

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.R. 1920 of 2014
With
CRAN 1 of 2014 (OLD CRAN 2773 OF 2014)

Bhaskar Banerjee
-Vs-
Central Bureau of Investigation & Anr.

For the Petitioners: Mr. Debasish Roy, Adv.
Mr. Avik Ghatak, Adv.
Mr. Amit Ranjan Pati, Adv.

For the CBI/ O.P. No.1 : Mr. P. Bajpayee, Adv.

For the O.P. No. 2 : Mr. Kausik De, Adv.
Ms. Mohini Majumder, Adv.

Heard on : 31.03.2022.

Judgment on: 08.04.2022.

Ananda Kumar Mukherjee, J. :-

1. The revisionist herein is an advocate who has been fastened with a criminal liability under section 420, 468, 471, 120B of IPC for providing false and improper legal advice which was instrumental in sanction of a bank loan to a company which turned NPA.

2. Petitioner filed this application under **section 401** read with section **482 of the Code of Criminal Procedure**, 1973 praying for quashing of proceedings in GR Case No. 4105 of 2013, arising out of Central Bureau of Investigation, Enforcement Offences Wing, Kolkata Case No. RC 07/E/011-Kolkata dated 16.12.2011 under **sections 420, 468, 471 read with section 120B** of the Indian Penal Code, pending before Learned Metropolitan Magistrate 22nd Court at Kolkata.

3. Mr. Partha Das Chowdhury and Smt. Baisali Mukherjee the two directors of Emotions Infomedia Private Limited applied for **cash credit loan** facility before **Opposite Party no.2/** Bank. The petitioner an empanelled advocate of IDBI Bank/ Opposite Party no.2. prepared a favorable Search Report on the basis of two Title Deeds of immovable property produced as collateral security and cash credit accommodation was sanctioned in favour of the said company. The Opposite Party no.2/bank initially sanction a loan of **Rs. 100.00 lakhs** on 15.07.2008 in favour of the company against current and fixed assets of the company and on Collateral security by mortgage of the immoveable property, purportedly owned by **Jitendra Nath Biswas**. Title Deeds bearing no. **3441** of 1961 and **558** of 1964 in the name of Jitendra Nath Biswas were deposited with the bank in respect of **5.37 acres of land situated over various plots**. Jitendra Nath Biswas also submitted false and forged Record of Rights (porcha) and Rent receipt in his name. For enhancement of loan limit the Chartered Accountant prepared false and fabricated Balance Sheet for submitting before the Bank. Whereas the Balance Sheet for ROC showed sales

turnover as only 35 lakhs, another Balance sheet of the accused company deposited with IDBI dishonestly showed inflated sales turnover of Rs. 335 lakhs. The petitioner as an advocate for the bank after considering the documents submitted a search report on 12.08.2008 on the basis of a report prepared by the Krishnendu Chakraborty, a junior advocate.

4. The sanctioned amount of loan was disbursed to the company between 25.8.2008 and 01.11.2008. Thereafter the cash credit limit was enhanced to Rs. 150.00 lakhs against personal guarantee of one Abdul Razzak Molla, who created equitable mortgage of immovable properties standing in his name and the enhanced limit of loan was disbursed to the company on 31.08.2009. Emotions Infomedia Private Limited through his directors again applied for enhancement of the cash credit limit to Rs. 200.00 lakhs which was disbursed in January, 2010. Title Deed no. 1164 for the year 1992 in the name of Abdul Razzak Molla and Title Deed no. 1887 for the year 1972 in the name of Abdul Wadud were used for creating equitable mortgage on 04.06.2009 and 31.12.2009 respectively. The loan account of the company was declared as Non Performing Asset (NPA) with an outstanding due of Rs. 2.57 crores. It was also revealed that Title Deed bearing no 3441 of 1961 and Title Deed 558 of 1964 which were deposited with the opposite party/bank for equitable mortgage were forged documents and the actual owner of the property was Yar Ali Mondal .

5. The General Manager of the opposite party/bank lodged a complaint against the Directors of the borrowing company alleging that they entered into criminal conspiracy with Jitendra Nath Biswas, Abdul Razzak Molla and Abdul

Wadud Gazi the purported owners of the mortgage property and other unknown persons for availing the cash credit facility from IDBI bank, City SME Branch Kolkata and cheated the bank by syphoning the money on the basis of forged and fabricated Title Deeds and other false supporting papers like Record of right (porcha), Tax Receipt etc.

6. On completion of investigation the Opposite Party no. 1/ Central Bureau of Investigation submitted charge sheet no. 6 of 2013 under section 420, 468, 471 and 120B against seven persons namely, Partha Das Chowdhury one of the Directors, Abdul Razzak Molla, Abdul Wadud Gazi who provided collateral security, Bhaskar Banerjee, the petitioner and empanelled advocate, Krishnendu chakraborty a junior advocate Saibal Sengupta, chatered Accountant who prepared false and fabricated Balance Sheets and M/s Emotions Infomedia Private Limited, the company in whose name loan was drawn. Jitendra Nath Biswas who provided collateral security expired on 12.03.2010, before lodging of complaint.

7. The case against the petitioner is that the bank asked him to conduct a search and verify the title in respect of the property covered by the Title Deeds, produced in the name of Jitendra Nath Biswas. The petitioner allegedly entered into a criminal conspiracy with Partha Das Chowdhury, one of the directors and others and submitted a Title Search Report on 12.08.2008 on the basis of a report of his junior, Krishnendu Chakraborty an advocate and certified that the property was free from all encumbrances and that Jitendra Nath Biswas had a clear and a marketable title over the property.

8. In course of investigation it was unearthed that **Yar Ali Mondal**, was the actual owner of the land in respect of **Deed no. 558 of 1964 and Jitendra Nath Biswas was not the owner**. The petitioner and the other advocate entered into criminal conspiracy with the persons who took loan accommodation and by facilitating the company in obtaining the loan committed fraud on the bank by false mortgage of property which did not exist in the name of the purported owner.

9. The **grounds on which the petitioner** sought for quashing of the proceeding are that continuation of the proceeding against the petitioner is a **gross abuse of the process of court and violative of the principle of natural justice**. It is urged that the complaint does not disclosed any incriminating material against the petitioner. The charge sheet submitted against the petitioner is **without foundation and that petitioner has been falsely implicated**. Further case of the petitioner is that the uncontroverted allegation against the petitioner in the complaint would not establish the offence of cheating and criminal conspiracy against him and no useful purpose would be served by continuing the criminal proceeding against the petitioner. Learned advocate for the petitioner sought for quashing of the proceedings by placing reliance on a decision of the **Hon'ble Supreme Court of India in the case of State of Haryana Vs. Ch. Bhajan Lal and others; 1992 SUPP (1) SCC 335**. The guiding principle laid down in the said decision illustrate that the allegation made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make

out a case against the accused or where the uncontroverted allegation made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, it is a fit case for exercising the inherent power under **section 482 of the Code of Criminal Procedure** and quash the preceeding to prevent abuse of the process of any court or otherwise to secure the ends of justice.

10. Learned advocate for the petitioner to fortify his argument relied upon a decision in the case of **CBI, Hyderabad Vs K. Narayana Rao: (2012) 9 SCC 512**, where the accused, a panel advocate submitted false legal opinion to the bank in respect of 10 housing loans and did not point out the actual ownership of the properties. On the basis of an FIR, investigation was carried out and charge sheet was submitted against the advocate as one of the accused persons. It was observe by the Hon'ble Supreme Court that, the court has to find out whether any **prima facie material was available** against the advocate who has been charged with an offence under **section 420** read with section **109 of the Indian Penal Code**. It was held, "That the ingredients of the offence of criminal conspiracy are that **there should be an agreement** between the persons who are alleged to conspire and the said agreement should be for doing of an **illegal act or for doing**, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by **direct evidence or by circumstantial evidence** or by both and in a matter of common experience that direct evidence to prove circumstantial conspiracy is

rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused.” Learned advocate for the petitioner further submitted that Hon’ble Supreme Court in the said judgment has noted the role and liability of a lawyer and observe that merely because his opinion may not acceptable, he cannot be mulcted with the criminal prosecution, particularly in the **absence of tangible evidence** that he associated with the 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 **section 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 entitle to proceed under criminal prosecution.

11. Learned advocate for the petitioner argued that **petitioner was not named in the FIR and his role in the alleged offence has not been disclosed**. The only allegation against him in the charge sheet is that he gave **wrong legal opinion** to the bank on the basis of Title Deeds submitted by the bank and he did not point out actual ownership of the properties. It is argued on behalf of the petitioner that there is **no iota of evidence** against the petitioner in the charge sheet to established that the petitioner committed any **fraud against the bank** by dishonestly inducing the bank authorities to sanction any loan in favour of the petitioner, nor is there any evidence to establish that in connivance with

other conspirators the petitioner caused wrongful loss to the bank and wrongful gain to himself.

12. Learned advocate for the petitioner further relied upon a decision in the case of **Surendra Nath Pandey & Another Vs State of Bihar and another; (2020) 18 SCC 730**, wherein under similar situation an allegation of conspiracy and cheating was brought against an accused advocate of the bank who **furnished false search report/** legal opinion with regard to property, facilitating sanction of loan. In that case police submitted charge sheet against the Advocate. The petitioner advocate filed an application for quashing of the proceeding as against him but the Hon'ble Bench of Patna High Court refused to quash the proceeding. The petitioner preferred an appeal before the Hon'ble Supreme Court. Taking account of the contents of the FIR, Hon'ble Supreme Court observe that the allegations are **bald and omnibus** and do not make any specific reference to the role of the appellant in the alleged conspiracy. Relying upon the decision in **CBI Hyderabad Vs. K. Narayana Rao**, it was observed that allegation against the panel advocates of bank ought not to be allowed to proceed as the same constitute and abuse of the process of court and such prosecution may in all likelihood be abortive and futile. Taking into account the facts and the ratio of the law laid down in CBI Vs. K. Narayana Rao, Hon'ble Supreme Court set aside the order of the High Court and quashed the proceedings in so far as the appellants Surendra Nath Pandey & Suresh Prasad are concerned.

13. Reliance is further placed on another decision of the Hon'ble High Court of Delhi in the case of **A. Kumar Sharma V. CBI; (2015) SCC Online Del 7206**. In the said case the compliant bank obtained a legal search report from advocate S. Ram Jadav, who is a panel advocate of the bank. By way of further clarification the advocate submitted another search report on 15.01.1999. Subsequently, the account of the accused company to whom bank loan was granted was declared Non-Performing Asset (NPA). The bank prepared an audit report stating that the property at Karol Bag were hypothecated with the complainant bank without deposit of Title Deeds. The bank then filed a written complaint with the superintendent of police, CBI anti corruption branch. A case was registered under section 420, 468, 471 IPC and section 13(1)(d) read with 13(2) of Prevention of Corruption Act. After investigation charge sheet was submitted wherein petitioner advocate figured as one of the accused persons. The petitioner preferred an application for quashing. It was found that there was **no collusion between the petitioner** and other accused persons nor was there any evidence which could lead to a conclusion that the petitioner issued a search report to cause loss to the complainant bank and benefit to accused no 1 to 4. A copy of sale deed was shown to the petitioner but he did not have the means to come to any adequate conclusions as to whether the copy of the sale deed was forged or fabricated. In that case Hon'ble Single Bench of Delhi High Court observe that the allegation against the petitioner are that he did not verify the property for a minimum period of 13 years and gave his comments based on the last title deed and also the lease deed was not properly

scrutinized. It was held that no doubt the petitioner has committed an error in not noticing the fact, however in the light of the decision in 'CBI Vs. K. Narayana Rao' and 'Nita Rastogi' mere negligence or want of greater professional care and competence on the part of an advocate would not make him liable for a criminal offence in absence of tangible evidence. It was found that loan was sanctioned by the bank to the accused person even before the search report was submitted by the petitioner. In the said case the order of charge was quashed by the court in respect of the petitioner.

14. It is argued that the liability of the advocate who gave legal opinion would arise only when he actively participated in the process of defrauding the bank but in absence of any tangible evidence the continuation of a criminal proceeding against the advocate petitioner under section 420, 468, 471 and 120B of Indian Penal Code would be an abuse of the process of court and the proceeding is liable to be quashed.

15. Mr. Bajpayee, learned advocate for opposite party no.1/ CBI controverted the contention of the petitioner and argued that the petitioner Bhaskar Banerjee, a panel advocate of opposite party bank in collusion with the principal offenders submitted a favorable search report dated 12.08.2008, misleading the bank and facilitating the accused persons to obtain loan accommodation which was declared as Non Performing Asset. The outstanding dues of the company as on 30.11.2011 stood at Rs. 2,578001.21. On subsequent verification of security documents, it was revealed that Title Deed no. 3441 of 1961 and Title Deed no 558 of 1964 which were deposited by

Partha Das Chowdhury the Director and Jitendra Nath Biswas were forged documents and the search report submitted by the petitioner advocate was a false report to cheat the Bank. It is argued that the petitioner/advocate did not care to verify the actual ownership of the property having entered into a criminal conspiracy with the principal offenders in facilitating disbursement of the loan amount. Learned advocate for opposite party no. 1 urged that the petitioner and the principal accused persons from the very inception intended to defraud the bank and siphoned the loan amount on the basis of forged documents and search report. It is argued that the ratio of the decisions relied on behalf of the petitioner would not apply to the present facts and circumstances of this case. It is contended that there is material against the petitioner and the charge sheet prima facie establish that the petitioner entered into a conspiracy with the principal accused persons for sanction and payment of the cash credit advanced by issuing false Title search reports. It is urged that the application for quashing of proceeding filed by the petitioner is liable to be dismissed and the petitioner should face trial.

16. Learned advocate for opposite party no. 2/ IDBI Bank adopted the argument advanced on behalf of the CBI/opposite party no. 1.

17. I have considered the allegations in the FIR, material in the charge sheet and all other relevant documents. Also considered the rival arguments advanced by learned advocates for the parties. The case was registered on the basis of a complaint lodged by Opposite Party no.2 on 16.12.2011 before the Superintendent of police, Central Bureau of Investigation, Economic Offences

Wing. Kolkata. It is gather from the contents of the complaint that Partha Das Chowdhury one of the directors of Emotions Infomedia Private Limited submitted an application on 02.06.2008 before City SME Branch IDBI bank requesting them for a loan accommodation to the tune of Rs. 125 lakhs as working capital for funding project execution expenses against collateral security of immovable property of one Jitendra Nath Biswas. Title Deeds in respect of land measuring 5.3 acres, purportedly won by Jitendra Nath Biswas in two Title Deeds bearing no. 3441 dated 17.03.1961 and Title Deed no 558 dated 19.03.1964 were submitted before the bank. Loan of Rs. 100.00 lakhs was sanctioned in favour of the company on 15.07.2008 against primary security of Current Assets and Fixed Assets of the company and collateral security in respect of two immovable property of Jitendra Nath Biswas. The bank considered search report prepared on the basis of the said documents submitted by empanelled advocates of the bank on 08.08.2008 and 12.08.2008 and valuation report dated 12.08.2008 by Bank's empanelled valuer. Hypothecation documents was executed on 21.05.2008 and Jitendra Nath Biswas created equitable mortgage on 22.08.2008 by depositing two Title Deed bearing no. 3441 of 1961 and Title Deed no 558 of 1994. The sanctioned limit was disbursed between 25.08.2008 and 01.01.2008. The limit of cash credit facility was enhanced to Rs. 150.00 lakhs on 04.06.2009 on execution of a loan cum hypothecation agreement, guarantee agreements and creation of equitable mortgage in respect of two immovable properties of Abdul Razzak Molla by submitting Title Deed No. 1164 of 1992 and Title Deed No. 1887 of 1972

consisting of 'Danga', 'Bagan' and structure thereon. The enhanced credit facility was disbursed on 31.08.2009. On 23.11.2009 the accused company requested for enhancement of the cash credit limit to Rs. 200.00 lakhs which was allowed on the basis of Bill Discounting and eventually the account was declared Non Performing Asset on 30.09.2010. On verification by Sri Debasish Chowdhury, another empanelled advocate of the bank, it was found that Deed no 3441 of 1961 and 558 of 1964 were forged documents.

18. The First Information lodged by the Deputy Manager of the bank (Opposite Party No. 2) does not name the petitioner as any accused persons and it has not mentioned that the petitioner had defraud the bank for any wrongful gain or that he had entered into any criminal conspiracy with other to cheat the bank by inducing sanction of loan.

19. Learned advocate for the petitioner took me through the charge sheet submitted by the CBI and the materials and the Title verification report submitted by the petitioner. The petitioner is one of the seven charge sheet accused person. The allegation against him in the charge sheet are as under:

“(9) Investigation further revealed that for the sanction of the said Credit Limit of Rs. 100 Lakh, primary security in the form of first charge of Current Assets and Fixed Assets of the company was accepted by IDBI Bank Ltd. The company further offered a third party property, as collateral security, in the form of land measuring more or less 5.37 Acres, situated at Dag No.2, 3 & 4 under L.R. Khatian No. 254 of Mouza-Tunighata, J.L. No. 148, P.S. Habra, Dist-North 24-Parganas in the name of Jatindra Nath Biswas, covered by two title deeds bearing number 3441 dated 17/03/1961 and 558

dated 19/03/1964. A legal search report was obtained by IDBI Bank Ltd. On 12/08/2008 in respect of the said property from Shri Bhaskar Banerjee, Advocate who stated in his report that the property of Shri Jatindra Nath Biswas was free from all encumbrances and present owner Jatindra Nath Biswas has a good, clear and marketable title over the said property.

(10) Investigation further established that Partha Das Chowdhury, in criminal conspiracy with Jatindra Nath Biswas, submitted the false and forged title deed in respect of both the above said title deed bearing number 3441 dated 17/03/1961 and 558 dated 19/03/1964. Investigation further established that Partha Das Chowdhury, in criminal conspiracy with Jatindra Nath Biswas also submitted to the IDBI Bank Ltd. False and forged Record of Right (parcha) of Khatian No. 250, J.L. No. 148, Mouza-Tunighata in the name of Shri Jatindra Nath Biswas purportedly issued from O/o. Habra Land & Land Reforms Office, 24 Pgs. (N), issued on 11/08/2008 and Kajna Dakhila receipt No. L&LR/SBP C-4077186 in the name of Shri Jatindra Nath Biswas for the Tax Paid for the year 1415 (in Bengali Calendar) in respect of Khatian No.254, to enable the said property of Jatindra Nath Biswas to be mortgaged with the said Bank. The said document was forged with a view to project that the Nature of Land "Bastu" and mortgagable to Bank, whereas, in fact, the nature of land was "Danga". However, the forger of those documents could not be identified.

(11) Investigation further established that Bhaskar Banerjee, Advocate, who was empanelled Advocate of IDBI Bank Ltd., was entrusted by the Bank for Title Search of the Property of in respect of Lt. Jatindra Nath Biswas. The said Bhaskar Banerjee, Advocate, entered into a criminal conspiracy with Partha Das Chowdhury and as a result, he submitted his title Search Report, solely relying the report of his Junior Shri Krishnendu Chakraborty, Advocate and on

the basis of the report of Shri. Krishnendu Chakraborty dated 08.08.2008, he submitted his Search Report dt. 12.08.2008 by certifying that the said property is free from all encumbrances and present owner Shri Jatindra Nath Biswas has a good, clear and marketable title. During the course of investigation it is transpired that the Title Deed of the said property is false and forged. Even, Title Deed No. 558 of 1964 was found to be not in the name of Jatindra Nath Biswas. The said property, in fact, is in the name of one Yar Ali Mondal. Thus, Bhaskar Banerjee and Krishnendu Chakraborty, both Advocates, entered into a criminal conspiracy with Sh. Partha Das Chowdhury and others and as a result of the said conspiracy facilitated M/s Emotions Infomedia Pvt. Ltd. to part with Bank fund by mortgaging false property towards the Credit facility which was sanctioned basing on the Report of the Advocate.”

Further more in his Search Report addressed to the Bank dated 12.08.2008 the petitioner stated as follows:

“Dear sir,

One partha Das Chowdhury handed over some documents (xerox) copies related to the above property being instructed by you and wanted me to submit a report after necessary searching on the basis of supplied documents namely, Deed no. 3441 dated 17.3.1961 by which Jatindra Nath Biswas of Tunighata, 24 Parganas (North) purchased a land in Dag No.2 measuring about 2.48 Acres from M/S. Kishan Lal Co. represented by its Managing Director, In-Charge, Manas Bandhopadhyaya & Another, Sale Deed being No. 558 dated 19.3.1964 by which Shri Jatindra Nath Biswas purchased the property from Kunja Mohan Dutta in Dag Nos. 3,4 land 1.58 and 1.31 total 2.89 acres etc.

Search was conducted both at D.R.O., Barasat from 1996 to 2008 in respect of Index Register IT and A.D.S.R.O at Habra. As per our search made on the basis of available records no entry was found in respect of transfer in any way whatsoever.

Hence opinion may be given that as per the record available, the aforesaid property is free from all encumbrances and present Owner Shri Jatindra Nath Biswas has a good, clear and marketable title.”

20. It appears from the contents of the charge sheet that Shri Bhaskar Banerjee, Adv. stated in his report that the property of Shri Jitendra Nath Biswas was free from all encumbrances and the present owner Jitendra Nath Biswas has a good, clear and marketable title over the said property. It was stated that both the Title Deeds No.3441 dated 17.03.1961 and 558 dated 19.03.1964 were false and forged Title Deeds and that Partha Das Chowdhury, in criminal conspiracy with Jitendra Nath Biswas submitted false and forged record of right (Parcha) of the said land in the name of Jitendra Nath Biswas purportedly issued from Habra Land and Land Reforms Office and Khajna Dankhila received in the name of Jitendra Nath Biswas for the land tax paid for the year 1415 in respect of Khatiyon No.254 for the purpose of mortgage in the property.

21. It is therefore clear from such materials in the charge sheet that the forged documents were submitted to the bank by Partha Das Chowdhury and Jitendra Nath Biswas. The bank in turn directed the documents to be produced before the petitioner who on considering the same on the basis of the contents of the documents submitted his search report.

22. This act on the part of the petitioner submitting wrong verification report itself does not lead to any conclusion that the petitioner entered into criminal conspiracy with Partha Das Chowdhury and others to submit a false search

report. There is no prima facie imputation in the FIR or in the charge sheet to indicate that petitioner entered into any agreement to do or caused to be done any illegal act, or an act which is not illegal, by illegal means. Therefore, the role of the petitioner in issuing a wrong Title Search Report on the basis of false documents handed over to him by the bank, submitted by Partha Das Chowdhury, one of the directors and Jitendra Nath Biswas, the purported owner, does not prima facie establish any offence against the advocate petitioner that he entered into a criminal conspiracy with the principal offenders to defraud the bank. The petitioner was to verify the genuineness of the ownership of the land in question from the documents submitted to him by the bank and not the genuineness of the documents themselves. The report submitted by the petitioner without verification of the genuineness of the documents from the ADSR's Office and the Land Revenue Office could make him responsible for negligence for not possessing the requisite skill and for not exercising reasonable competence. The act of the petitioner in submitting a wrong report without examining the basic tenets of ownership and possession of the property reveals his want of professional skill for which he may be held negligent, but in absence of tangible material it would not imply that he conspired with the principal accused persons in defrauding the bank.

23. It is striking to note that the complaint was lodged by the bank before the Superintendent of CBI/EOW on 16.12.2011 to the effect that Partha Das Chowdhury and Smt. Baishali Mukherjee the Directors of Emotions Infomedia Pvt. Ltd. applied for a loan accommodation on 02.06.2008 and the loan was

sanctioned on 15.07.2088 in favour of the company on execution of loan cum hypothecation agreement and guarantee agreement, being personal guarantee of both the directors, yet in the charge sheet the investigating agency has given a clean chit to the other Director of the borrowing company stating that no material surfaced to indicate that she was a part of the criminal conspiracy.

24. On a careful reading of the complaint I find no allegation against the petitioner. Furthermore he has not been named in the FIR. If the allegations found in the complaint is taken on its face value and accepted in their entirety, no offence is constituted against the petitioner to make out a case against him. The charge sheet in paragraph 9, 10 and 11, quoted above reveals that the petitioner as panelled advocate stated in his report that the Jatindra Nath Biswas has good, clear, marketable title over the said property. It is stated that Bhaskar Banerjee, advocate entered into a criminal conspiracy with Partha Das Chowdhury and as a result, he submitted his Title Search Report, solely relying on the report dated 8.8.2008 of Krisnendu Chakraborty, an advocate, his junior.

25. In course of investigation it has been revealed that the Title Deeds of the said property are false and forged. It was also found that "Title Deed No.558 of 1964 was not in the name of Jitendra Nath Biswas and the said property was in the name of Yar Ali Mondal. Therefore, Bhaskar Banerjee and Krisnendu Chakraborty, entered into a criminal conspiracy with Partha Das Chowdhury and others and as a result the said conspiracy facilitated M/S. Emotions Infomedia Pvt. Ltd. to part with bank fund by mortgaging false property

towards the credit facility which was sanctioned basing on the report of the advocates”.

26. Apart from the report submitted no material has surfaced in course of investigation to establish any manner of connection and involvement of the petitioner with the principal accused in defrauding the bank to disburse the loan to the company. There is no allegation or material in the charge sheet that the petitioner made any wrongful gain from the co-accused persons or he had any pecuniary benefit for preparing a wrong search report in favour of the company.

27. It is undisputed that the loan was sanctioned in favour of the accused company on 15.07.2008 and the Title Deeds and other fabricated and forged documents relating to the property were handed over to the opposite party no.2 bank on arrangement made by the principal accused person, including the directors of the company who applied for the loan. The petitioner considered such false and forged documents and prepared his report. He should have been more cautious and careful to hold search at the A.D.S.R office to ascertain if the Title Deeds were entered in the Register to determine ownership of the property and the genuineness of the Deeds and also find out the genuineness of the record of rights from the Land Revenue Office to unearth the names of recorded owner and the nature of the land. The petitioner appears to have been negligent by not fulfilling his duties in proper manner. However, the report simpliciter does not lead to any presumption that the petitioner had any connection with the actual beneficiaries for releasing of the loan. The

allegations made in the complaint and the evidence collected against the petitioner in support of the same during investigation do not prima facie constitute commission of any offence of defrauding the bank by the petitioner. Instant case therefore, would come under the category (1) and (3) laid down in the case of **State of Harayana and others Vs. Ch. Bhajan Lal and others; (1992) SCC (Cri) 426**, where the court would be justified to exercise the inherent power under section 482 of the Code of Criminal Procedure to quash the proceeding against the petitioner to secure the ends of justice.

28. In a similar situation as discussed in the case of **Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao; (2012) 9 SCC 512**, a charge sheet was submitted under Section 120B/ 419/420/467/468 and 471 of the Indian Penal Code and Section 13(1)(d) and (2) of the Prevention of Corruption Act, against K. Narayana Rao, a legal practitioner and a panel advocate for Vijaya Bank. The duty of the advocate was to verify the documents and to give legal opinion. The allegation against him was that he gave false legal opinion in respect of 10 housing loans. The concerned advocate filed a petition under section 482 of the Code of Criminal Procedure before the Hon'ble High Court of Andhra Pradesh for quashing of the criminal proceeding. The High Court quashed the proceeding in so far as the advocate petitioner was concerned.

29. Being aggrieved CBI, Hyderabad filed an appeal before the Hon'ble Supreme Court by way of special leave. While considering the matter Hon'ble Supreme Court held that, "Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an

agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmise or inference which are not supported by cogent and acceptable evidence.”

30. Hon’ble Supreme Court in the said judgment further held, “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 sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link for evidence to connect him with the other conspirators for causing loss to the institution undoubtedly, the prosecuting authorities are entitle to proceed under criminal prosecution. Such tangible materials are lacking in the case of respondent herein.”

31. In my considered view the ratio of the decision relied on behalf of the petitioner squarely applies to the present case of the petitioner where there is absence of material in the charge sheet to establish that the petitioner had any connection with other conspirators for causing loss to opposite party no 2/ bank. There is no material in the charge-sheet and the case diary to prima facie establish the complicity of the petitioner in the offence of defrauding the opposite party/Bank.

32. In the case of **Surindra Nath Panda and Anr. Vs. State of Bihar (2020) 18 SCC 730**, allegations were levelled against the panel advocates of the bank that they had furnish false search report/NEC/ Legal Opinion with regard to the properties/land documents in order to cheat to the Bank and to facilitate obtaining loan by the persons concerned. On the basis of an FIR lodged investigation led to a charge sheet but the same did not refer to any specific finding with regard to the role of the advocate in the alleged conspiracy. The Hon'ble High Court of Patna refused to quash the criminal proceeding against the appellant. Appeal was preferred before the Hon'ble Supreme Court and in the aforesaid case it was held that, "Taking into account the contents of the FIR, we are left with the impression that the said allegations are bald and omnibus and do not make any specific reference to the role of the appellants in any alleged conspiracy." Relying upon its earlier decision in the case of **CBI Vs. K. Narayana Rao (2012) 9 SCC 512**, the Hon'ble court reiterated that criminal prosecution on the basis of such bald and omnibus statement/ allegations against the panel advocates of the Bank ought not to be allowed to proceed as

the same constitute and abuse of the process of the court and such prosecution may in all likelihood be abortive and futile. Hon'ble Court held that the High Court was wrong in refusing to interdict the proceeding against the appellant and therefore the order of the High Court was set aside and proceeding was quashed.

33. The decision relied on behalf of the petitioners, in the case of **A. Kumar Sharma Vs. CBI; (2015) SCC Online Del 7206**, a finding of Hon'ble Single Bench of the Hon'ble High Court Delhi in the similar situation and relying upon the decision of CBI Vs. K. Narayana Rao also quashed the proceeding against an panel advocate who had submitted a false search report in alleged collusion with the principal accused, holding therein that mere negligence or want of greater professional care and competence on the part of an advocate would not make him liable for a criminal offence in absence of tangible evidence.

34. Having considered the facts and circumstances of the case, the contents of the FIR and the charge sheet and the ratio of the decisions referred above. I find and have no hesitation to hold that there is no tangible evidence to establish any connection or collusion between the petitioner and other co-accused persons for the purpose of defrauding the bank in sanction of the loan amount. Even there is no iota of evidence in the charge sheet where from it would indicate that the petitioner due to such act had made a wrongful gain from the other beneficiaries. Under such circumstances continuation of this proceeding against the petitioner would amount to an abuse of the process of court, as such the proceeding against the petitioner in GR Case No. 4105 of

2013 pending before the Learned Metropolitan Magistrate 22nd court at Kolkata, arising out of CBI/ EOW Case No. RC 07/E/011- Kol dated 16.12.2011 under section 420, 468, 471 read with section 120B of the Indian Penal Code is hereby quashed qua the petitioner only. Revisional application is accordingly allowed on contest. The observations made herein above shall not influence the prosecution in any manner against the co-accused. Copy of the case diary be returned to learned Advocate for CBI/Opposite Party no.1.

35. Interim order if any stands vacated. All connected applications are disposed of. Let a copy of this judgment be sent to Learned Metropolitan Magistrate 22nd Court Kolkata for information.

36. Urgent Photostat certified copy of this judgment, be supplied to the parties if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)