on their behalf.

12. In State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., , a three-Judge Bench of the Apex Court explained the meaning of the word "presume". It was further observed -

...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the material brought on record by the prosecution has to he accepted as true at that stage.

13. Taking into consideration the material facts of the case as well as nature of duties of the petitioner as legal advisor engaged by the bank and the obvious consequences of the report authored by him, none of the contentions raised against legality, propriety and correctness of the order framing charges is acceptable. In the light of the well-settled position of law on the subject as highlighted above, learned trial Judge did not commit any error in framing the charges.

14. The revision, therefore, stands dismissed. However, nothing contained herein shall be construed as expression of opinion on the merits of the case. It shall still be open to the petitioner to raise all such pleas as are available under law.