



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 95/2019

Gopi Kishan S/o Shri Chagan Lal, Aged About 58 Years, Resident
Of Achariya Pada, Jaisalmer (Raj.)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

Connected With

S.B. Criminal Revision Petition No. 1309/2018

Rani Dan S/o Sh. Kishanlal , Advocate, Aged About 65 Years, B/c
Sevaj , Chachapada, Jaisalmer

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s) : Mr. L.D. Khatri
Mr. Dhan Raj Vaishnav
For Respondent(s) : Mr. N.S. Bhati PP

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reserved on 16/05/2022

Pronounced on 25/05/2022

1. These criminal revision petitions under Section 397 read with Section 401 Cr.P.C. has been preferred against the order dated 01.11.2018 passed by the learned Special Judge, (Prevention of Corruption Act), Jodhpur in Criminal Regular Case No.35/2014, whereby the learned court below framed the charges against the accused-petitioners for the offences under Sections



13(1)(d) and 13(2) of the Prevention of Corruption Act and under Section 120B IPC.

2. Brief facts of this case, as placed by learned counsel for the accused-petitioners, are that certain Councilors of Municipality, Jaisalmer submitted a complaint before the office of the concerned Anti Corruption Bureau, which was registered as complaint No.225/2006.

2.1 Upon the investigation made into the aforementioned complainant, it was found that one Laxmi Narayan Sharma, the then Lower Division Clerk, Municipality, Jaisalmer, in the year 1985, being an employee of the said Municipality, had got allotted a plot of land in a colony on subsidized rates; however since the said plot was falling in a pit, therefore, he made another application before the Municipality for exchange of the said plot with another plot of land in the same colony; whereupon his brother Jeevan Lal drawn the comments that the plot of land can be exchanged, whereas as per the relevant rules, Jeevan Lal was supposed to make comments otherwise than the one as made.

2.2 The present accused-petitioner Advocate Rani Dan, who was the Legal Advisor also alleged to have not given the correct legal opinion in the matter, and also, the present accused-petitioner, Gopi Kishan, the then Chairman, on the basis of such incorrect legal opinion had issued the patta in question, allegedly contrary to the rules.

2.3 As per the prosecution, from the aforementioned backdrop, the accused persons, in their capacity as a public servants, had acquired for themselves the pecuniary benefits, while adopting the corrupt and illegal means, thereby causing the Municipality/State Exchequer a huge loss to the tune of Rs.7,18, 800/-.



2.4 On the basis of the aforementioned report, a case was registered, and upon due investigation, a charge-sheet was submitted under Sections 13(1)(d) & 13(2) of the Prevention of Corruption Act as well as Section 120-B IPC against the accused persons, namely, Laxmi Narayan, Jeevan Lal, Rani Dan (present petitioner) and Gopi Kishan (present petitioner).

3. Learned counsel for the accused-petitioner submitted that being the employee of the Municipality, the said Laxmi Narayan was rightly allotted the plot of land in question, in a lawful manner, and the same kind of allotment was also made in favour of other employees of the Municipality. Learned counsel further submitted that the earlier plot of land, that was allotted to Laxmi Narayan was falling in a pit and therefore, he sought exchange thereof by allotment of another plot of land in the same colony, on count of the earlier plot being not suitable for the usage of Laxmi Narayan.

3.1 Learned counsel also submitted that the Laxmi Narayan has also surrendered the lease deed issued in respect of the allotment of the first plot, and thus, there was no irregularity in making the allotment of the second plot in question, as alleged by the prosecution.

3.2 As regards the case found to be made out against petitioner-Rani Dan, learned counsel submitted that the said petitioner has only given a legal opinion, and it was not proved that such opinion was given by receiving any illegal gratification, nor there was any conspiracy behind furnishing of such legal opinion. Moreover, as per learned counsel, merely for giving a legal opinion, no offence can be made out against an Advocate (enrolled and registered as a lawyer and not holding any office as an employee), that too, in



absence of the sufficient evidence available on record. Further, as per learned counsel, the prosecution has devised the methodology of pick and choose so as to implicate the present accused-petitioners in this case, as the charge-sheet was filed, while keeping aside certain other persons so as to enable them to evade the prosecution.

3.3 As regards the accused-petitioner Gopi Kishan, learned counsel submitted that the dispute with regard to the plot of land in question is going on since 1983; in case, the said petitioner wishes to extend any unlawful pecuniary benefit to Laxmi Narayan, then certainly, Laxmi Narayan would not have been asked to deposit the amount as per the prevailing rates; thus, the act of the said petitioner cannot be said to be unlawful in any manner whatsoever, nor there is even an iota of evidence available on record, which could show any conspiracy hatched at the instance of the accused-petitioner Gopi Kishan.

3.4 Thus, as per learned counsel, the learned court below has erred in passing the impugned order of framing of charges against the accused-petitioners, without taking into due consideration the overall facts and circumstances of the case and without duly appreciating the evidence placed on record before it. Learned counsel therefore, submitted that the impugned order of framing of charges cannot be sustained in the eye of law, and accordingly, deserves to be quashed and set aside by this Court.

4. On the other hand, learned Public Prosecution, while opposing the aforesaid submissions made on behalf of the accused-petitioners, submitted that the learned court below has taken into due consideration the overall facts and circumstances of the case and made a due appreciation of all the evidence placed



on record before it; the said due appreciation is discernible on record, more particularly, in view of the fact that the charge against the accused-petitioners to the effect of causing a huge loss to the tune of Rs.7,18,800/- to the Municipality/State Exchequer, was duly proved by the prosecution by leading cogent and sufficient evidence on record before the learned trial court.

Thus, the impugned order has been passed, after due examination of each and every aspect of the case, as required at the stage of framing of charges. Moreover, as per the learned Public Prosecutor, at the stage of framing of charges, the concerned court is not required to delve into a detailed analysis or roving enquiry.

5. Heard learned counsel for the parties as well as perused the record of the case.

6. As regards the case of **petitioner-Gopi Kishan**, this Court finds that at the stage of framing of charge, the learned trial court is not required to conduct a meticulous appreciation of evidence or a roving inquiry into the same, as was laid down by the Hon'ble Apex Court in the judgments rendered in ***Ashish Chadha v. Asha Kumari and Ors (2012) 1 SCC 680*** and ***State of NCT of Delhi and Ors. vs. Shiv Charan Bansal and Ors. (2020) 2 SCC 290***.

6.1. At the stage of framing of charge, the Court is only required to prima facie presume whether a case against the accused person(s) may be made out. And that the facts that emerge from the case may be taken at face value; if they disclose the existence of ingredients constituting the alleged offences, then the charges may be framed.



6.2. The word "presuming" in Section 228 Cr.P.C. has been consciously inserted by the legislature, with the intention that if the Court strongly suspects that the accused is in any way connected with the commission of the alleged offences, then it may proceed to frame charges against the accused. The said word must be read ejusdem generis to the opinion that there is a ground for forming an opinion that the accused has committed the alleged offence.

6.3. It would also be immaterial whether the said opinion has been formed either on the basis of direct, or circumstantial evidence.

6.4. The Hon'ble High Courts' revisional jurisdiction under Section 397 Cr.P.C. is limited, more so when the order of the lower court is one of framing of charge against the accused.

6.5. The order passed by the court framing charges against the accused, need not be a detailed order as Section 228 Cr.P.C. is tentative, meaning thereby, if a strong suspicion exists in the mind of the court at the said stage, then the same is sufficient for the court to proceed with the framing of the charge against the accused. And if a prayer for discharge has been made before a revisional court, then the same may only be allowed if the court finds that the materials on record are wholly insufficient for the purpose of trial.

7. Now coming to the case of the **petitioner-Rani Dan**, who is an Advocate, controlled and registered with the Bar Council and not holding any office in the capacity of being an employee, this Court is conscious of the precedent law laid down by the Hon'ble Supreme Court in **Central Bureau of Investigation**,



Hyderabad Vs. K.Narayana Rao, 2012 CRI.L.J. 4610 (SC),

relevant portion of which reads as under:

16. . . . As stated earlier, the only allegation against him is that he submitted false legal opinion about the genuineness of the properties in question. It is the definite stand of the Respondent herein that he has rendered Legal Scrutiny Reports in all the cases after perusing the documents submitted by the Bank. It is also his claim that rendition of legal opinion cannot be construed as an offence. He further pointed out that it is not possible for the panel advocate to investigate the genuineness of the documents and in the present case, he only perused the contents and concluded whether the title was conveyed through a document or not. It is also brought to our notice that LW-5 (Listed Witness), who is the Law Officer of Vijaya Bank, has given a statement regarding flaw in respect of title of several properties. It is the claim of the Respondent that in his statement, LW-5 has not even made a single comment as to the veracity of the legal opinion rendered by the Respondent herein. In other words, it is the claim of the Respondent that none of the witnesses have spoken to any overt act on his part or his involvement in the alleged conspiracy. Learned senior Counsel for the Respondent has also pointed out that out of 78 witnesses no one has made any relevant comment or statement about the alleged involvement of the Respondent herein in the matter in question.

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 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.

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 Indian Penal Code 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.

7.1 The case of **petitioner-Rani Dan**, Advocate, when seen in light of the aforementioned precedential backdrop, and more particularly when it is apparent on the face of the record that the role of the said petitioner, in the present case, was exercised only as an Advocate, this Court is being conscious of the settled legal position, finds that an Advocate, though is bound by his professional conduct, but can only give his advice to the best of his ability and capacity; an Advocate never gives to his client an assurance that his legal opinion/advice would result into a win-win situation for his client, in any circumstances. Once an advice is given by an Advocate, it is the prerogative of the party concerned



to adhere to such advice or not. Such professional advice however, cannot attract criminal proceedings, as the professional advice is a very delicate issue between a client and an Advocate, for which the Advocate cannot be held criminally liable. Thus, if any legal advice rendered by an Advocate goes wrong, the same would not subject him to criminal prosecution, as a lawyer.

7.2 As observed above, an Advocate, at the most, may be liable for gross negligence or professional misconduct, if it is established by placing a cogent evidence on record, but an Advocate cannot be charged for the offences, as alleged herein, alongwith other conspirators. Thus, when there is nothing substantial on record to show that the petitioner-Rani Dan was hand in glove with other conspirators, so as to deliberately cause a financial loss to the State Exchequer, this Court is of the firm opinion that merely on the basis of a professional advice/opinion, the lawyer's prosecution, as done in the present case, cannot be sustained in the eye of law.

7.3 This is more so when the prosecution has failed to prima facie prove that the petitioner-Rani Dan, Advocate was involved into a conspiracy of causing a financial loss to the State Exchequer.

7.4 If an Advocate is being prosecuted, as done in the present case, merely for rendering a legal advice/opinion, it shall not be possible for any lawyer to render such professional advice, more particularly, when such a professional advice, if found to be non-favourable for the client, the same would result into criminal prosecution against a lawyer, and in such circumstances, the system of justice delivery would suffer, as lawyers being an



important component of the justice delivery system would not be able to give their professional advice without fear and favour.

8. As an upshot of the above discussion, this Court finds that the impugned order dated 01.11.2018 does not suffer from any legal infirmity, so far as **petitioner-Gopi Kishan is concerned**, so as to call for any interference by this Court, at this stage.

However, so far as **petitioner-Rani Dan is concerned**, this Court, in view of the aforesaid precedent law and the observations made hereinabove, deems it appropriate to discharge him of all the charges/offences alleged against him, while quashing and setting aside the impugned order, qua him.

9. Consequently, the **petition No.95/2019 preferred by petitioner-Gopi Kishan is dismissed**. However, **petition No.1309/2018 preferred by petitioner-Rani Dan is allowed**, and accordingly, while quashing and setting aside the impugned order dated 01.11.2018 passed by the learned Special Judge, Sessions Court (Prevention of Corruption Act), Jodhpur in Criminal Regular Case No.35/2014 qua the **petitioner-Rani Dan**, he is discharged of all the charges/offences alleged against him, in the present case. All pending applications stand disposed of.

(DR.PUSHPENDRA SINGH BHATI), J.

SKant/-