

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3756 of 2016

Kulamani Parida

....

Petitioner

Mr. R.K. Rout, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. J. Katikia, AGA

CORAM:

JUSTICE CHITTARANJAN DASH

DATE OF JUDGMENT : 09.11.2022

Chittaranjan Dash, J

1. Heard learned counsel for the parties.
2. By means of this application, the Petitioner seeks to quash the order dated 17th October, 2015 passed in C.T. Case No.3664 of 2014 by the S.D.J.M., Bhubaneswar whereby the court took cognizance of offence under Sections 420/467/468/471/120-B IPC involving the Petitioner along with others.
3. The background facts of the case is that on 22nd September, 2014 the complainant, K. Jagannathan, Chief Manager, State Bank of Travancore, Bhubaneswar Branch situated over Plot No.N-1/40, IRC Village, Nayapalli, Bhubaneswar, Dist. Khurda alleged that the State Bank of Travancore, Bhubaneswar Branch had sanctioned financial assistance to the tune of Rs.600 lakhs (working capital limit of Rs.500 lakhs and letter of credit limit of Rs.100 lakhs) to M/s. Chhotray Suppliers, a partnership firm having its office at Plot No.2008/1199, Nayapalli, Bhubaneswar. Mr. Siba Narayan Chhotray is the Managing partner and Mrs. Swapna

Chhotray is the partner of the firm. Mr. Siba Narayan Chhotray is also the Managing Director of M/s. Srabani Constructions Pvt. Ltd wherein Mrs. Swapna Chhotray is the Director. Necessary security and documents were executed by Mr. Siba Narayan Chhotray and Mrs. Swapna Chhotray in favour of State of Bank of Travancore, Bhubaneswar Branch as per the terms and conditions laid down in the sanction letter given by the complainant, *inter alia*, on mortgage of immovable property belonging to Mrs. Swapna Chhotray and M/s. Srabani Constructions Pvt. Ltd. , Nayapalli, Bhubaneswar. M/s. Srabani Constructions Pvt. Ltd. had mortgaged the property situated over Plot No.89, pertaining to Khata No.82/23 measuring Ac.0.721 decimals in Mouza-Damodarpur, Khandagiri, Bhubaneswar in favour of State of Bank of Travancore, Bhubaneswar Branch belonging to M/s. Srabani Constructions Pvt. Ltd. which they obtained through sale deed bearing No.4872, dated 24th September, 2004 of SRO, Khandagiri. The mortgage was created by Sri Siba Narayan Chhotray in the capacity as the Managing Director of the company vide Resolution dated 18th December, 2012. Mr. Siba Narayan Chhotray and Mrs. Swapna Chhotray remained guarantors to the facility granted in favour of M/s. Chhotray Suppliers and executed guarantee documents in favour of State of Bank of Travancore, Bhubaneswar Branch. Mr. Siba Narayan Chhotray in the capacity as Managing Director of M/s. Srabani Constructions Pvt. Ltd. registered the charge in respect of the mortgaged property in favour of the Bank with Registrar of Companies, Cuttack on 20th December, 2012 by filing Form No.8. During the course of operation of working capital account for the cash credit limit to the tune of Rs.500 lakhs, M/s. Chhotray Suppliers serviced the interest charge regularly. Bank in regular course of business for search report on 16th June, 2014 noticed that at Registrar of Companies, Bank's charge over

the mortgaged property has been shown as satisfied on 12th June, 2013. That the alleged accused persons in the above referred C.T. Case stated to have submitted a scanned letter of “No Objection Certificate” purportedly issued by the Bank stating that M/s. Chhotray Suppliers have repaid the entire dues to the Bank (working capital Rs.500 lakhs and letter of credit limit of Rs.100 lakhs) in full and there is no outstanding from M/s. Chhotray Suppliers along with charge satisfaction in Form No.17 digitally signed by Sathua Laxmidhar, (an employee working under Mr. Siba Narayan Chhotray,). as Chief Manager of the State Bank of Travancore, Bhubaneswar Branch to the Registrar of Companies satisfying corporate guarantee of M/s. Srabani Constructions Pvt. Ltd. to secure cash credit/letter credit limit is lifted/cancelled. The contents of the charge satisfaction Form No.17 are certified by one Kulamani Parida, the Chattered Accountant of M/s. Chhotray Suppliers (the Petitioner in the present application).

4. Whereas, no such letter has been issued and signed by the Chief Manager, State Bank of Travancore, Bhubaneswar Branch. The loan was never satisfied as on 12th June, 2013. When the matter of forgery and impersonation was brought to the notice of the accused persons such as Mr. Siba Narayan Chhotray, Mrs. Swapna Chhotray, Kulamani Parida, the present Petitioner, M/s. Chhotray Suppliers, M/s. Srabani Constructions Pvt. Ltd. they admitted the forgery orally and had submitted letters. However, the total dues to the Bank had been fully remitted by them on 25th August, 2014. The above said persons being accused of the above act connived and conspired in siphoning off the public money with an intention to defraud the Bank and accordingly the case was registered and investigated into.

5. On the basis of the complaint of the Bank as narrated above, received by EOW, Bhubaneswar, the EOW P.S. Case No.23/14 under Sections 467/468/471/420/120-B IPC was registered and on the direction of the S.P. E.O.W, investigation commenced into the matter.

6. The Investigating Officer having taken up the investigation, examined the complainant and the witnesses, seized the connected documents from State Bank of Travancore, Bhubaneswar Branch as well as from M/s. Srabani Constructions Pvt. Ltd. verified the Form No.8 and Registrar of Companies, received the certified computer generating documents from the Registrar of Companies under requisition. On scrutiny of Bank statements of M/s. Chhotray Suppliers, it is ascertained that M/s. Chhotray Suppliers closed their Account No.67205271336 with State Bank of Travancore, Bhubaneswar Branch on 25th August, 2015 and that the said Bank to have given a certificate on 23rd September, 2014.

7. It further revealed that on 10th June, 2013 the said persons submitted Form No.17 before the Registrar of Companies, Cuttack claiming that they have repaid the loan amount to State Bank of Travancore, Bhubaneswar Branch and declaring that there is no outstanding against the company whereas on scrutiny it is ascertained that on 10th June, 2013 M/s. Chhotray Suppliers was having outstanding of Rs.4,99,85,793.41 to be paid to the State Bank of Travancore, Bhubaneswar Branch in the said Account No.67205271336. On scrutiny of Form No.17 at the Registrar of Companies it is also ascertained that Sri Siba Narayan Chhotray puts his digital signature on Form No.17 showing that the company namely M/s. Srabani Constructions Pvt. Ltd. satisfying the corporate guarantee on 12th June, 2013 including a scanned letter of “No Objection Certificate” purportedly issued by the Bank on 10th June, 2013

stating that M/s. Chhotray Suppliers have repaid the entire dues to the Bank in full and there is no outstanding from M/s. Chhotray Suppliers and copy of the extract of the minutes of the meeting of Board of Directors as on 10th June, 2013 at the office of the company at 11 a.m. regarding closure of the said loan. One Sathua Laxmidhar an employee under M/s. Chhotray Suppliers puts his digital signature as Chief Manager, State Bank of Travancore, Bhubaneswar Branch. The present Petitioner, namely, Kulamani Parida, Chattered Accountant of M/s. Chhotray Suppliers also to have put his digital signature certifying the satisfaction of charge in Form No.17. Allegedly, therefore, all the above persons submitted forged documents created purposefully.

8. It is further alleged that during interrogation of Kulamani Parida, Chattered Accountant of M/s. Srabani Constructions Pvt. Ltd. it is ascertained that on 10th June, 2013 Mr. Siba Narayan Chhotray of M/s. Srabani Constructions Pvt. Ltd. gave letter to him (Kulamani Parida) enabling him to file Form No.17 before the Registrar of Companies, Cuttack in favour of M/s. Srabani Constructions Pvt. Ltd. along with a scanned letter of 'No Objection Certificate' purportedly to have been issued by State Bank of Travancore, Nayapalli, Bhubaneswar and other connected documents of the said company. Accordingly, the present Petitioner Kulamani Parida submitted Form No.17 before the Registrar of Companies regarding satisfaction of charge over the mortgaged property but examination of Form No.17 reveals that he had not verified from the concerned Bank regarding issue of "No Objection Certificate" in favour of M/s. Chhotray Suppliers. The investigation further revealed that the certificate enrollment form regarding application for digital signature in favour of Kulamani Parida, Sri Siba Narayan Chhotray and Laxmidhar Sathua, has been registered by Tata Consultancy Pvt. Ltd.,

Hyderabad in favour of Kulamani Parida vide Enrollment No.2672765 valid for two years, Laxmidhar Sathua vide Enrollment No.2823689 and Sri Siba Narayan Chhotray created two digital signature vide Certificate Enrollment Form No.2914143 and 2698034 respectively valid for two years. Laxmidhar Sathua also changed his name as Sathua Laxmidhar.

9. During investigation, it is further revealed from the document that the seized documents were sent for examination and opinion of the hand writing bureau and opinion was obtained and on verification, it is found that documents were forged.

10. Be that as it may, the investigation revealed that the present Petitioner Kulamani Parida in connivance and conspiracy with Sri Siba Narayan Chhotray, Mrs. Swapna Chhotray and M/s. Chhotray Suppliers and M/s. Srabani Constructions Pvt. Ltd. along with Laxmidhar Sathua created fake "No Objection Certificate" and got the signature of the Chief Manager, State Bank of Travancore, Nayapalli, Bhubaneswar Branch forged and in a fraudulent manner submitted the form before the Registrar of Companies, Cuttack representing the same to be charged in documents. Consequent upon registration of the case against the above said persons, the learned S.D.J.M., Bhubaneswar took cognizance of the offences involving the Petitioner and others as impugned herein.

11. It is submitted by learned counsel for the Petitioner that in due discharge of his professional duty the Petitioner submitted the "No Objection Certificate" in Form No.17 before the Registrar of Companies as was supplied to him by his client M/s. Chhotray Suppliers. According to the learned counsel it is the duty and responsibility of the client to supply the document necessary for compliance for its onward submission before the competent authority and there is no scope for the

Chartered Accountant to go behind the document to ensure that the documents in question supplied by the client is genuine or not. As a professional, the Chartered Accountant discharged his duty on good faith and submitted the form before the Registrar of Companies not being aware of the manner in which the document in question asked to be submitted before the Registrar of Companies was procured by the client. Consequently, nothing can be attributed to the Chartered Accountant as regards the duty discharged by him as required of him professionally as instructed/directed by the client. Relying upon the decision in the cases of *Nrusinghnath Mishra – v. Republic of India*, reported in (2010) 46 OCR 623, *Nimain Charan Mohanty v. Republic of India* reported in (2015) 1 ILR, Cuttack 1122 and *Central Bureau of Investigation, Hyderabad v. K. Narayan Rao*, reported in (2013) 1 OLR SC 74. Learned counsel for the Petitioner seeks quashing of the order of cognizance vis-à-vis the Petitioner.

12. Learned Additional Government Advocate for the State, on the other hand, vehemently opposed the contention raised by the learned counsel for the Petitioner and *inter alia* submitted that the documents submitted before the Registrar of Companies by the Petitioner as a Chartered Accountant ought to have verified its genuineness before being submitted and cannot escape the rigor of law on the plea of his discharge of duty as professional on good faith and submitted the impugned order taking cognizance to be just and proper.

10. In the case of *Central Bureau of Investigation v. K. Narayana Rao*, the Apex Court held as under :

23) 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 practicing 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.

24) In *Jacob Matghew vs. State of Punjab & Anr.* (2005) 6 SCC 1 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.

25) In *Pandurang Dattatraya Khandekar vs. Bar Council of Maharashtra & Ors* (1984) 2 SCC 556, this Court held that "...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.

26) 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.

27) 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 Sections 420 and 109 of IPC 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.

28) In the light of the above discussion and after analyzing all the materials, we are satisfied that there is no prima facie case for proceeding in respect of the charges alleged insofar as respondent herein is concerned. We agree with the conclusion of the High Court in quashing the criminal proceedings and reject the stand taken by the CBI.

13. In the case of *Nrusinghnath Mishra – v. Republic of India*, this Court while dealing with the matter in respect to the professional duty of an Advocate held as under:

At this juncture, it would be profitable to note that the other co-accused is an advocate, who was engaged by the New India Assurance Company Ltd. to investigate the case and while performing such professional work, he sent a report that he could not trace out any records regarding hospitalization of the petitioner at S.C.B. Medical College, Hospital. There is no material whatsoever to show prima facie that the co-accused in order to cause an illegal gain to either himself or the petitioner or to cause illegal loss to the company gave such a report. A report or opinion rendered by an advocate, to his client, if found to be

incorrect, cannot constitute an offence when nothing is shown that such report or opinion is purposefully given to commit any offence. The prosecution has also not come out with any material disclosing meeting of mind between the two accused persons to bring home the charge under section 120-B IPC. Rather, the allegation in the F.I.R. was made that the co-accused conspired with one Beni Madhan Dwivedi, who was functioning as a Divisional Manager and the said Beni Madhab Dwivedi is not an accused in the charge sheet filed.

5. The impugned order passed by the learned C.J.M. taking cognizance of the offence under sections 420/120-B IPC ex-facie shows non-application of judicial mind by the learned C.J.M. It is a settled position of law that when a charge sheet is filed after investigation against the accused persons alleging commission of offence, the court taking cognizance is to apply his judicial mind to find out as to whether there is any material showing that such offence has been committed.

6. The Court, while exercising jurisdiction under section 482 Cr.P.C. to quash a criminal proceeding, no doubt, should exercise such power sparingly and with circumspection. If, however, it is found that on accepting the materials produced by the prosecution, which were collected during investigation along with the F.I.R. in its entirety, do not disclose commission of any offence, the court is to quash the criminal proceeding in order to prevent abuse of the process of the court and to secure the ends of justice. (See *State of West Bengal and others v. Swapan Kumar Guha and others* , AIR 1982 SC 949, *State of Haryana and others v. Ch. Bhajan Lal and others*, AIR 1992 SC 604, *Sanu Das and another v. State of Orissa and another* , 1999 (I) OLR 442, *G. Sagar Suri and another v. State of U.P. and others* , (2000)18 OCR (SC) 355, *Ajaya Mitra v. State of M.P. and others* (2003) 25 OCR (SC) 226, *Uma Shankar Mishra v. State of Orissa*, (2003) 25 OCR 611 and *Hira Lal Hari Lal Bhagwati v. CBI New Delhi*, (2003) 25 OCR (SC) 770).

7. In the instant case, accepting the entire materials produced by the prosecution along with the charge sheet in its entirety, no offence is made out against the petitioner as well as the co-accused. Allowing the case to continue would only amount to abuse of the process of the court as the chance of conviction is bleak. Hence, to secure the ends of justice, this Court finds that this is a fit case where the entire proceeding is to be quashed to secure the ends of justice.

14. In the case of *Nimain Charan Mohanty v. Republic of India*, this Court relying on the decision reported in the case of *Central Bureau of Investigation, Hyderabad v. K. Narayana Rao* held as under:

“9. Having gone through the order of the learned Special Judge, C.B.I., it appears that the learned Special Judge has entered into conjectures and surmises and has held that the petitioner has submitted a false legal opinion about the genuineness of the document in question. This finding regarding the legal opinion about the genuineness of the document in question does not arise in this case. The moot question that is to be decided at this stage is, if there are sufficient materials on record to find out if the present petitioner has entered into a criminal conspiracy with other accused persons to return the N.S.Cs. in favour of main accused and in pursuance to such criminal conspiracy he deliberately rendered an illegal opinion. In the case of **Central Bureau of Investigation, Hyderabad v. K. Narayana Rao** (supra), the Supreme Court has held that a lawyer owes an “unremitting loyalty” to the interests of the client. The Supreme Court has further held that merely because his opinion may not be acceptable he cannot be mulcted with the criminal prosecution, particularly, in absence of tangible evidence that he associated with other conspirators. The Supreme Court has further held that at the most, he may be liable for gross negligence of professional misconduct if it is established by acceptable evidence and cannot be charged of the offence under Sections 420 and 109 of the I.P.C. along with other conspirators without proper and acceptable

link between them. It is further made clear by the Supreme Court 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 were lacking in the reported case.

11. In this case, having gone through the records produced by the learned Retainer Counsel for the C.B.I., this Court has come to the conclusion that there is not an iota of evidence to show that there is a conspiracy between the petitioner and the other accused persons. The only admitted fact is the opinion given by the petitioner appears to be illegal. The opinion given in the case may not be legal in view of the fact that investigation of the case was pending. However, even if the N.S.Cs are returned to the main accused after keeping copies thereof, the prosecution can well rely on the secondary evidence after laying foundation as envisaged under Section 65 of the Evidence Act and in no way the prosecution case can be weakened by the conduct of the petitioner. Nowhere in the charge-sheet filed by the C.B.I., the Investigating Agency, has clarified how and with whom the present petitioner has entered with a conspiracy as consequence of which he gave a wrong opinion to release the stolen/forged N.S.Cs. There is also no material, direct or circumstantial, to hold that the petitioner has entered into a criminal conspiracy with other accused.”

15. In the case in hand, admittedly the present Petitioner is the Chattered Accountant of M/s. Chhotray Suppliers and M/s. Srabani Constructions Pvt. Ltd. In sequel, discharging his professional duty the Petitioner carried out the instructions given by the said firm for being complied with in his professional front. Admittedly, the document, i.e. the “No Objection Certificate” in question supplied by the client to the Petitioner for being annexed with the Form No.17. The declaration submitted in Form No.17 is one at the instruction of the client only. Needless to say

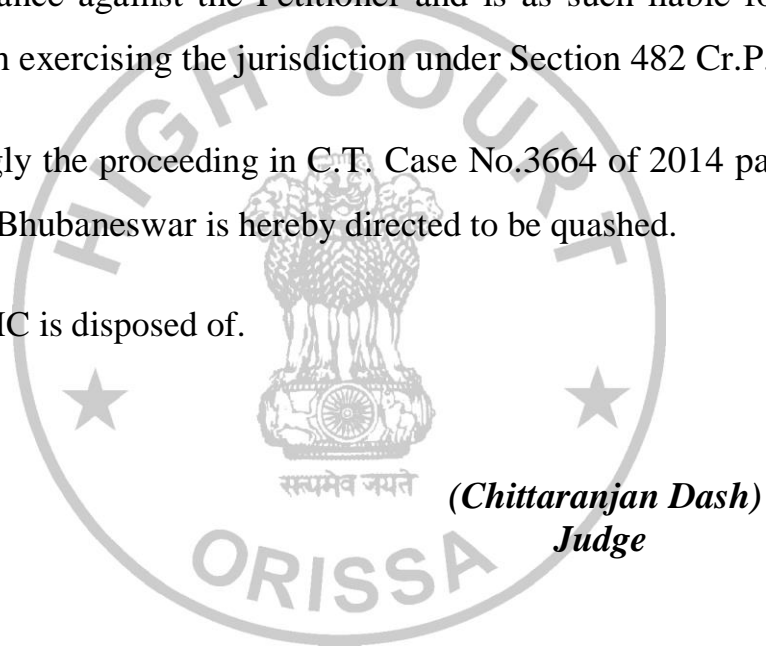
that while discharging the professional duty as Chattered Accountant in submitting the compliance before the authority the Petitioner need to depend upon his client in procuring the document such as the statement of the Bank and other documents pertain to the compliance. Consequently, nothing can be attributed that the Chattered Accountant has any role either in preparing or procuring the document for being placed before the authority and to ascertain the genuinity thereof since consequence of supply or procurement of such document would obviously go to the client and not to the professional. It is in such view of the matter when the entire gamut of allegations is summed up would reveal that the action performed by the Petitioner in submitting the Form No.17 before the Registrar of Companies along with the documents such as “No Objection Certificate” is in due discharge of the compliance of the direction of the client and there cannot be a conspiracy allegedly to have been entered into by the Petitioner along with client. It is indeed true that the Court while exercising the jurisdiction under Section 482 Cr.P.C. need to circumspect the overall facts emerging the allegation and to arrive at a conclusion as to if there appears material constituting offence against the Petitioner.

16. In such view of the matter, the allegation appearing in the F.I.R. and the complaint of the Bank vis-à-vis the Petitioner does not make out a case constituting the offences under Sections 420/467/468/471/120-B IPC as neither the Petitioner is part of the business transaction allegedly to have conducted by the co-accused persons having interest therein nor that the document in question allegedly to have been forged and fabricated is attributed to the present Petitioner in absence of a material showing his personal interest in any gain/loss of the parties conducting business except that he retains his professional interest. This Court while

dealing with the matter is alive of the fact that the offences alleged are the category of offence involving the moral aptitude and detrimental to the society in general but have strong conviction that the act of the Petitioner in discharging his professional duty is above all the allegations alleged save and except discharging part of his professional duty. Consequently, this Court finds no material to proceed against the Petitioner attributing the criminal liability so as to continue the proceeding. The learned court below having not specifically recorded any reasoning vis-à-vis the present Petitioner erroneously travelled in taking cognizance against the Petitioner and is as such liable for being interfered with exercising the jurisdiction under Section 482 Cr.P.C.

17. Accordingly the proceeding in C.T. Case No.3664 of 2014 passed by the S.D.J.M., Bhubaneswar is hereby directed to be quashed.

18. The CRLMC is disposed of.



KC Bisoi /Secretary