(2010) 10 AP CK 0049

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 471 of 2009

Shri K. Kishore Kumar Reddy — APPELLANT

Vs

State and Bank of India — RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 419, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2010) 10 AP CK 0049

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—This Criminal Petition is filed by the Petitioner u/s 482 Code of Criminal Procedure, seeking to quash the entire proceedings in C.C. No. 19 of 2007 on the file of learned Special Judge for C.B.I. Cases, Hyderabad.

2. Heard Sri C. Padmanabha Reddy, learned senior counsel appearing for the Petitioner and the learned Special Public Prosecutor for C.B.I. Cases.

3. The Petitioner herein is a practicing Advocate and he was also panel Advocate for Bank of India, Zonal Office, Hyderabad. Some individuals have applied for housing loans by mortgaging certain properties to the bank. After disbursement of sanctioned loans to several borrowers, it came to light that the property mortgaged by the borrowers was earlier mortgaged with Aryan Co-operative Urban Bank Limited, Nallakunta, Hyderabad, and Laxmivilas Bank, Malkajgiri, Hyderabad, by some other persons, for the purpose of loans. Thereafter, on the report lodged by the Assistant General Manager of Bank of India, Zonal Office, Hyderabad, C.B.I. registered a case against several accused persons, who include the bank officials and the Petitioner herein i.e., A-10.

4. The specific allegation against the Petitioner herein is that he being a panel

advocate of the bank, supposed to go to the Registrar offices where the documents produced by the borrowers were executed and registered and has to find out whether the said documents are genuine or whether there are encumbrances on the properties covered by the documents mortgaged, but the Petitioner failed to go to the Registrar offices and without verifying the documents gave his opinion merely by examining the documents and Encumbrance Certificates produced by the borrowers.

5. According to the prosecution, as per the circulars of the de-facto complainant bank and as per its written guidelines, the Petitioner-A-10 who is a panel advocate, has to personally verify the records and then submit his report. It was alleged against the Petitioner that had he examined all the original documents by visiting various Registrar offices in the city, he could not have given his opinion to the effect stating that the documents are genuine and the property covered by the documents has marketable title.

6. The question therefore to be determined is, even if the entire allegations in the charge sheet, which are leveled against the Petitioner are true, whether the Petitioner is liable for prosecution for the offences under Sections 120B R/w 419, 420, 467 and 468 of I.P.C. and Section 13(2) R/w 13(1)(d) of Prevention of Corruption Act, 1988?

7. The allegations leveled against the Petitioner only indicate that he was not diligent while giving his opinion and did not follow the guidelines issued by the bank to the panel advocates, which obligate him to physically verify the documents and encumbrances therein. However, it was also alleged that the builder directly approached the Petitioner, while the procedure is that the bank has to ask the opinion of the Petitioner-panel advocate and as such the communication between the bank and the advocate should be direct and confidential.

8. The said allegation is not specific, there is nothing on record to show that the Petitioner without any request from the bank gave his legal opinion at the instance of the builder. The allegation therefore is imaginary and it is so in the charge sheet. The very fact that the bank relied upon the opinion of the Petitioner clearly indicates that the opinion was called for by the bank. The Assistant General Manager of the de-facto complainant bank, made a complaint to the Bar Council of the State of Andhra Pradesh against the Petitioner and the Bar Council in the complaint No. 114 of 2006 after making a thorough inquiry into the allegations passed an order to the effect that it is not the duty of the a Advocate-Respondent to identify the borrowers, it is not his part of duty to inspect the subject properties, personally identify the concerned persons, inspect and conduct searches in various offices as expected by the complainant, the only duty of the panel advocate is that he should diligently examine the documents, material placed before him by a party and offer his opinion with reference to the relevant provisions of law. Ultimately the Bar Council of Andhra Pradesh, concluded that there is no negligence on the part of the Advocate-Respondent, in

the matter of giving his legal opinion, there is no prima-facie case made out against him and referring the matter to the disciplinary committee for enquiry would be an abuse of process of law. Holding as such, the Bar Council dropped further action against the Petitioner.

9. The prosecution has not specifically indicted the Petitioner that he conspired with any of the borrowers or builder or that he had any knowledge about producing false documents by the Petitioners and had connivance with them in giving his legal opinion. Even if it is considered that the Petitioner was not diligent while giving his legal opinion, he cannot be accused of committing any criminal offence. The allegation that the Petitioner failed to exercise more care, which was required before giving his opinion, does not involve any criminal offence. Further, in the normal course, any Advocate is expected to examine the documents produced by the parties thoroughly and then he can give his opinion. In the instant case, the Petitioner examined the documents produced by the parties and also the encumbrance certificates and gave his opinion stating that the documents are genuine and the property had marketable title. There was no occasion for the Petitioner to find out whether the same property was in mortgage twice to Aryan Co-operative Urban Bank Limited, Nallakunta, Hyderabad, and Laxmivilas Bank, Malkajgiri, Hyderabad.

10. For the foregoing reasons, I am of the considered view, that even if the entire material gathered against the Petitioner by the investigating agency is examined in the light of the allegations levelled against him, it does not disclose any Criminal offence, and prosecuting him for the offences under Sections 120B R/w 419, 420, 467 and 468 of I.P.C. and Section 13(2) R/w 13(1)(d) of Prevention of Corruption Act, 1988, is nothing but abuse of process of law.

11. If the proceedings in C.C. No. 19 of 2007 on the file of learned Special Judge for C.B.I. Cases, Hyderabad, are allowed to continue against the Petitioner, it causes much inconvenience and great loss to the Petitioner and it will also result in miscarriage of justice.

12. Therefore, the entire proceedings in C.C. No. 19 of 2007, on the file of learned Special Judge for C.B.I. Cases, Hyderabad, are hereby quashed against the Petitioner-A-10.

The Criminal Petition is accordingly allowed.

