

(2009) 08 MAD CK 0446
In the Madras High Court
Case No : Criminal R.C. No. 1063 of 2008

L.N. Rajagopalan

APPELLANT

Vs

State by The Additional Superintendent of Police

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 147, 419, 420, 467
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2009) 2 LW(Cri) 1069

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : D. Nagesh Babu, for the Appellant; N. Chandrasekar, Special Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—The petitioner L.N. Rajagopalan, ranked as A14 in C.C. No. 14 of 2008 filed a petition before the Trial Court seeking discharge from the criminal proceedings. As the Trial Court dismissed his plea for discharge, the petitioner aggrieved by the said order, preferred the present criminal revision case before this Court.

2. The petitioner stood charged along with 32 others by the investigating agency with the offences punishable u/s 120-B read with 420, 419, 467, 478 and 147 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The allegation as against the first accused who was the Branch Manager of Andhra Bank, Sowcarpet Branch, Chennai is that he sanctioned SOD limits to ten Companies on the basis of forged auditor's certificate and collateral security documents. It is complained that the said Bank Manager did not conduct pre-sanction inspection to ascertain the existence of the partnership firms and the ownership of the properties. It is alleged that the said first accused acted in contravention of the guidelines of the bank. That all the accused conspired

together to commit the aforesaid offences is the case of the prosecution.

4. The specific charge as against this petitioner ranked as A14 is that he, being the approved Valuer of the bank, valued six properties purported to be owned by Muniammal, M.G. Kumar, P. Karthikeyan, M. Sundaresan, A. Balasundaram and M. Ramalingam, and offered as collateral security. But, those properties were not existing as described in the title deeds. A14 did not identify the ownership of the property. Some of the properties were found to be Government lands and some other properties were owned by persons other than those who appeared before the Bank. A14 violated the guidelines of the bank and submitted valuation reports of the properties which do not exist.

5. Learned Counsel appearing for the petitioner would submit that the petitioner, having physically verified the properties sought to be valued, submitted valuation report. There is no allegation that the petitioner never paid a visit to the subject property. The petitioner, being the Valuer, is not called upon to probe into the genuineness of the documents. Therefore, he would submit that the petitioner has been wrongly implicated without any basis.

6. Learned Special Prosecutor for the CBI Cases would submit that the petitioner failed to verify the documents and the person in actual possession of the property. The Valuer subsequently appointed, having verified the documents, has come to a decision that the documents were fabricated. As prima facie materials are available as against the petitioner, the Trial Court has rightly rejected the plea for discharge, he would submit.

7. The guidelines prescribed by the bank had not been produced by the investigating agency. The petitioner takes a stand that there was no guideline prescribed for valuation of the property by the approved Valuers. A Valuer is supposed to estimate the marketability of the property referred for valuation by the bank based on the documents provided by it. Of course, the Valuer is bound to inspect the property referred by the bank for valuation purpose. The Valuer cannot simply go to a location of a property on his own. For the purpose of identification, he takes the Branch Manager or some authorised agent to the location at the time of inspection for the purpose of identifying the property. The Valuers take this precaution just to avoid any mistake in the identification of the property. Even if the Branch Manager locates the property for the purpose of inspection by the approved Valuer, the Valuer is supposed to identify the property with the schedule found in the copy of the document furnished to him for valuing the property.

8. An approved Valuer fixes the value of the property taking into account various factors contributing to the marketability of the property viz., the location of the property, the availability of transport facility, the width of the road which leads to the property, the availability of access to hospital, schools, bus terminus, etc., and determine the value of the property and thereafter generates the valuation report in the prescribed format laid down by the bank.

9. It is definitely not the duty of the Valuer to look into the authenticity of the documents. He is not an expert to test the genuineness of the documents. He is not equipped with knowledge to identify a document as a fabricated or concocted one. For assessing the value of the property which is the prime job of the Valuer, he is not supposed to identify and meet the owner of the property.

10. The prosecution would contend that the properties valued by the petitioner were not in existence as described in the title deeds. As per the practice in vogue, it appears that the petitioner inspected all the six properties only with the assistance of the Branch Manager, the first accused. It is he who has provided the copy of the documents to generate the valuation report. The other contention on the side of the prosecution is that the petitioner did not choose to identify the owner of the properties. As already held by this Court, the job of identification of the owner falls outside the purview of the assessment of valuation of the property. It is further alleged that some of the properties were Government lands and some properties were owned by persons other than those who appeared before the bank.

11. Firstly, the Valuer is not associated with the business transaction when the application for loan is submitted by the borrower. Therefore, there is no occasion for the Valuer to see the persons who appear before the bank. Some of the properties might have been Government properties. It is not the duty of the Valuer to go to the Registrar's Office to verify whether the lands belong to the Government or private individuals.

12. The next allegation is that the petitioner violated the guidelines of the bank and submitted valuation reports of properties which do not exist. The prosecution has not produced any documents to show that there are specific guidelines issued to the Valuers for valuing the property.

13. Of course, D. Parthasarathy cited as 61st witness by the prosecution who is also one of the Valuers of Andhra Bank, has stated that the documents produced were not genuine, but, were found to be fabricated.

14. Firstly, it is found that the said Parthasarathy was nominated to assess the value of the property only after it had come to light that the properties furnished as collateral security were not in existence. Therefore, it would have been easy for him to say that the documents were not genuine and fabricated. Mr. D. Parthasarathy who is only a Valuer cannot with authority say that a particular document is genuine or fabricated unless he is tipped about the forgery committed in a particular document. It is the handwriting or finger print expert's job to determine scientifically whether a document is a genuine or fabricated one.

15. The poor approved Valuer, well qualified in assessing the value of the property, has been wrongly implicated having found that no properties were in existence as though he committed cheating punishable u/s 420 of the Indian Penal Code. Likewise, the other charges under Sections 419, 467, 468, 471 read with Section 120B of the Indian Penal Code have also no basis. It is in the

figment of imagination of the investigating agency that the petitioner was involved in the conspiracy hatched by the other accused. The Valuers are supposed to contact the Branch Manager and not the borrowers. None of the witnesses has spoken to the fraudulent or dishonest role played by the petitioner in the fabrication of documents.

16. In view of the above, the court finds that no prima facie case has been made out as against the petitioner. The allegations made as against the petitioner, who is only an approved Valuer, are found to be baseless. Absolutely no materials are available for charging him for the aforesaid offences alleged against him.

17. The Trial Court has misdirected itself and has come to a wrong decision that there are materials to charge this petitioner. Therefore, the petitioner L.N. Rajagopalan, ranked as A14 is discharged from the criminal proceedings in C.C. No. 4 of 2008 on the file of the learned the Principal Sessions Judge for CBI Cases, Chennai and as a result, the impugned order stands set aside and the criminal revision case is allowed.