(2013) 07 UK CK 0002

In the Uttarakhand High Court

Case No : Criminal Revision No. 164 of 2013

Jai Prakash Gupta	APPELLANT
Vs	
Central Bureau of Investigation	RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120B, 420, 468, 471

Citation : (2013) 07 UK CK 0002

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Piyush Garg, for the Appellant; Arvind Vashishth, for the Respondent

Final Decision : Disposed Off

Judgement

Umesh Chandra Dhyani, J.—Heard learned counsel for the parties. Admit the criminal revision.

2. Supplementary affidavit filed by learned counsel for the revisionist today is taken on record. As prayed for, two weeks'' time is granted to learned counsel for the respondent to file counter affidavit (against the affidavit as well as supplementary affidavit filed by the revisionist).

3. Accused no. 3 Jai Prakash Gupta, Advocate, was charge-sheeted by Central Bureau of Investigation in connection with offences punishable under Sections 120B, 420, 468 and 471 of IPC. On the basis of the material collected by the Investigating Agency during the course of investigation, charge for the offences punishable under Sections 120B, 420, 468 and 471 of IPC was framed by the learned Special Judge, Anti-Corruption (CBI), Dehradun, on 05.04.2013. The accused revisionist has challenged the same by way of present criminal revision.

4. It is an admitted fact that the revisionist is a practicing lawyer and is panel lawyer of Canara Bank. The allegation against the revisionist is that he gave a false legal scrutiny report to the Canara bank to facilitate co-accused Virendra Singh in obtaining the loan fraudulently. It is the contention of learned counsel

for the revisionist that the revisionist acted bona fide, and it was only on account of second opinion taken by the bank, that the revisionist was implicated in the case. Learned counsel for the respondent, on the other hand, contended that on his legal report dated 26.07.2010, Mr. Shankar Saran Agarwal, Advocate (from whom second opinion was sought) mentioned that co-accused Virendra Singh sold the property to various persons even before mortgaging it with the Canara bank on 05.06.2009 and the earlier legal report submitted by the revisionist (in his capacity as panel lawyer of the Canara bank) at the time of mortgage of the property was a false report.

5. Learned counsel for the revisionist placed reliance on the ruling of Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, . The only allegation against K. Narayana Rao was 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. K. Narayana Rao was not named in the FIR. K Narayana Rao was having experience in giving legal opinion for the banks and the only allegation against him was that he submitted false legal opinion about the genuineness of the properties in question. It was claimed, in the case of K. Narayana Rao that rendition of legal opinion cannot be construed as an offence, and it was not possible for the panel Advocate to investigate the genuineness of the documents. The Hon''ble Apex Court held that the liability against an opining Advocate arises only when the lawyer was an active participant in a plan to defraud the bank. Evidence was required to prove that the panel Advocate was abetting or aiding the original conspirators. The Hon''ble Supreme Court further observed that a lawyer owes his ''unremitting loyalty'' to the interest 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 the opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, 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 offences under Sections 420 and 109 IPC alongwith other conspirators without proper and acceptable links between them. Taking a leaf out of the book of Hon''ble Apex Court, and applying the aforesaid law in the context of present criminal revision, it is provided that no action pursuant to the impugned order dated 05.04.2013, passed in C.B.I. Case no. 04 of 2012, whereby the charge was framed against the revisionist, shall be taken till further orders of this Court. It is made clear that this interim order has no bearing with the cases of co-accused persons. Stay Application No. 961 of 2013 stands disposed of accordingly.