

(2009) 07 MAD CK 0022

In the Madras High Court

Case No : Criminal R.C. No. 311 of 2008, M.P. No. I of 2008 in Criminal R.C. No. 311 of 2008 and Criminal OP. No. 8844 of 2008

M.V. Chandran

APPELLANT

Vs

State, Special Police Establishment, Central Bureau of Investigation, Economic Offences Wing, III Floor, "A" Wing, Rajaji Bhavan, Besant Nagar, Chennai-90 and DRT and DRAT Bar Association, Spencer Towers, VI Floor, 770-A, Anna Salai, Chennai 600 002 (impleaded vide order in M.P. No. 2 of 2008) Intervener Crl. O.P. No. 8844 of 2008
E. Kumar Vs The Inspector of Police, SPE, CBI, ACB, Chennai and Madras High Court Advocates Association

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Citation : (2009) 5 CTC 209 : (2009) 2 LW(Cri) 955

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : S. Dinakar, for Mr. S. Karthikeyan in Criminal R.C. No. 311 of 2008 and Mr. Sivanand for Sivanand Associates in Criminal O.P. No. 8844 of 2008, for the Appellant; K. Gopinath, for Intervener DRT and DRAT Bar Association and Mr. N. Chandrasekar, Special Public Prosecutor for CBI Cases in Crl. R.C. No. 311 of 2008 Mr. Gopinath, for DRT and DRAT Bar Association, Mr. R.C. Paul Kanagaraj for MHAA for Intervener and Mr. N. Chandrasekar, Special Public Prosecutor for CBI Cases in Crl. O.P. No. 8844 of 2008, for the Respondent

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—Aggrieved by the order passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai dismissing the plea for

discharge raised by the third accused, the present criminal revision is preferred by him. Criminal Original Petition No. 8844 of 2008 is filed praying

to quash the criminal proceedings in CC.No.7651 of 2003 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The petitioners in both the proceedings are Advocates by profession. As they have been charged fundamentally on the ground that they issued legal opinion which paved way for forgery of documents, fabrication of records and cheating, they have been arraigned as accused in the respective proceedings.

3. The prosecution has come out with a case that the petitioner in Crl. R.C. No. 311 of 2008, having hatched a criminal conspiracy along with the first accused during the period from 2001 to 2003, fraudulently availed credit facility in the form of Packing Credit and other loans from Bank of India, Chennai, Main Branch by impersonation, producing fabricated documents and offering forged title deeds as collateral securities and thereby he, along with the other accused, committed offences punishable u/s 120(B) read with sections 193, 419, 420, 467, 468 and 471 of the Indian Penal Code.

4. The petitioner in Crl.O.P.No.8844 of 2008, who figures as the third accused in C.C.No.7651 of 2003, was also charged with hatching a criminal conspiracy with other accused and availing loan from Indian Bank, Royapuram Branch by submitting false and fabricated documents and thereby they cheated the said Bank and committed offences punishable u/s 120(B) read with section 420 and sections 419, 420, 467, 471 and 477A of the Indian Penal Code.

5. The learned Additional Chief Metropolitan Magistrate rejected the plea of the petitioner in Crl. R.C. No. 311 of 2008 that the bank had not acted solely upon the opinion given by the petitioner herein that the first accused therein had marketable, complete, valid, absolute, perfect, legal and enforceable title to the immovable properties offered as collateral security. Further, it is observed by the Trial Court as far as the search report given by the petitioner that it was too early to give a finding at that stage as to whether the petitioner had gone to the Sub Registrar's office to verify the records. In view of the above, the Trial Court chose to dismiss the discharge petition filed by the third accused/petitioner in Crl. R.C. No. 311 of 2008.

6. The court is called upon to decide whether there is any illegality or impropriety in dismissing the plea for discharge made by the petitioner in Crl.

R.C. No. 311 of 2008 and whether there is abuse of the process of the court in

arraigning the petitioner/third accused in CrI. O.P. No. 8844 of 2008.

7. The petitioner in CrI. R.C. No. 311 of 2008 has given a legal opinion based on certain Xerox copies and original sale deeds and other

documents of title that the first accused had marketable complete, valid, absolute, perfect, legal and enforceable title to the properties referred to

him for opinion. He also observed in the legal opinion that the property was not encumbered as per the encumbrance certificate produced upto

3.10.2001. In the search report separately given by the petitioner in CrI. R.C. No. 311 of 2008, he has observed that as per the search conducted

before the Sub Registrar at Sembium and Ambattur, the properties were not encumbered and were free to be encumbered in favour of Bank of

India, Main Branch, Chennai.

8. The petitioner in CrI.O.P.No.8844 of 2008 had the occasion to peruse the original documents relating to one item of the property and Xerox

copies relating to the other item of the property before he gave legal opinion. He had given a legal opinion that Sri. Marimuthu Reddy @

Mariappa Reddy has got good, valid, marketable and perfect title over the property offered as collateral security. He has given his opinion subject

to the production of nil encumbrance for the period from 3.3.1992. He has opined that Sri Govinda Pillai and Marimuthu Reddy could create an

equitable mortgage by depositing the title deeds with the bank including the encumbrance certificate as required.

9. The learned Senior Counsel appearing for the petitioners and the interveners would submit that it is really strange that an Advocate, who offered

his legal opinion, was implicated in a case of forgery of documents and fabrication of records and cheating. It is their submission that the legal

profession will be at peril if such intimidator tactics are adopted by CBI as against the legal professionals. There is no material on record to show,

part from the ipse dixit of the investigating official, that the petitioners, who are learned members of the legal profession ganged-up with any

accused to hatch a conspiracy to cheat the nationalized banks. The legal opinion given by the advocates, per se, will not invite criminal prosecution,

they would submit.

10. Per contra, learned Special Public Prosecutor for CBI Cases would vehemently

contend that it is premature to determine the actual role played by these petitioners in the matter of forgery, fabrication and cheating alleged against the petitioners and others. Unless materials produced before the court without any rebuttal falls short of showing a prima facie case, the court cannot come to the rescue of the accused concerned to relieve them of the criminal prosecution. As there is a concrete allegation that these legal professionals also were part of the criminal conspiracy, the question of relieving them from the charges does not arise, he would further submit.

11. Of course, it is the settled position of law that the court is called upon to consider whether there is sufficient material to proceed against the accused while framing the charge but, at that stage the court is not required to delve deeply into the materials collected and appreciate the evidence and arrive at a decision as to whether the materials projected by the prosecution are sufficient to convict the accused. Therefore, thorough marshaling of the voluminous materials produced in the background of factual matrix falls outside the scope at the stage when the matter was taken up for framing charges. It is also a well settled position of law that whatever may be the valid defence of the accused, that cannot be permitted to be introduced at the stage of framing charges.

12. It is found that there is no material whatsoever to incriminate the petitioners, who are legal professionals of repute that they were involved in the conspiracy hatched by the other accused to hoodwink the nationalized banks. As rightly pointed out by the learned Senior Counsel appearing for the petitioners and the interveners, it is only the ipse dixit of the investigating officer that there was a conspiracy wherein the petitioners herein also contributed their might to translate the conspiracy into action. The conspiracy theory projected by the CBI will not stand legal scrutiny even if such a theory remains unrebutted during the course of trial.

13. The grave sin alleged to have been committed by the learned members of the legal fraternity is that they chose to issue legal opinion based on the forged and fabricated documents. Further, the charge as against the petitioner in Crl. R.C. No. 311 of 2008 is that he had chosen to give a search report as though he actually made a search in the Sub Registrar's office that there was no encumbrance in the subject property when there

is actually an encumbrance over the property. The legal professionals are supposed to delve deep into the legal nuances relating to the property in question. They do not claim that they are experts in finger print or handwriting. Such professionals cannot be expected to give an opinion as to whether the documents are forged and fabricated. In fact, these petitioners have also not been called upon to give any opinion as to the genuineness of the documents or otherwise produced for legal opinion. Had that been the case, they would have cool refused to render any service as called for. There is a Forensic Sciences Department wherein technically qualified persons are available for giving opinion as to the genuineness of the documents by putting to acid test the documents under challenge. Such a function which could be discharged only by a well qualified technical expert cannot be expected from the legal professionals.

14. It is very much relevant to refer to the observation made by me in yet another similar case in *S. Udayakumar v. State* (2008 1 LW (Crl.) 320)

which reads as follows:-

An advocate is not a detective of forged documents or an expert to give opinion as to the forgery or otherwise of a document. The petitioner, having received the documents alleged to be originals, perused them and certified that he verified the original documents also. A meticulous concoction of a document would outsmart the original thereof in its form and execution. It is only an expert or a detective in the field unearthing forgery of documents can bring to light the delicacy or concoction applying his expertise. A Legal Advisor is not supposed to play the role of a document expert.

15. Further, it is found that the petitioner in Crl. R.C. No. 311 of 2008, having gone through the encumbrance certificate produced, made a

comment that the search made in the Sub Registrar's Office does not disclose any encumbrance. The search certificate given by the petitioner in

Crl. R.C. No. 311 of 2008 does not indicate that he personally went to the Sub-Registrar's Office for the purpose of making a search in the

documents. The search can be conducted only by the official of the office of the Sub-Registrar. No Advocate, even if he goes to the Sub-

Registrar's Office, can make a search in the document which are in the custody of the Sub Registrar. A party can only file an application seeking

search of documents to issue the necessary encumbrance certificate. Therefore, it is far fetched to say based on the search report that the

petitioner in Crl. R.C. No. 311 of 2008 had furnished the search report as though he himself had gone to the Sub-Registrar's Office and made a

search and submitted the search report.

16. In fact, the petitioner in Crl. O.P. No. 8844 of 2008 has given a qualified opinion directing the parties concerned to produce the originals

relating to one of the properties for furnishing final opinion. But, it appears that such a suggestion has not carried the required message to the party

concerned.

17. In the above facts and circumstances, I find that there is no incriminating material to show even prima facie that these petitioners were part of

the criminal conspiracy alleged to have been hatched to cheat the bank. The innocent legal professionals, who gave opinion as required by the legal

profession, have been arrayed as accused. The legal profession will be, definitely, in peril if the legal professionals, for discharging their duty, are

implicated in criminal cases. No legal professional worth his salt would ever come forward to offer any legal opinion if such intimidation is in store

for discharging the duties of legal profession.

18. Therefore, the court has no hesitation to discharge the petitioner viz., third accused in C.C. No. 13473 of 2005 and quash the proceedings in

C.C. No. 7651 of 2003 as against the third accused therein on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai. As a

result, both the criminal revision case and the Criminal Original Petition stand allowed. M.P. No. I of 2008 in the revision case stands closed.