

(2014) 07 GUJ CK 0137

In the Gujarat High Court

Case No : Special Criminal Application No. 102 of 2012

Rameshbhai Vallabhbhai Korat

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 109, 120B, 34, 420, 465

Citation : (2015) 3 Crimes 524 : (2015) 1 GLH 437 : (2014) 3 GLR 2653

Hon'ble Judges : R.D. Kothari, J

Bench : Single Bench

Advocate : Harshit S. Tolia and Parth S. Tolia, Advocate for the Appellant; K.P. Raval, A.P.P, Advocate for the Respondent

Judgement

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R.D. Kothari, J.—Rameshbhai Vallabhbhai Korat - petitioner herein - is a practising Advocate at Surat. He has issued one title clearance certificate in respect of Revenue Survey No. 598 of village Adajan. The said title clearance certificate said to be erroneous or to be precise, false. The petitioner is facing criminal prosecution for offence under Secs. 465, 467, 468, 471, 120B read with Sec. 34 of I.P.C. for that. The present petition is filed praying to quash the said prosecution. Heard learned Advocate Mr. Tolia for the petitioner.

2. Rule. Learned A.P.P. Mr. K.P. Raval waives service of notice of Rule on behalf of respondent No. 1 - State. Respondent No. 2, though duly served, has chosen not to appear.

3. Few relevant facts are, thus:

"One Vallabhbhai Nanjibhai Savani had approached the present petitioner with a request to give title clearance report in respect of above-referred land i.e. Revenue Survey No. 598 of village Adajan, District-Surat. The said property is

also known as Town Planning Scheme No. 10, Final Plot No. 27. The petitioner has said to have examined the revenue record, history of the property and has also made inspection at the office of Sub-Registrar, Surat. Upon examining the material, petitioner had opined that land in question stood in the name of (i) Sunilkumar Hiralal, (ii) Prakashkumar Hiralal, (iii) Dahiben Wd/o. Hiralal Govindji, (iv) Ilaben Hiralal and (v) Daxaben Hiralal. He has also given opinion that property in question does not have any lien, right or any charge nor there is any easementary right over the said property. He stated in his opinion that the property has a marketable title. The said opinion was given on 21-2-2005."

The present complaint is lodged on 26-5-2005 at Rander Police Station as I-C.R. No. 175 of 2005. The complainant is one of the sub-plot holder, who has said to have purchased the land from the original land owner. The details of the complaint in order to consider the grievance of the complainant when read, it does not inspire confidence. For the purpose of present discussion, it is not necessary to go into the detail of the complaint. It is the say of the complainant that he had purchased the property by a registered sale deed dated 5-8-2000 from the original owner.

4. Learned Advocate Mr. Tolia for the petitioner, after referring the facts of the case and drawing attention to title clearance report issued by the present petitioner, has pointed out that present complaint is the third complaint in succession in respect of land in question. The first complaint was lodged as I-C.R. No. 168 of 2005 at Rander Police Station. Though the petitioner was joined as an accused in the complaint, after investigation the petitioner was dropped as an accused in the charge-sheet. Copy of charge-sheet is on record. In the second complaint i.e. I-C.R. No. 264 of 2005, P.I. has filed a report in favour of present petitioner. Said report is on record. Learned Advocate for the petitioner has also pointed out that on being inquired by the police, Talati has written a letter to P.I. in respect of land in question and has stated that land is an agricultural land and N.A. permission is not granted. That being so, assertion of the complainant that he is a purchaser of sub-plot from the original owner, losses the considerable force. Learned Advocate Mr. Tolia submitted that at best the petitioner can be said to have acted negligently but, fastening of criminal liability in the circumstances is clearly erroneous. Neither the original owner of land nor Vallabhbhai Nanjibhai, who had approached the petitioner for opinion, has come forward to file the complaint. Learned Advocate has drawn attention to a decision of the Supreme Court in the case of Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, . Relying on the same, it was submitted that present petition may be allowed by quashing and setting aside the F.I.R.

5. On the other hand, learned A.P.P. Mr. K.P. Raval, opposing the present petition, has drawn attention to order passed by the Magistrate rejecting the discharge application of the petitioner. Said order was carried in Revision and the Revisional Court was pleased to dismiss the Revision. It was submitted that in view of the concurrent finding of two Courts below, this Court should not interfere either in

exercise of power under Arts. 226 and 227 or under Sec. 482 of the Cr.P.C. Learned A.P.P. also submitted that petitioner should be asked to face the trial.

6. In K. Narayana Rao's case (supra), the respondent was legal practitioner and panel Advocate for Vijaya Bank. In criminal case, he was joined as A-6. As a panel Advocate, his duty was to verify the documents and to give legal opinion. The allegation against him was that, he gave a false opinion in respect of 10 housing loans. The respondent filed petition under Sec. 482 of Cr.P.C. praying to quash the F.I.R. The High Court was pleased to allow the petition. Hence, the C.B.I. filed appeal before the Supreme Court. There also, the charge was for offence of forgery, cheating and criminal conspiracy. The Supreme Court agrees with the High Court and dismissed the C.B.I.'s appeal. Important observations made in Paras 27 to 31 read, thus:

"27. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an Advocate's work. In the 26 Page 27 law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings, viz., either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.

28. In Jacob Mathew Vs. State of Punjab and Another, , this Court laid down the standard to be applied for judging. To determine whether the person charged has been negligent or not, he has to be judged like an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices .

29. In Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra, Bombay and Others, , this Court held that....."

"8. There is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct."

30. 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.

31. 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 Secs. 420 and 109 of I.P.C. 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. In the present case, first complaint was lodged by one Baldevbhai. It is in respect of Final Plot No. 28. The petitioner is shown as A-6 therein. As observed above, at the end of investigation, police has not filed charge-sheet against the present petitioner in respect of that complaint (Page 240). Then, second complaint was lodged as I-C.R. No. 264 of 2005. It is lodged at Varachha Police Station. It is in respect of three Final Plots of land in question i.e. Final Plot Nos. 27, 28 and 29. Therein also, the present petitioner is shown as A-6. In respect of the said complaint, P.I., Varachha Police Station has addressed a letter to the Government Pleader stating that in investigation, no evidence is found against the present petitioner. It was submitted at the time of hearing that in respect of this complaint, petitioner has filed anticipatory bail application. However, at the time of hearing, it was disclosed by the State that State is not interested in arresting the present petitioner and on the said disclosure, bail application was not pressed. Then, the 3rd complaint i.e. present complaint is filed in respect of Plot No. 27. It is the say of the complainant that he owns one of the sub-plots. He has filed the present complaint as the Baldevbhai i.e. complainant of the first complaint has handed over to the complainant xerox copy of the deed of power of attorney and title clearance report etc. which is on record and it is also the say of the complainant that Notary Advocate Shri Dhirubhai Rajkotiya with the aid and assistance of one Shri Satishbhai Patel, who is stated to be a petition writer and doing title deed work, has executed the forged power of attorney. That in connivance, they have forged the documents. Case against the petitioner is only on account of giving title clearance report by him. It is not in dispute that petitioner has not played any role in preparing the power of attorney or other documents. So far as preparing title clearance report is concerned, it is the say of the petitioner that after verifying all relevant revenue entries and after giving advertisement in the newspaper, he has given the certificate. Neither examination of revenue entry nor giving of advertisement in newspaper can be

said to be sufficient to ascertain the status of the property. It is also the say of the petitioner that he has made inspection in Sub-Registrar office before giving his opinion. He says that he had carried out inspection on 10-2-2005. His application for inspection bears No. 1501 and receipt of payment of inspection fees issued to him bears No. 2890139. He says that search of record of last 30 years was made.

8. Present case is covered up by K. Narayana's case (supra). As stated above, there is no case of prosecution against the present petitioner. The only case is giving title clearance report by the petitioner. The report given by the petitioner turn out to be inaccurate. Petitioner ought to have taken proper care. At worst, petitioner can be said to have shown negligence. In the circumstances of the case, petitioner cannot be held liable for forgery or cheating. It was pointed out at the time of hearing that Dhirubhai Rajkotiya, who is said to have prepared forged power of attorney, has moved for discharge and the Sessions Court was pleased to allow the Revision No. 80 of 2009 of the said accused. Compared to said Dhirubhai Rajkotiya, virtually, there is no case against the present petitioner. That being so, submission of learned A.P.P. Mr. Raval that in view of rejection of discharge application, this Court should not interfere is not possible to accept.

9. In view of above discussion, present petition succeeds. The Complaint being I-C.R. No. 175 of 2005 registered with Rander Police Station, Surat is hereby quashed and set aside qua the present petitioner. Rule is made absolute. Direct service is permitted. However, it is clarified that complaint and further proceedings may proceed in accordance with law so far as other accused are concerned.