

HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD

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Criminal Petition No.586 OF 2021

Between:

V.Narsinga Rao.

... Petitioner

And

The State of Telangana,  
Rep. through Public Prosecutor,  
High Court for the State of Telangana,  
Hyderabad and another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 16.03.2023  
Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

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*K.SURENDER, J*

\* THE HON'BLE SRI JUSTICE K. SURENDER  
+ CRL.P. No. 586 of 2021

% Dated 16.03.2023

# V.Narsinga Rao

... Petitioner

And

\$ The State of Telangana,  
Rep. through Public Prosecutor,  
High Court for the State of Telangana,  
Hyderabad and another

... Respondents

! **Counsel for the Petitioners:** Sri M.V.Hanumantha Rao

^ **Counsel for the Respondents:** Sri S.Sudershan

Additional Public Prosecutor for R1

>HEAD NOTE:

? Cases referred

<sup>1</sup> 2012 (Suppl.) ACC 308

**HON'BLE SRI JUSTICE K.SURENDER**  
**CRIMINAL PETITION No.586 OF 2021**

**ORDER:**

1. This Criminal Petition is filed to quash the proceedings against the petitioner/Accused No.9 in C.C.No.10380 of 2020 on the file of XII Additional Chief Metropolitan Magistrate, Hyderabad for the offence under Section 109 of IPC.

2. The 2<sup>nd</sup> respondent is the Chief Manager of Bank of Maharashtra. He filed a complaint stating that loan application was made by Gali Niranjan/A2 on behalf of A1 i.e., M/s.REX Contractors & Traders Private Limited for cash credit of Rs.180.00 lakhs which was sanctioned on 02.11.2012 from Khairatabad branch. An open plot admeasuring 1700 sq.yds in Sy.No.110, Maktha, Mehaboobpet village, Serilingampally which was owned by A2 was given as security. Loan was given to A1 and A2. However, the amounts were not being paid. The account was declared as NPA on 29.10.2013 and the Bank also initiated proceedings under SARFAESI Act.

3. It is further stated that on enquiry, the Bank came to know that the sale deed which was deposited is non existent

property and same was done with an intention to cheat the Bank. The documents from the Bank were collected during the course of investigation. During the course of investigation it was found that there are disputes regarding the property and also certain documents were fabricated by the accused A1 to A7 who created will deeds and A5 to A7 executed agreement of sale-cum-GPA in favour of A4. A4 to A7 planned and divided the property into two plots and sold one of the said plots for sale consideration of Rs.1.87 lakhs to A2. The said document was submitted before the Bank of Maharashtra. On the basis of the complaint filed by the bank, the police investigated the case and filed charge sheet. This petitioner who is an advocate was found complicit of colluding with A2 and furnishing false certification of the plot given as security by A2.

4. Learned counsel for the petitioner submits that an Advocate giving a legal opinion cannot be prosecuted criminally in view of the judgment of the Hon'ble Supreme Court in the case of **Central Bureau of Investigation,**

**Hyderabad v. K.Narayana Rao**<sup>1</sup>. On the basis of the documents produced by the Bank, the petitioner, who is appointed as a counsel for the Bank has certified that the property which was registered and in Sy.No.110 of Maktha, Mehaboobpet village was searched in the sub- registrar's office and that there is a clear marketable title. Since the opinion is based on the documents provided, it cannot be said that this petitioner in any manner entered into criminal conspiracy with the other accused to cause loss to the Bank. Accordingly, petition has to be allowed.

5. On the other hand, it was argued on behalf of the respondents that the role of this petitioner is clearly mentioned in the charge sheet that A2 approached A8 and this petitioner/A9 and submitted loan application and offered to give good percentage. For the said reason, A8 and this petitioner colluded with A2 and knowing that the property was not genuine certified that the property to be clear and marketable. On the basis of said opinion, A8 sanctioned loan

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<sup>1</sup> 2012 (Suppl.) ACC 308

for an amount of Rs.180.00 lakhs. After disbursal of the loan, A2 diverted the amount to his personal account and misappropriated. The bank has suffered loss on account of the acts of this petitioner also along with other accused as such the proceedings have to continue before the trial Court.

6. The role attributed to this petitioner, who is an Advocate is that he had given an opinion on the basis of the documents provided by the Bank. The certification by the counsel in his legal opinion is as follows:

“I have examined the original title deed Doct.No.12306 of 2012 dt.05-11-2012 relating to land admeasuring 2051 sq.yds in Sy.No.110 of Makta Mahaboobpet village, Serilingampally Mandal, R.R.District and I have also taken search with the District Registrar, R.R.District for the last 29 years (Original fee receipt enclosed). I certify that Sri Gali Niranjana has an absolute, clear and marketable title over the property shown above in Para-5 and that by deposit of afore said title deed by mortgagor/borrower a valid mortgage would be created on behalf of borrower in the manner required by law, it will satisfy the requirements of creation of Equitable Mortgage.”

7. The Bank while lodging the complaint mentioned that on enquiry, they came to know that the borrowers and guarantors defrauded the Bank by depositing a sale deed of non existent property for the purpose of cheating the Bank. However, no

role was attributed to this petitioner in the complaint made nor did the preliminary enquiry by the Bank before lodging the complaint reveal the role of this petitioner.

8. The police, having filed charge sheet mentioned that an offence under Section 109 of IPC is made out against this petitioner. However, against A1 and A2, the charges are under Sections 406, 409, 420 r/w 34 of IPC, charges against A5 and A6 are Sections 406, 420, 465, 468, 471 r/w 34 of IPC and against bank official A8, offence under Section 406, 409, 420r/w 109 of IPC.

9. The borrowers and guarantors approached the Bank for the purpose of taking loan and provided the documents for the purpose of security. The role of this petitioner is after the other accused had approached the Bank, the Bank had provided the documents for the purpose of certification and verification. Having verified the said documents in the District Registrar, R.R.District for a period of 29 years certified that Gali Niranjana has absolute clear and marketable title over the property

which is 1700 sq.yds out of 3751 sq.yds in Sy.No.110, Mahaboobpet Village, Serilingampally Mandal.

10. It is not in dispute that the document is registered document and original fee receipt which the petitioner had searched in the District Registrar was also enclosed along with the legal opinion. It is not the case of the police that this petitioner had verified the physical boundaries of the land by visiting the said property. No where it is mentioned in the legal opinion that this petitioner had verified the land physically and later certified. The only documents which were provided by the Bank were verified with the Sub-Registrar office.

11. To attract an offence under Section 109 of IPC, it has to be shown that the accused has instigated the other accused or engaged with them in pursuance of criminal conspiracy for doing an illegal act. Admittedly the role attributed to this petitioner is only after the bank provided relevant documents for the purpose of verification. There is no allegation of any transfer of amounts to this petitioner. In the said circumstances, on the basis of an assumption that this



petitioner had intentionally aided or abetted the other accused to obtain loan, the prosecution against the petitioner cannot be continued.

12. The Hon'ble Supreme Court in **Central Bureau of Investigation, Hyderabad v. K.Narayana Rao (surpa)** held that merely because opinion of a counsel or lawyer is not acceptable, he cannot be mulcted with criminal liability particularly in the absence of any tangible evidence that he is associated with the other conspirators. There are no witnesses to speak about this petitioner being in any manner involved with the other accused. Though the evidence is circumstantial in nature, merely on the basis of opinion given by this petitioner, on the basis of verification in the Sub-Registrar Office, this Court is of the opinion that criminal proceedings cannot be allowed to continue against this petitioner.

13. In the result, the proceedings against the petitioner/A9 in C.C.No.10380 of 2020 on the file of XII Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed.

14. Accordingly, the Criminal Petition is allowed. Consequently, miscellaneous petitions, if any, shall stand disposed.

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**K.SURENDER, J**

Date: 16.03.2023

Note: LR copy to be marked.

B/o.kvs

**HON'BLE SRI JUSTICE K.SURENDER**

CRIMINAL PETITION No.586 OF 2021

Date: 16.03.2023

*kvs*