IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.50456 of 2016

Arising Out of PS. Case No.-366 Year-2008 Thana- GANDHIMAIDAN District- Patna

==========

Gopal Krishna Agrawal, Son of Late Kali Charan Agrawal, Resident of Flat Nos. A/4 and B/4, 26-jay Residency, Opposite Gold's Gym, Kavi Raman Path, Nageshwar Colony, P.O. G.PO., P.S. Buddha Colony, Boring Road, Patna-800001, Bihar, Previously residing at Mata Khudi Lane, P.O. Mahendru, P.S. Sultanganj, District and Town Patna-800006, Bihar

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Chief Manager, UCO Bank, Exhibition Road, P.S. Gandhi Maidhan, District Patna, PIN-800001, Bihar.

... ... Opposite Party/s

==========

Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Advocate
		Mr. Om Prakash Kumar, Advocate
		Mr. Shashank Shekhar, Advocate
For the State	:	Mr. Sanjay Kumar Tiwary, APP
For the UCO Bank	:	Mr. Rajesh Kumar Pandey, Advocate

==========

CORAM: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

C.A.V. JUDGMENT

Date : 26-10-2026

***"Fiat justitia ruat caelum"* - Let justice be done though the heavens fall.**

"As recognised in Rondel v. Worsley [1969] 1 AC 191, the administration of justice requires that an advocate be permitted to discharge his professional duties fearlessly and

WEB COPY

> ***independently, without the chilling effect of unwarranted subsequent litigation. The maxim Fiat justitia ruat caelum underscores that the pursuit of justice must remain paramount; nevertheless, professional protection extends only to bona fide advocacy and does not excuse independent criminal misconduct."***

2. ***"Advocatus est defensor juris, non particeps criminis"* - An advocate is a defender of the law, not an accomplice in the crime.**

3. An Advocate of this Bar having an experience of more than 35 years, being the petitioner, now knocks the door of justice, for the justice, from the Court of justice, to be meted to him for the acts discharged by him in course of performing his professional work/duty.

4. Assailing the order dated 21.01.2016 passed by the learned Additional Chief Judicial Magistrate, Patna *(in short, the **"ACJM, Patna")***, in connection with Gandhi Maidan P.S. Case No. 366 of 2008, whereby finding *prima facie* case under Sections 406, 409, 420, 467, 468, 471 and 120(B) of the Indian Penal Code *(in short, the **"IPC")***, cognizance has been taken of the offences and processes was directed to be issued against the petitioner for appearance, the present application, invoking inherent power of this Court under Section 482 of the Code of Criminal Procedure, 1973, has been preferred.

5. The factual matrix of the prosecution case, in

WEB COPY

brief, is that Gandhi Maidan P.S. Case No. 366 of 2008, dated 03.12.2008, was instituted on the basis of written report dated 28.11.2008 of Chief Manager, UCO Bank, Exhibition Road Branch, Patna in connection with certain irregularities allegedly committed in the sanction and disbursement of cash-credit facilities by the officials of UCO Bank, Exhibition Road Branch, Patna. The case was instituted against various persons including the petitioner for the offences punishable under Sections 406, 409, 420, 467, 468, 471, 474 and 120(B) of the IPC.

The then two Chief Managers of UCO Bank, Exhibition Road Branch, Patna, and the then Senior Manager of the said Branch, in connivance with the borrowers and guarantors, entered into a conspiracy and abused their official position while sanctioning cash-credit facilities in favour of different borrowers. It is alleged that cash-credit limits of Rs. 10 lakhs in favour of M/s Jai Mata Di; Rs. 5 lakhs in favour of M/s Tyre Emporium; Rs. 10 lakhs in favour of M/s New Adarsh Medical Hall and Rs. 4.5 lakhs in favour of M/s India Motors were sanctioned by the Exhibition Road Branch of UCO Bank.

The borrowers and guarantors offered their respective properties as collateral security for the aforesaid

WEB COPY

credit facilities. The requisite legal opinions with regard to the properties offered as security were obtained and the said properties were accepted as collateral security by the Bank. Subsequently, the accounts relating to the aforesaid credit facilities were classified as Non-Performing Assets, resulting in loss to the Bank.

It is alleged that the properties offered as collateral security were not genuine and that the title documents relating to the said properties were found to be fraudulent and fabricated. The alleged acts relating to the sanction of the credit facilities, the securities furnished therefor and the handling of the loan accounts, constitute the basis of the criminal case registered by the police.

On the basis of the said written report, Gandhi Maidan P.S. Case No. 366 of 2008 was instituted on 03.12.2008 for the offences punishable under Sections 406, 409, 420, 467, 468, 471, 474 and 120(B) of the I.P.C.

6. During the course of investigation, the police examined the relevant documents and also examined the role of the persons connected with the aforesaid loan transactions. Upon completion of the investigation, submitted charge-sheet *vide* charge-sheet No. 223 of 2014 dated 31.08.2014 under

WEB COPY

Sections 406, 409, 420, 467, 468, 471, 474 and 120(B) of the I.P.C. and, thereafter, the matter came to be considered by the learned ACJM, Patna, who, by order dated 21.01.2016, took cognizance of the offences under Sections 406, 409, 420, 467, 468, 471 and 120(B) of the I.P.C. in connection with Gandhi Maidan P.S. Case No. 366 of 2008.

7. Mr. Siddhartha Prasad, learned counsel for the petitioner, submits that the petitioner was an empanelled Panel Advocate of UCO Bank, Exhibition Road Branch, Patna. In such capacity, he had furnished his legal opinions with regard to the borrowers, namely, M/s Jai Mata Di and M/s New Adarsh Medical Hall on 21.10.2003 and 02.05.2002, respectively. The said opinions were rendered on the basis of the documents made available to him and in good faith. The petitioner had specifically advised the Bank that, before acting upon the said opinions, it should itself take necessary steps to have the original documents duly verified at the time of their deposit by the borrowers/guarantors, so as to safeguard the interest of the Bank. The decision to sanction and disburse the loans was taken by the concerned Bank officials and the petitioner had no role, whatsoever, in such decision-making process.

8. He submits that the petitioner had no

WEB COPY

knowledge of any alleged forgery or irregularity in the title deeds. His role was confined to rendering professional legal opinions, which were not binding upon the Bank. The petitioner neither derived any benefit from the transactions nor was he entrusted with any property or funds belonging to the Bank. There is no allegation suggesting any meeting of minds, conspiracy or participation on the part of the petitioner in the alleged transactions.

9. The petitioner, as argued, had unfortunately met with a serious road accident in the year 2004 while returning from Ranchi (Jharkhand), resulting in multiple fractures and permanent physical disability. A disability certificate issued by the Medical Board, Patna, dated 28.04.2005, certifies that the petitioner suffered 60% permanent physical disability.

10. It is contended that the then Chief Manager, UCO Bank, Exhibition Road Branch, Patna, submitted a written report dated 28.11.2008, alleging a criminal conspiracy against certain Bank officials, borrowers and guarantors in the sanction of loans against forged title deeds, thereby causing loss to the Bank, without examining the role of the petitioner.

11. Learned counsel avers that even if the allegations made in the FIR and the materials collected during

WEB COPY

investigation, as reflected in the *charge-sheet*, are taken at their face value, the essential ingredients of the offences alleged are not made out against the petitioner. There is no material to indicate any dishonest or fraudulent intention, participation in any conspiracy or knowledge of the alleged forgery on the part of the petitioner. The petitioner cannot be held criminally liable merely on account of a professional opinion rendered by him, particularly when he had advised independent verification by the Bank before sanctioning loan.

12. In the aforesaid circumstances, learned counsel appearing on behalf of the petitioner submits that continuation of the criminal proceeding against the petitioner would amount to an abuse of the process of the Court and, accordingly, the order dated 21.01.2016 taking cognizance, insofar as the petitioner is concerned, deserves to be quashed.

13. Mr. Rajesh Kumar Pandey, learned counsel appearing on behalf of informant/opposite party No. 2, submits that the present application seeking quashing is wholly misconceived and devoid of merit. He submits that Gandhi Maidan P.S. Case No. 366 of 2008 was instituted on the basis of a written complaint lodged by the then Chief Manager of UCO Bank, Exhibition Road Branch, Patna, alleging serious financial

WEB COPY

irregularities and conspiracy in connection with the sanction and disbursement of cash-credit facilities by the Bank.

14. He submits that the then Chief Managers and Senior Manager of the Exhibition Road Branch, in conspiracy and connivance with the borrowers and guarantors, abused their official position and facilitated the sanction of various cash-credit limits, including Rs. 10 lakhs in favour of M/s Jai Mata Di; Rs. 5 lakhs in favour of M/s Tyre Emporium; Rs. 10 lakhs in favour of M/s New Adarsh Medical Hall and Rs. 4.5 lakhs in favour of M/s India Motors and, thereby, causing substantial financial loss to the Bank.

15. The borrowers had offered their respective properties as collateral security and that the petitioner, being one of the panel Advocates of the Bank, had furnished legal opinions in respect of the properties and documents relied upon for creation of such security. It is alleged that during the course of investigation, the properties offered as collateral security were found to suffer from serious irregularities and that the accounts in question were subsequently classified as Non-Performing Assets.

16. Thus, the allegations against the petitioner, as argued, cannot be brushed aside merely by describing his role as

WEB COPY

that of a legal adviser. The legal opinions furnished by the petitioner form part of the materials collected during the course of investigation and, the same discloses his involvement and connivance in the transactions in question. The counter affidavit, filed on behalf of the Bank, specifically asserts that a bare perusal of the FIR and the legal opinions furnished by the petitioner, makes his involvement and connivance apparent.

17. Thus, supporting the order dated 21.01.2016 passed by the learned Additional Chief Judicial Magistrate, Patna, taking cognizance of the offences under Sections 406, 409, 420, 467, 468, 471 and 120(B) of the IPC, he submits that it is fully in accordance with law and suffers from no illegality. At the stage of taking cognizance, the learned Magistrate is required to consider whether the materials available in the FIR and the case diary, disclose a *prima facie* commission of the alleged offences and accordingly upon consideration of the FIR and the case diary, he submits that the learned Magistrate found sufficient materials to proceed against the accused persons and, he rightly took cognizance of the offences. At this stage, the defence of the accused or the explanation sought to be offered by him cannot be examined in detail, as the petitioner would have adequate opportunity to establish his innocence before the

WEB COPY

learned Trial Court during trial.

18. Learned counsel, therefore, submits that the present application is devoid of merit and deserves to be dismissed, leaving it open to the petitioner to raise all his factual and legal defences before the learned Court below during trial.

19. Learned Addl. Public Prosecutor for the State, Mr. Sanjay Kumar Tiwary, opposes the application and submits that the allegations made in the FIR and the materials collected during course of investigation disclose a *prima facie* case against the petitioner. The learned Magistrate, upon consideration of the materials available on record, has rightly taken cognizance by order dated 21.01.2016 in connection with Gandhi Maidan P.S. Case No. 366 of 2008 and at this stage, this Court is not required to undertake a detailed appreciation of the evidence or examine the defence of the petitioner.

20. Thus, the learned Addl. Public Prosecutor for the State submits that since sufficient material exists to proceed against the petitioner, no ground for interference under Section 482 of the Cr.P.C. is made out and the application, therefore, deserves to be dismissed.

21. Heard rival submissions advanced on behalf of the respective parties and perused the entire gamut of

WEB COPY

evidence placed on record.

22. The primal *legal nodus*, which emanates for consideration in view of the issue raised in this application appears to be:-

> *"Whether an Advocate could be fastened with criminal liability for discharging his professional duty and for rendering legal opinion with respect to giving non-encumbrance certificate to the Bank for grant of loan or extending the credit limit?*
>
> *In other words, "whether a legal professional/an Advocate could be prosecuted criminally for furnishing legal opinion to his client?"*

23. This issue needs to be examined in the backdrop of the allegations levelled in the case at hand.

24. The cradle of the instant criminal prosecution is said to be the legal opinion tendered by the petitioner to the Chief Manager, U.C.O. Bank, Exhibition Road Branch with respect to two borrowers, namely, M/s. Jai Mata Di and Ms. New Adarsh Medical Hall on 21.10.2003 and 02.05.2002 respectively (Annexures-3 and 13 respectively).

25. In terms of allegation, as evident from the F.I.R., contained in Annexure-1, is that two Chief Managers, one Senior Manager and two Managers of the U.C.O. Bank, Exhibition Road Branch entered into criminal conspiracy in connivance with the borrowers and guarantors, four in number,

WEB COPY

including the two borrowers mentioned hereinabove, in order to cheat the Bank, in pursuance thereof, they showed undue favour for getting sanction of the credit limits of the borrowers and for the said purpose, the borrowers offered the properties, as Collateral Security, and for the said purpose, the lawyers and the valuers furnished their respective opinions and subsequently all these four aforementioned accounts became "Non-Performing Assets" (N.P.A.) and on account of this, omissions and commissions and criminal conspiracy of the suspects, the Bank sustained a loss of Rs. 29.54 lacs.

26. From the perusal of the written report, especially the last paragraph, it appears that it has categorically been mentioned by the informant, *i.e.*, the Chief Manager of the U.C.O. Bank, Exhibition Road Branch that:-

> *"Considering the facts and circumstances stated above, it is requested that suitable legal action may be taken against the aforesaid borrowers, guarantors and the then two Chief Managers of Exhibition Road, Patna Branch, the then Sr. Manager of the same Branch and the then two Managers of the same Branch."*

From bare perusal of the aforesaid written report, the specific categorical and unequivocal prayer of the informant is to register an F.I.R. against borrowers, guarantors, the then two Chief Manager, two Managers and one Senior Manager posted during the relevant period of time. The informant has

WEB COPY

never prayed for the registration of the F.I.R. against the lawyers and valuers, who provided their respective opinions and valuations thereof, but mechanically, it becomes evident from perusal of the F.I.R. that the names of the lawyers, who tendered their legal opinion in the connected matter, have also been arrayed as an accused in Column No. 7 of the F.I.R.

27. The petitioner, being a panel lawyer of the Bank, was requested by the Bank, enclosing therewith xerox copies of the Title-Deed of the properties, detailed therein, for his opinion as regard to its genuineness, with respect to 19 decimals of land situated at Plot No. 2678, Khata No. 1614, Tauzi No. 8 and Thana No. 35 at Village-Isopur, P.S.-Phulwari, District-Patna, duly purchased by one Mr. Laldeo Prasad and Mr. Lal Behari Prasad.

28. Thereafter, the petitioner furnished his opinion *vide* his letter dated 02.05.2002 to the Chief Manager, U.C.O. Bank, stating therein that:-

> *"The non-encumbrance certificate is required for proper verification and you may examine from his own level. However, the property is free from encumbrance than equitable mortgage can be made."*

Thereafter, the petitioner has stated that:

> *"In my opinion the property can be taken in equitable mortgage and be created in favour of the bank, the above noted property*

WEB COPY

> *is clear and marketable title over the property in question by deposited all the relevant documents in favour of the Bank."*

A note of caution, thereafter, has been given at the end of the opinion in following words:

> *"Note : The Sale Deed may be kept in bank security for future use the non-encumbrance certificate from Patna Sadar is also required for equitable mortgage."*

29. This opinion has been tendered with respect to the borrowers, who, in order to develop their medicine business in the name and style of M/s. New Adarsh Medical Hall, requested for the credit limit of Rs. 10 lacs.

30. The second opinion which the petitioner had furnished with respect to the property of one Manoj Kumar, who was to stand as a guarantor for M/s. Jai Mata Di, which prays for the credit limit of Rs. 10 lacs.

31. Pursuant to the letter of the Bank dated 10.10.2003, requesting the petitioner to tender his legal opinion with respect to the property of Mr. Manoj Kumar, the petitioner tendered his legal opinion regarding Non-Encumbrance Certificate and a detailed report of the Title *vide* his opinion dated 21.10.2003 (Annexure-13).

32. It is evident from the aforesaid letter that the petitioner has submitted his report on the basis of search report

WEB COPY

receipt No. 0309843 dated 26.09.2003 issued by Registrar Office, Patna Sadar and recepot No. 586176 dated 08.10.2003 issued by the Sub-Registrar Office, Patna City in the name of borrower, namely, Rajesh Kumar (proprietor of M/s. Jai Mata Di).

33. For the sake of clarity and fitness of the thing, relevant part of the opinion of the petitioner is being quoted hereinbelow:-

> *"As per your letter this property is perfect for collateral security which is in the name of Manoj Namar, he may be a guarantor of M/s. Jai Mata Di, Patina, subject to depositing the original sale-deeds. The relevant search report receipt no. 0309843 dated 26.09.03 is issued by Patna Sadar and receipt no. 586176 dated 08.10.03 issued by Patna City Sub-Registrar office in the name of borrower Rajesh Kumar."*

34. This is the factual backdrop on the basis of which the petitioner being sought to be prosecuted, for the offences under Sections 406, 409, 420, 467, 468, 471, 474 and 120(B) of the I.P.C.

35. Certain facts are not in dispute and for the sake of clarity and in order to have proper appreciation of the case, relevant facts are being detailed hereunder:-

(i) The petitioner was a panel lawyer of the U.C.O. Bank at the relevant point of time;

(ii) The petitioner has submitted two Non-Encumbrance Certificates in the form of opinions on

WEB COPY

02.05.2002 and 21.10.2003 respectively in favour of the borrowers on being required by the Bank;

(iii) The petitioner, at the time of tendering his opinions, has enclosed the copies of certain documents for perusal of the Bank, *viz.*, photocopy of the sale-deeds, photocopy of the Rent Revenue Receipt No. 547798 with his first opinion dated 02.05.2002;

(iv) The petitioner, with his second opinion dated 21.10.2003, enclosed the copies of Search Report Receipt No. 0309843 dated 26.09.2003 issued by the Registrar Office, Patna Sadar and Receipt No. 586176 dated 08.10.2003 issued by the Sub-Registrar Office, Patna City;

(v) Besides the above, the petitioner has also mentioned in his opinion that he perused the first Non-Encumbrance Certificate issued by the competent authority, *viz.*, Registrar Office, Patna Sadar *vide* Memo No. 4078 dated 29.09.2003 and the second Non-Encumbrance Certificate issued by the Sub-Registrar Office, Patna City *vide* Memo No. 789 dated 09.10.2003 as well as also did examination and verification from Register-II in the Circle Office, Patna; and

(vi) A mention has also been made in the aforesaid connection that a mutation case *vide* Mutation Case No. 2037/9-2003-2004 of the plots mentioned in the sale-deeds have also been verified.

36. On the basis of the aforesaid documents and materials collected and verified from the official records of the concerned Government office, the petitioner, being the panel

WEB COPY

lawyer of the Bank, tendered his opinion to the Bank, however, while tendering his opinion, he has also given a caution to the Bank to do certain things, which is evident from the opinion, wherein, very categorically, the petitioner has stated in his opinion dated 02.05.2002 in connection with M/s. New Adarsh Medical Hall that Non-Encumbrance Certificate is required for proper verification and you (Bank) may examine from your (Bank) own level; meaning thereby, the petitioner, while tendering his opinion, has also requested the Chief Manager, U.C.O. Bank, Exhibition Road, to be careful enough to examine himself the Non-Encumbrance Certificate at his own level. Therefore, it cannot be said that the petitioner has asked the Chief Manager (informant) to process the file merely on the basis of his legal opinion; on the contrary, he has requested the Chief Manager to verify everything from his own level.

37. From the aforesaid fact, it can be gathered that due care and caution has to be taken by the Chief Manager of the Bank, in view of the legal opinion so tendered by the petitioner, being the lawyer of the Bank.

38. In submitting second opinion with respect to M/s. Jai Mata Di, the petitioner has very categorically described all the documents, which he got from the concerned

WEB COPY

Departments of the Government, on the basis of which he submitted his report, in the form of opinion.

39. The conduct of the petitioner in both the cases, while tendering his opinion in the form of Non-Encumbrance Certificate, cannot be said to be tainted with vices; like favoritism, corruption, illegal gratification, conspiracy, connivance and ignorance of the material facts etc. nor is it appearent from the records that any such kind of allegation of *mal* intention or acting for extraneous consideration in favour of the borrowers, has been hurled against the petitioner.

40. In the absence of such allegation, not only in the F.I.R., but also in course of investigation, fastening the criminal liability on the petitioner for committing offences under aforesaid sections (supra), does not appear to be proper and in consonance with the settled judicial principles.

41. At this juncture, the meaning, purpose and purport of legal opinion gains importance.

42. The ***Black's Law Dictionary*** defines *"legal opinion"* as - "a written document in which an Attorney provides his or her understanding of the law as applied to specifc facts."

In other words, a *"legal opinion"* tendered by an

WEB COPY

Attorney/qualified legal practitioner or an Advocate provides an objective, professional analysis of how the law applies to the specific set of facts. Its core purpose is to clarify legal aspects, identify risks and confirm regulatory compliance and assured third parties or lenders that the transaction is valid and enforceable.

In legal terms, *"legal opinion"* tendered by an Advocate is an expert advisory document, which represents the professional evaluation and interpretation of the law based on the specific facts provided by the client. It does not have any binding effect, rather it is only of pursuasive value for the client to whom it is tendered. It is merely advisory in nature and actually serves as a guided risk assessment having no evidentiary value in the law.

43. An Advocate owes a duty of care to client if the opinion is tendered carelessly, negligently and without having examined and verified the factual substance, the Advocate can be sued for professional negligence in the form of disciplinary proceedings to be constituted by competent body, like the District Bar Association, State Bar Council or Bar Council of India, as the case may be. On the contrary, an Advocate can never be penalized for tendering his opinion

WEB COPY

simply because his opinion turned out to be incorrect or if a Court later took a different view of the law.

44. The law is open for interpretation and an error of a judgment, made in good faith, is not actionable.

45. However, if an Advocate deliberately gives a false and misleading opinion to facilitate a scam fraudulently, certifying a property Title for a bank loan, if his opinion is tendered for illegal gratification, in collusion and connivance with the persons and if any opinion is tendered with *mal* intention of cheating his client, then he can face criminal liability for conspiracy, cheating and professional misconduct.

46. It is well settled law that extending of a legal opinion for granting loan has become an integral component of an Advocate's work in banking sector. A lawyer, on his part, has a responsibility to act to the best of his knowledge and skills and to exhibit an unending loyalty to the interest of his clients. He has to exercise his knowledge in a manner that would advance the interest of his clients. However, while acting so, the advocate does not assure to his client that the opinion so rendered by him is flawless and must in all possibility act to his gains. Just like in any other profession, the only assurance which can be given and may even be implied from an advocate

WEB COPY

so acting in his professional capacity is that he possesses the requisite skills in his field of practice and while undertaking the performance of task entrusted to him, he would exercise his skills with reasonable competence. The only liability that may be imputed on an Advocate, while so acting in his professional capacity, is that of negligence in application of legal skills or due exercise of such skills.

47. The liability against an opining Advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. 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 law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills.

48. The knotty issue as to whether a legal professional can be rendered criminally liable for negligence or improper legal advice, has cropped up for consideration in the case of ***Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao***, reported in ***(2012) 9 SCC 512***, wherein the Hon'ble Supreme Court has held that:-

> *"**27.** In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of*

WEB COPY

an advocate's work. In the 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.

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 orginal 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*

WEB COPY

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."

49. The principle of law laid down by the Hon'ble Supreme Court in ***K. Narayana Rao's*** case *(supra)* was followed with approval by the Hon'ble Supreme Court subsequently in the matter of ***Surendra Nath Pandey and Anr. Vs. State of Bihar and Anr.,*** reported in ***(2020) 18 SCC 730*** by observing as under:-

*"**3.** The High Court by the impugned judgment has refused to quash the First Information Report (FIR) on the ground that the same prima facie discloses commission of the offences alleged against the Appellants who are the panel advocates of the Bank. A reading of the FIR would go to show that the allegations levelled against the Appellants is that as panel advocates they had furnished false Search Report/NEC/legal opinion with regard to the properties/land documents in order to cheat the Bank and to facilitate obtaining of loan by the concerned persons. On investigation of the FIR, a charge sheet has been submitted, a copy of which is enclosed to the present Appeal Paper Book. A reading of the charge sheet does not refer to any specific finding of investigation."*

*"**4.** Taking into account the contents of 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. In CBI v. K. Narayana Rao to which one of us (Ranjan Gogoi, J.) was a party, it has been held by this Court that a criminal prosecution*

WEB COPY

> *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 an abuse of the process of the court and such prosecution may in all likelihood be abortive and futile."*
>
> *"**6.** Taking into account the aforesaid facts and the ratio of the law laid down by this Court in CBI v. K. Narayana Rao, we are of the view that the High Court was plainly wrong in refusing to interdict the proceedings against the appellants. We, therefore, set aside the order of the High Court and quash the proceedings in GR No. 710 of 206 arising out of Agiaon (G) PS Case No. 20 of 2006 pending before the Chief Judicial Magistrate, Bhojpur, Ara insofar as the two appellants Surendra Nath Pandey and Suresh Prasad are concerned."*

50. The aforesaid principle of law laid by the Hon'ble Supreme Court in the cases of ***K. Narayana Rao*** *(supra)* and ***Surendra Nath Pandey*** *(supra)* has consistently been followed by different High Courts, like High Court of Gujarat, High Court of Rajasthan, High Court of Allahabad and High Court of Chattisgarh etc.

51. Now coming to the ingredients of the offences as have been levelled against the petitioner, which assumes significance for proper and just adjudication of the issue raised in the present case.

52. At this stage, it would be germane to consider the ingredients of Section 406 and 420 of the I.P.C. first, which defines, the offences and lays down pre-requisite for fastening

WEB COPY

liability under Sections 406 and 420 of I.P.C., respectively, since in the case at hand, these are the main offence upon which the petitioner has been summoned.

53. Section 405 of the I.P.C. defines offence of "criminal breach of trust" which stipulates that:-

> *"**405. Criminal breach of trust**.— Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."*

The offence under Section 405 of the I.P.C. is made punishable under Section 406 of the I.P.C., which reads as follows:-

> *"**406. Punishment for criminal breach of trust**.— Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

Thus, for Section 406 of the I.P.C. to get attracted, there must be a criminal breach of trust in terms of Section 405 of the I.P.C. The essential ingredients for invoking Section 405 of the I.P.C. are enumerated hereunder :-

> *"(a) the accused was entrusted with property, or entrusted with dominion over*

WEB COPY

> *property;*
>
> *(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and*
>
> *(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person had made, touching the discharge of such trust.*
>
> *In other words, for the invocation of the offence of criminal breach of trust, it is expedient that the use of disposal of the property is made by a persons entrusted with or who has dominion over the property. Furthermore, such an act must not only be done dishonestly but also in violation of any direction of law or any contract, express or implied, relating to carrying out the trust."*

54. As per ***Black's Law Dictionary***, the definition of the term 'Entrustment' means to give (a person), responsibility for something, usually after establishing a confidential relationship.

55. In the context of Section 406 of the I.P.C. proceedings of any criminal prosecution may be quashed if the complaint or F.I.R., even if taken at the face value, does not disclose the essential ingredients of the offence. A clear absence of allegations regarding entrustment or dishonest misappropriation can be a ground for quashing.

56. The Hon'ble Supreme Court in the case of ***Anand Kumar Mohatta & Anr. Vs. State (N.C.T. of Delhi),***

WEB COPY

Department of Home and Anr., as reported in ***(2019) 11 SCC 706***, emphasized the need to ascertain if the facts make out an offence under Section 406 of the I.P.C.

57. Section 406 of the I.P.C. prescribes the punishment for the offences of criminal breach of trust. This provision plays a crucial role in upholding fiduciary relationship and ensuring accountability for the misappropriation of property entrusted to another. "Criminal breach of trust", as defined under Section 405 of the I.P.C., is a nuanced offence, requiring a careful examination of the elements of entrustment, dishonest misappropriation and the violation of legal or contractual duties.

58. The Hon'ble Supreme Court in the case of ***Radheyshaym & Ors. Vs. State of Rajasthan & Anr.***, as reported in ***(2024) SCC OnLine SC 2311***, ***Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada***, as reported in ***(1997) 2 SCC 397***, has culled out the aforesaid ingredients as discussed herein to constitute the offence of criminal breach of trust and has laid down that:-

> *"The word 'Entrustment' carries with its implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. 'Entrustment' is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all its imports is handing over the possession for some purpose which may not imply the conferment of*

WEB COPY

any propriety right therein."

59. With respect to the allegation for the offence under Section 406 of the I.P.C., the Hon'ble Supreme Court has held in the case of ***Rahul Agarwal Vs. State of Uttar Pradesh and Anr. [arising out of SLP (Crl.) No. 5416 of 2026]*** that non-payment of commercial dues or unpaid balance in a sale/trade transaction does not amount to "criminal breach of trust". The Court emphasized that the essential ingredient of 'entrustment' is absent in regular commercial debt or in sale or trade transactions and as such, these disputes are purely civil in nature. Likewise, in the case of ***Satish Chandra Ratan Lal Sah Vs. State of Gujarat (2019)***, the Hon'ble Supreme Court has held that mere failure to repay a loan or fulfill a financial promise does not automatically constitute a criminal offence either under Section 406 of the I.P.C. or Section 420 of the I.P.C., unless there is a clear material showing "dishonest intention" or 'entrustment' of the property from the very beginning.

60. Thus, if the case at hand is examined in the backdrop of the foregoing discussion regarding the ingredients of Sections 405, 406 and 409 of the I.P.C., it would be necessary to ascertain whether the essential ingredients of the aforesaid offences are satisfied so as to attract criminal liability against

WEB COPY

the petitioner?

61. On analysis, it is found that none of the essential ingredients of the offences punishable under Sections 406 and 409 of the I.P.C., for which cognizance has been taken, is made out against the petitioner. There is neither any allegation of 'entrustment' of property to the petitioner nor any consequential misappropriation thereof so as to attract the penal provisions of the aforesaid sections. The absence of the essential ingredient of 'entrustment', coupled with the absence of any dishonest intention to misappropriate the property, renders the order taking cognizance of the offences under Sections 406 and 409 of the I.P.C. not only unsustainable in the eyes of law but also indicative of non-application of judicial mind.

62. Now in view of allegation and order taking cognizance under Section 420 of the I.P.C., it becomes imperative to consider the offences, ingredients and scope of Section 420 of the I.P.C.

63. Section 415 I.P.C. defines 'cheating' which reads as under:

> *"**415. Cheating**.-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so*

WEB COPY

> *deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."*

64. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

65. Section 420 I.P.C. defines "cheating and dishonestly inducing delivery of property" which reads as under:

> *"**420. Cheating and dishonestly inducing delivery of property**.-Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

66. Section 420 I.P.C. is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

WEB COPY

67. The basic and essential ingredients of the offence of cheating as defined under Section 420 of the I.P.C. are:-

> *"1. The ingredients to constitute an offence of cheating are as follows:*
> *1.1. There should be fraudulent or dishonest inducement of a person by deceiving him:*
> *1.1.a. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or*
> *1.1.b. The person so induced should be intentionally do or omit if he were not so deceived; and*
> *1.2. In cases covered, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.*
> *2. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.*
> *Thus,*
> *3. The ingredients to constitute an offence under Section 420 are as follows:*
> *3.1. A person must commit the offence of cheating under Section 415; and*
> *3.2. The person cheated must be dishonestly induced to:*
> *(a) deliver property to any person; or*
> *(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security."*

Thus, to constitute an offence under Section 420 of the I.P.C., there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived, to deliver any property

WEB COPY

or to make or alter or destroy wholly and in part a valuable security.

68. In the case at hand, it is to be borne in mind that, to constitute an offence under Section 420 of the I.P.C., there must not only be cheating, but such cheating must have resulted in the dishonest inducement of the person so deceived to deliver any property to any person, or to make, alter or destroy, wholly or in part, a valuable security, or anything which is signed or sealed and is capable of being converted into a valuable security. In view of the nature of the allegations levelled against the petitioner, none of the essential ingredients of Section 420 of the I.P.C. is attracted. The petitioner has neither cheated any person nor dishonestly induced any person to deliver any property or to make, alter or destroy any valuable security, so as to attract the penal provisions of the aforesaid section.

69. Thus, the very foundational ingredient of the offence of 'cheating' is found to be conspicuously absent in the case at hand, insofar as the petitioner is concerned.

70. Further, Section 409 of the I.P.C. provides for the offence of "criminal breach of trust" by, *inter alia*, a public servant. The essential ingredients of "criminal breach of trust"

WEB COPY

are set out in Section 405 of the I.P.C. and at this stage, it is germane to quote the ingredients of the same, which are as follows:-

> *"(a) the accused was entrusted with property, or entrusted with dominion over property:*
> *(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and*
> *(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person had made, touching the discharge of such trust."*

71. In other words, for the invocation of the offence of "criminal breach of trust", it is expedient that the use of disposal of the property is made by a persons entrusted with or who has dominion over the property. Furthermore, such an act must not only be done dishonestly but also in violation of any direction of law or any contract, express or implied, relating to carrying out the trust.

72. It is apposite to note that to attract offence of Section 467 and 468 of the I.P.C., the prosecution must establish that the accused made a false document within the meaning of Section 463 and 464 of the I.P.C., with intent to cheat.

73. The offence of forgery and making of false

WEB COPY

document as defined under Sections 463 and 464 of the I.P.C. are extracted herein below for ready reference:

> *"**463. Forgery**.-Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*
>
> ***464. Making a false document**.-A person is said to make a false document or false electronic record:*
>
> *First-Who dishonestly or fraudulently-*
>
> *(a) makes, sign, seals or executes a document or part of a document;*
>
> *(b) makes or transmits any electronic record or part of any electronic record;*
>
> *(c) affixes any digital signature on any electronic record;*
>
> *(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority or a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly-who dishonestly or fraudulently causes any person, sign, seal, execute or alter a document or an electronic record or to affix his digital*

WEB COPY

> *signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration."*

74. In the case at hand, no specific act of making, signing, executing or altering any false document has been attributed to the petitioner. The allegations, as set out in the petition, primarily concern with the legal opinion prepared by the petitioner. However, the question whether any document was forged, the circumstances in which it was prepared or processed, and whether the petitioner had any role or knowledge in that regard must be examined with reference to the relevant documents and the materials collected during investigation. Neither is there any allegation of that nature nor is there any evidence of showing involvement of the petitioner in making or forging any documents has surfaced in course of investigation. Thus, no offence under Sections 467 and 468 of the I.P.C. is also made out.

75. With respect to the allegation under Section 471 of the I.P.C., in respect of which the learned Magistrate has taken cognizance, it is necessary to examine the ingredients of the said provision to ascertain whether the offence punishable under Section 471 of the I.P.C. is made out against the petitioner

WEB COPY

or not?

76. Like Sections 467 and 468 of the I.P.C., Section 471 of the I.P.C. also requires proof that the accused used a forged document as genuine, knowing or having reason to believe, at the time of its use, that the document was forged. In the instant case, there is no allegation, whatsoever, that the petitioner, in his capacity as a panel lawyer, used any forged document as genuine, knowing or having reason to believe that the same was forged at the time of its use. On the contrary, the petitioner, along with his legal opinion, enclosed all the relevant documents obtained from the concerned Government office after due verification and inspection, for the perusal of the Bank officials and none of those documents so appended therewith with his opinion, as submitted to the Bank, was subsequently found to be forged. However, there is not even a shred of evidence collected in the course of the investigation to establish that the document in question or any other document relied upon by the petitioner and obtained from the concerned Government office, was known to him to be forged or that he had any reason to believe the same to be forged.

77. Thus, in the absence of the requisite ingredients of the offence, no offence under Section 471 of the

WEB COPY

I.P.C. is made out against the petitioner, nor can he be held criminally liable for the commission of the said offence.

78. The ingredients of the offence under Section 471 of the I.P.C. and the legal principles governing its applicability have been discussed by the Hon'ble Supreme Court in the case of ***Vandna Vs. State of Maharashtra***, reported in ***2025 SCC OnLine SC 1954***, wherein the Hon'ble Supreme Court has held as follows:-

> *"On the contrary, the material evidence would disclose that the documents passed through institutional hands for scrutiny, endorsement and forwarding and at certain points of time it was not in the custody of appellant at all. In such circumstances, the passing of the alleged document through the hands of several person before it was detected as forged renders unsafe to arrive at a conclusion that appellant had authored the tampering or possessed the contemporaneous knowledge of such tampering. It is apt to mention that it is well-established principle of law that suspicion, howsoever grave, cannot replace the standard of legal proof."*

Thus, in view of the allegations levelled and the evidence collected, no *mens rea* on the part of the petitioner appears to be established, which is a prerequisite for attracting the provisions of Section 471 of the I.P.C.

79. Thus, none of the offences for which cognizance has been taken by the learned Trial Court is made out against the petitioner and there exists no basis for

WEB COPY

prosecuting him for the offences punishable under Sections 467, 468 and 471 of the I.P.C.

80. After considering the allegations made in the F.I.R. and the materials brought on record, this Court is required to examine whether the ingredients necessary to constitute the offence of criminal conspiracy under Section 120-B of the I.P.C. are disclosed against the petitioner. In this regard, the principles laid down by the Hon'ble Supreme Court in the case of ***Rajeev Vs. State of Kerala,*** reported in ***2023 SCC onLine SC 1470*** while referring to State through ***Superintendent of Police, CBI/SIT Vs. Nalini & Ors.,*** reported in ***(1999) 5 SCC 253***, are relevant. The principles governing the offence of criminal conspiracy, as summarised in the said decision, are reproduced hereinbelow:

> *"i. Conspiracy is when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means.*
>
> *ii. The offence of criminal conspiracy is an exception to the general law, where intent alone does not constitute crime. It is the intention to commit a crime and join hands with persons having the same intention.*
>
> *iii. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.*
>
> *iv. Where in pursuance of the agreement, the conspirators commit offences individually or adopt illegal means to do a legal act that has a nexus to the object of the conspiracy, all of them will be liable for such offences even if*

WEB COPY

> *some of them have not actively participated in the commission of those offences."*

The Hon'ble Supreme Court further emphasised that the essential ingredient of criminal conspiracy is an agreement between two or more persons to commit an illegal act or to do a lawful act by illegal means. The agreement may be established through direct evidence or inferred from the acts and conduct of the parties.

81. The principles laid down in the case of ***Nalini*** *(supra)* make it clear that the mere existence of a common intention or the presence of several accused persons in a dispute does not, by itself, establish the offence of criminal conspiracy. There must be material indicating an agreement or meeting of minds between two or more persons to commit an illegal act or to achieve a lawful object by illegal means. Although such an agreement need not invariably be established by direct evidence, its existence must be reasonably inferable from the allegations and surrounding circumstances.

82. Thus, the principles laid down in the case of ***Nalini*** *(supra),* if applies to the case at hand, evince indisputably that no ingredient of Section 120-B of the I.P.C. is attracted in the case at hand. There is no evidence, at all, in the case to evince that the petitioner had prior making of mind

WEB COPY

either with the Bank officials or with the borrowers and guarantors. In absence of the same, the petitioner being panel lawyer cannot be held liable for the acts done by officials of th Bank or the beneficiaries.

83. Now examining the case of the petitioner, a practicing Advocate of this Court, in the light of the aforementioned precedential and factual backdrop and more particularly when it is apparent on the face of the record, that the role of the petitioner, in the case at hand, was only as an Advocate, this Court is being cautioned of the settled legal principles, finds that an Advocate, though, is bound by his professional conduct, can only give his advice to the best of his ability and capacity. An Advocate never gives an assurance to his clients, *i.e.*, legal opinion/advice would result into a win-win situation or a 100% guarantee of success/winning in the given case, in any circumstances.

84. Once an advice is given by an Advocate, it is the prerogative of the party concerned, to which it is tendered, to adhere to such advice, to follow the same or to negate the same or ignore the same. Such professional/legal advice, however, can, by no stretch of imagination, attract criminal proceedings as the professional advice is a very delicate issue

WEB COPY

between a client and an Advocate, more particularly, a very privileged communication between the two, for which an Advocate cannot 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.

85. At the most, in the given case, an Advocate may be liable for gross negligence and professional misconduct, which is, if, established by placing a cogent, credible, unimpeachable evidence on record but even for such proved professional misconduct or negligence, an Advocate cannot be charged or fastened with the criminal liability along with other conspirators, who may have direct and vested interest in the issue.

86. In the case at hand, in fact in the F.I.R., there is absolutely no allegation, at all, connecting the petitioner to the alleged crime or in any manner defrauding the Bank or cheating the Bank or any advice has been given for illegal gratification or consideration. There is absolutely no evidence on record to evince that the petitioner has been working in cahoots with and in tandem with other accused persons or conspirators so as to deliberately cause financial loss to the State exchequer.

87. No shred of evidence has been brought on

WEB COPY

record showing and proving that the petitioner has committed any act at the time of furnishing legal advice/opinion to the Bank, under the influence of the borrowers or for any sorts of illegal gratification or consideration taken from them.

88. Even with respect to the allegation of conspiracy, there is neither an allegation nor is there any evidence which could even remotely connect the petitioner to the other accused persons in order to evince that he has any kind of collusive and conniving mind with an ultimate aim to commit criminal breach of trust and thereby misappropriating a fund rather the prosecution has failed to bring on record any form of evidence which could establish that the act of the petitioner for tendering legal advice to the Bank was, in any manner, pre-judicial to the interest of the Bank and that could ultimately prove the detrimental to the interest of the Bank.

89. Perusal of the opinion tendered by the petitioner, on the contrary, gives a more fair and brighter side of his professional conduct where in, in no ascertain term, he has categorically stated that the Bank authorities must verify the non-encumbrance certificate before taking any decision of the application of the borrowers. He has, in fact, taken all sorts of precaution and professional cautions while advising his client

WEB COPY

that all his opinion and advice is based on the Government documents which he has enclosed therewith with a request to take decision at their own level, before processing the application.

90. Curiously enough, the informant has not even alleged any act of crime against the petitioner nor has prayed for lodging an F.I.R. against him, but even though he has been made an accused in the case.

91. Perusal of record reflects that the petitioner has taken care in observing some safeguards to be followed by the Bank in his report/opinion which have already been noticed hereinabove, but there is no material on record to evince whether the Bank has observed any such safeguard as recommended by the petitioner. The Hon'ble Supreme Court in cases of ***K. Narayana Rao*** *(supra)* and ***Surendra Nath Pandey*** *(supra)* has clearly held 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 tenable evidence.

92. If an Advocate is being prosecuted, as done in the present case, merely on rendering a legal advice/opinion, then it shall be not possible for any lawyer to tender such

WEB COPY

professional advice, more particularly, when such a professional advice, if found to be favourable for the client, the same would result into criminal prosecution against the lawyer, which would ultimately lead to sufferings to the justice delivery system.

93. A lawyer, being an integral and significant component of the justice delivery system, would not be able to give his professional advice without any fear and favour, if faced with the imminent criminal prosecution for professional advice tendered to his client. The very efficacy of the administration of justice would be at stake, as any such interference with the professional integrity, efficiency and competence of an advocate, would not only be detrimental to the legal profession but would also strike at the very root of the edifice of justice delivery system, ultimately causing hardship and prejudice to the common man, compelling them to approach the Court of justice for the redressal of their grievances.

94. The fearlessness, impartiality, boldness, integrity, diligence, honesty, independence, etiquette and professional conduct are the virtues which a lawyer possesses and if his professional integrity and capacity is to be impinged in this manner, the same will have a very catastrophic effect on the justice delivery system, which is simply unacceptable to

WEB COPY

canons of justice.

95. In this backdrop, it becomes indisputably evident that the instant case, where the petitioner is being prosecuted, is nothing but amounts to malicious and vexatious prosecution of the petitioner which is impermissible in view of the settled judicial principle. In the case of ***West Bengal and State Electricity Board Vs. Dilip Kumar Ray***, reported in ***AIR 2007 SC 976***, the Hon'ble Supreme Court has defined the term "*malicious prosecution*" as "*a judicial proceeding instituted by one person against another, for wrongful or improper motive and without probable cause to sustain it.*" The present case is one of such manifest illustration of the same.

96. In ***R. Kalyani Vs. Janak C. Mehta***, reported in ***(2009) 1 SCC 516***, the Hon'ble Supreme Court culled out propositions concerning interference under Section 482 of the Code as under :-

> *"15. Propositions of law which emerge from the said decisions are:*
>
> *(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.*
>
> *(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.*
>
> *(3) Such a power should be exercised very sparingly. If the allegations made in the*

WEB COPY

> *FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.*
>
> *(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."*

97. The most celebrated judgment, on this aspect, has always been the case of ***State of Haryana Vs. Bhajan Lal***, reported in ***1992 Supp (1) SCC 335***, where in paragraph 102, particularly grounds (1) (3) and (7), the Hon'ble Supreme Court has laid down the para-meters for exercising the extraordinary power of criminal quashing by observing as hereunder:-

> *"**102.** ……. **(1)** Where the allegations made in the first information report 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.*
>
> *……*
>
> ***(3)** Where the uncontroverted allegations 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.*
>
> ***(7)** Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

applies with full force in the case at hand and as such, the criminal prosecution which since its inception, is

WEB COPY

absurd and improper, could not be allowed to be continued and in order to prevent the vexatious *mala fide* prosecution of the petitioner, relying upon the aforesaid cases as laid down in the cases of ***Bhajan Lal*** *(supra)* and ***R. Kalyani*** *(supra)*, which squarely applies in the case at hand, this Court is of the considered view that the instant criminal prosecution is fit to be set aside in order to prevent an abuse of the judicial process.

98. While examining the present case on the touchstone of above legal principle as enunciated by the Hon'ble Supreme Court, especially, in the light of the allegation made in the F.I.R. and the chargesheet, even if the allegations are taken on its face value and accepted in its entirety, the same do not disclose any commission of offence and make out a case against the petitioner. Thus, I am of the considered opinion that the order impugned taking cognizance of the offences deserves to be quashed, keeping in view the aforementioned judicial principles.

99. In view of the entire conspectus of factual and legal discussion made hereinabove, this Court is of the considered view that the instant case, in which a lawyer has been sought to be prosecuted for rendering his legal opinion/advice, without there being an iota of allegation or

WEB COPY

evidence connecting him to the crime or placing on record any evidence showing or evincing in any manner his conduct, to be of dubious nature, wherein, absence of any shred of evidence with respect to any *mal* practice or in absence of any allegation of any illegal gratification, appears to be not only bad in law but malicious one and as such, the same should not be allowed to be continued.

100. However, one important aspect in this matter could not be overlooked and ignored where the manner in which the order taking cognizance has been passed. From perusal of the order dated 21.01.2016 taking cognizance it appears that it has been written by some of the office staff of the learned Additional Chief Judicial Magistrate Court whereas after having written all these things at the last a blank space was left by the scribe in which, it appears the learned Magistrate taking cognizance has simply filled in the blanks by putting the word 'cognizance'. These sort of things have been deprecated umpteen number of times by the Hon'ble Supreme Court as well as by this Court.

101. The order taking cognizance is a very significant step whereby a proceeding has been initiated against a person whose life and liberty is put at stake on account of this

WEB COPY

summoning order. So at the time of summoning, the learned Magistrates are required to consider all the aspects, thereafter having found *prima facie* case and recorded his satisfaction thereof, is to pass the order. It should be reflected by the order that it has been considered and passed by the concerned learned Magistrate and not by the concerned clerk, who having written a proforma order, left a blank space which is simply filled by concerned Magistrate by putting the word 'cognizance'.

102. In the case of ***Darshan Singh Ram Kishan Vs. State of Maharashtra***, reported in ***(1971) 2 SCC 654***, the Hon'ble Supreme Court has held that the process of taking cognizance does not involve any formal action but it occurs as soon as Magistrate applies his mind to the allegations and thereafter takes judicial notice of the document. The Magistrate is not required at the time of taking cognizance to pass a detailed order but it does not mean that order taking cognizance can be passed either on a printed proforma or on the script written by somebody else.

103. Cognizance is very significant word which denotes "taken note of" or "bring to the notice of" meaning thereby when the Court finds *prima facie* that ingredients of a particular offence makes out a case so as to require the

WEB COPY

summoning of the accused persons before the Court to face trial, it must be a diligent, sincere and dutiful act reflecting application of judicial mind to the facts. On this score also order taking cognizance, impugned hereinabove, is bad in law.

104. Thus, the impugned order dated 21.01.2016 passed by learned A.C.J.M, Patna, in connection with Gandhi Maidan P.S. Case No. 366 of 2008, therefore, cannot be sustained and, hence, the same is fit to be quashed.

105. *Ex consequenti*, the order dated 21.01.2016 passed by the learned A.C.J.M, Patna, in connection with Gandhi Maidan P.S. Case No. 366 of 2008, whereby finding *prima facie* under Sections 406, 409, 420, 467, 468, 471 and 120(B) of the I.P.C., cognizance has been taken, is, hereby, quashed and set aside with respect to the petitioner and all the consequent criminal proceedings emanating therefrom are also quashed and set aside, *qua* the petitioner.

106. Accordingly, this application stands allowed in the aforesaid terms.

107. All pending interlocutory application(s), if any, shall also stand disposed of.

108. I would like to record my appreciation for the valuable assistance rendered by my Judicial Clerks/Law

WEB COPY

Assistants, Mr. Eshan Pawar and Ms. Jyoti Singh, in the preparation of this judgment.

(Rana Vikram Singh, J)

Praveen-II/Saurabh

AFR/NAFR	AFR
CAV DATE	27.07.2026
Uploading Date	26.10.2026
Transmission Date	26.10.2026

WEB COPY