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ALLEGED IPC PROVISIONS FACED BY THE VALUERS (A CASE STUDY) & PREVENTIVE METHODOLOGIES

'Prevention' is the act of stopping something from happening or avoiding it in the beginning so as to stop a bad event from happening in the first place than to have to deal with along with resulting evil consequences. Every professional is expected to deal with the assignment very much prudently and with utmost care and leaving no room for the negligence.

Friends, my view point is to take the utmost care as expected from an expert while dealing with the assignment of Valuation of properties. We, sometimes, hurriedly issue the valuation reports leaving behind lacuna i.e., leaving pitfalls such as, not assigning proper reasoning/ explanations to each of our conclusion, application of appropriate base(ies) and premise of value, Assumptions, special assumptions and limitations encountered due to insufficiency of documents, reliability of the documents submitted and its authenticity, etc.

The most important provisions of IPC under which the professional valuers have been alleged to have committed frauds in conspiracy with the borrowers, officers of the lending bank/ institutions under various complaints made by the lender banks to Police, C.B.I. etc. are most importantly Section 120B, 419, 420, 467, 468 and 471 of Indian Penal Code, 1860 (hereinafter referred to as IPC for the sake of brevity) and section 13(2) read with 13(1) (d) of The Prevention of Corruption Act, 1947.

The definitions of various important terms associated with the provisions are as under:

DEFINITIONS

1. The term '***criminal conspiracy***' is defined under **Section 120A** I.P.C. which says, when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy, provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy

unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. (“**No overt act need be established**” – as decided in the Supreme Court Judgment -Kehar Singh Vs. State Of Delhi).

2. The term '**cheating**' is defined under **Section 415 I.P.C.**, as follows:

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 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"".

To constitute an offence under Section 415 I.P.C., the prosecution has to establish the following ingredients:

- (i) There should be fraudulent or dishonest inducement of a person by deceiving him;
 - (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
 - (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he was not so deceived; and
- (ii) In cases covered by (i) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

3. **The word 'forgery'** is defined under **Section 463 I.P.C.**, which means whoever makes any false document 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.
4. A question will arise in the mind that **a valuer** of the Banks, is not a **public servant** strictly speaking as defined under Section 21 I.P.C. or as defined under Section 2 (c) of the Prevention of Corruption Act, 1947, then how this provision would be attracted upon him?

Answer for it is very simple: If the appropriate Court finds based on the facts and circumstances that the act done by accused valuer along with public servants and the borrowers of the Banks, directly points out the complicity (अपराध में सहयोग, सँठ-गँठ, मिली भगत) for the

offences referred to conspiracy, cheating, forgery etc. is also liable to be proceeded with the other accused, who are public servants, in view of Section (8) of the Prevention of Corruption Act.

I have reproduced below the Sections 120B, 419, 420, 467, 468, 471 & Section 13 (2) read with 13 (1) (d): Section 13 (2) of The Prevention of Corruption Act, 1947, with punishment prescribed thereunder:

1. **IPC: SECTION 120B: Section 120B I.P.C. deals with punishment for criminal conspiracy.**

Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]
2. **SECTION 419: Punishment for cheating by personation:** Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
3. **SECTION 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.
4. **SECTION 467: Forgery of valuable security, will, etc.** Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

5. **Section 468 I.P.C.** deals with punishment for forgery for the purpose of cheating: Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
6. **Section 471 I.P.C.** deals with using as genuine a forged document: As per Section 471 I.P.C., whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record shall be punished in the same manner as if he had forged such document or electronic record.
7. **The Prevention of Corruption Act, 1947**. Section 13 (2) read with 13 (1) (d): Section 13 (2) of The Prevention of Corruption Act, 1947, deals with any public servant, who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than four years but which may extend to ten years and shall also be liable to fine.

As per Section 13 (1) (d) of the Prevention of Corruption Act, a public servant is said to commit the offence or criminal misconduct, if he by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest is liable for punishment.

CASE STUDY:

G. Satyanand Rao vs The State, C.B.I. Hyderabad, on 27 August, 2018 (Telangana High Court)

In view of understanding the applicability of various provisions of Indian Penal Code, 1860 I have taken the help of Common Orders pronounced by the Hon'ble Sri Justice M. Satyanarayana Murthy of Telangana High Court arising out of various Criminal Revision Cases of 2011 which were passed against the Petitioner (accused before C.B.I. Court) i.e., **Valuer Mr. G. Satyanand Rao.**

FACTS OF THE CASE:

The petitioner in all the three cases was one Mr. G. Satyanand Rao, who was a panel valuer of Syndicate Bank, Borabanda Branch and Bank of India, Saroor Nagar Branch. He allegedly valued the properties mortgaged with the complainant Banks at inflated rate, thereby making the Banks to advance loans at inflated rate. When the loans were not paid by the borrowers, it came to the notice of the complainant Banks that the petitioner submitted reports valuing the properties at inflated rate in a most negligent manner. On account of lending amounts to the borrowers, solely based on valuation reports submitted by this petitioner at inflated rate, the complainant Banks sustained huge loss. Hence, they lodged complaints with the C.B.I., who, in turn,

registered crimes against this petitioner and other employees of the complainant Banks. After completion of investigation, the C.B.I. filed charge sheets before the Special Judge for C.B.I. Cases, Hyderabad, for various offences referred to above against several accused, including this petitioner.

1. The Valuer/ petitioner filed various Criminal Miscellaneous Petitions before the C.B.I. Court under Section 239 Cr.P.C., to discharge him for the various alleged offences referred to in all the cases. His main contention was that none of the witnesses examined by the Investigating Agency during investigation, who were the listed witnesses in the memorandum of evidence annexed to the charge sheet, did spoke anything against this petitioner and none of the documents collected during investigation and filed along with the charge sheets disclose commission of any offence by this petitioner for the offences referred to above. The statements recorded by the Investigating Agency under Section 161 (3) Cr.P.C. did not disclose any statement pointing out the complicity of this petitioner for the various offences referred to above.
2. However, a basic allegation against this petitioner in one of the complaints to constitute the offences was that this petitioner failed to ascertain the genuineness of permit No. G/2155/98, dated 07.12.1998, which was mentioned in the documents while submitting the valuation reports. This petitioner in his discharge application contended that there was no evidence even to suggest that this petitioner conspired with the employees of the complainant Bank, who were arraigned as other accused in the charge sheet, and even if the evidence available on record was accepted as true and correct, there was no *prima facie* material to proceed against this petitioner by framing charges.
3. In the support of the Petitioner, his counsel produced various judgment of Apex Court mentioning the underlying principle thereby that the Court must not automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case and on the strength of the principles laid down in the judgments so referred and the grounds urged therein, the petitioner requested the Special Judge for C.B.I. Cases to discharge him for various offences referred to above by exercising the power under **Section 239 Cr.P.C.**
4. The respondent C.B.I. filed counters raising identical grounds, while denying the material allegations made in the petitions. In the counter filed, it was, inter alia, contended that as per the general guidelines laid down by the Bank of India, the property has to be visited by the

approved valuer himself physically for preparation of valuation report. While valuing the property, the valuer has to undertake physical measurement of the property. If any deviations/additions are noticed vis-à-vis sanctioned plan, the same has to be clearly mentioned in the report together with the cost/percentage of such deviations/additions. The valuation of the property has to be made taking into consideration the actual market value, Government value in the concerned Sub-Registrar Office, location of the property and other related matters. The assigned work was to be done by the valuer honestly and as per the guidelines of the Bank and reasonable care has to be taken while assessing the value of the property. The valuer should not inflate the value of the properties. Further, he is responsible, in case, at a later date it was found/observed that the valuation report was incorrect/the valuation of the property was inflated. The valuer shall be liable for the action to be taken by the Bank in any manner including the recovery of the loss suffered by the Bank, if any. Therefore, submission of valuation report in contravention of the guidelines issued by the Bank without physical inspection, without taking measurements and valuing the property at inflated rate or valuing the property, which was not in existence on ground, was a matter of serious concern. The cumulative effect of the circumstances pointed out that the petitioner colluded with the borrowers and the Bank officials and submitted reports, to enable the Banks to advance loans on the basis of valuation reports submitted by him and therefore, the petitioner could not be discharged at that stage.

5. It was also contended that the petitioner submitted valuation reports for the different named borrowers for different flats to be purchased by the accused borrowers and that on the advice of the Manager, Bank of India, Saroornagar Branch, Hyderabad, he along with the owners and representative of the borrowers, visited the property in the above premises and that the builder had obtained permission for ground and four upper floors from the Commissioner, Malkajgiri Municipality, vide permit No. G/2155/98, dated 07.12.1998, and that the flats were semi-finished and hence average rate. However, the investigation revealed that the petitioner had not physically verified the properties and failed to point out the deviations between the approved plan and the one existing on the ground. During the course of investigation, the evidence collected by the Investigating Agency, including the submissions of the original owners of the properties who were different than the accused borrowers and the sale deeds in whose names were executed long back in the year 2000. This clearly established that the petitioner had not physically verified the properties and some of the flats were already sold out and the actual owners were residing in those properties. Thus, he gave a false report so as to enable the borrowers to obtain loan from the Bank based on such false report. Similarly, it was confirmed by the municipal authorities that they have not issued any permit vide permit No. G/2155/98, dated 07.12.1998. As per their

record, the said permit was issued in the name of Sri Jayaprakash for construction of stilt + ground + first and second floors, which was valid for two years i.e., from 1994 to 1996. But, the petitioner in his valuation report mentioned about the afore-said permit. Thus, the petitioner by exhibiting **sheer negligence and in collusion with the borrowers and the Bank employees issued such valuation reports and thereby, caused huge loss to the complainant Bank.**

6. Similarly, the respondent contended that the petitioner, who was an approved valuer engaged by Syndicate Bank during the years 2003 and 2004, conspired with other accused and submitted false valuation reports showing inflated rates and facilitated the borrowers to draw more quantum of loan amounts from the Bank and thereby, cheated the Syndicate Bank, Borabanda Branch, and committed offences punishable under Sections 120B and 420 I.P.C. and there was sufficient material to proceed against the petitioner. It was also contended that the petitioner submitted false valuation reports, which were cited vide various document Nos. and filed along with the charge sheet. It was also contended that during investigation, inspection of the properties, for which valuation reports were given by this petitioner, was done and a report was filed along with the charge sheet as document No. x. It was also contended that one Kamalanabha Rao, Branch Manager, Syndicate Bank, being witness to the proceedings and Y.S.R. Subramaniam on behalf of M/s. Immaneni Associates, Panel Valuer, conducted physical survey of the said properties and speak about document No. x was sufficed to conclude that **the petitioner without visiting the property physically, submitted reports.**
7. The trial Court, upon hearing the arguments of the counsel for both the petitioner and the respondent represented by the Public Prosecutor dismissed the petitions holding that **there is material to proceed against this petitioner.**

Feeling aggrieved by the above orders passed in three different petitions, the three revision cases were filed before the Hon'ble High Court of Telangana by the accused/ portioner under Section 397 and 401 of Cr.P.C raising a specific ground that none of the allegations made against this petitioner constitute any offence punishable under Section 120B, 419, 420, 467, 468 and 471 I.P.C. and section 13(2) read with 13(1) (d) of Prevention of Corruption Act, but the trial Court, even without insisting any material to proceed against this petitioner, concluded *prima facie* that the material available is sufficient to proceed against this petitioner for framing charges and committed an error in dismissing the petitions.

ISSUE INVOLVED IN THE CASE BEFORE THE HIGH COURT:

"Whether prima facie material is available to proceed against this petitioner for the offences punishable under Section 120B, 419, 420, 467, 468 and 471 of I.P.C. and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act? If not, whether the orders passed by the Special Judge for C.B.I. cases be reversed or set aside discharging this petitioner for the aforesaid offences".

Decision of the High Court:

The main allegations were that the petitioner, being a panel valuer of immovable property on behalf of the complainant Banks, was asked to value the properties of the borrowers before advancing loans to them. The panel valuer had to follow the guidelines issued by the Banks for fixing value of the property and submit his report in the proforma prescribed by the guidelines issued by various Banks. The panel valuer was also expected to visit the property personally, verify the permits granted by the authorities concerned to construct the building and point out the deviations, if any, etc., and submit his valuation report in accordance with law. But, in the present cases, the petitioner did not visit the properties personally for advancing loans and submitted valuation reports in collusion with the borrowers and Bank officials. Apart from that, though the property was not in existence on ground, the petitioner fixed the value. This fact was supported by the joint inspection report of the Branch Manager of the Bank along with the other valuer. Therefore, submitting valuation report to enable the borrowers to borrow huge amounts from the Bank in collusion with the employees of the Bank, though not directly supported by any material, can be inferred based on the conduct of the petitioner prior to and subsequent to the commission of the offence i.e., submitting a valuation report to the Bank, which made the bank to part with huge amount. Therefore, the petitioner allegedly committed various offences referred to above. In all the three cases, the common offences are under Sections 120B, 420 and 468 I.P.C. and Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act.

On verification of the statements recorded by the police under Section 161 (3) Cr.P.C. during investigation and the material documents produced along with the charge sheet in compliance of Section 173 Cr.P.C., the honourable Judge found prima facie material against this petitioner to proceed in the criminal Court after framing the charges. "**Therefore, the contention that there is no material against this petitioner to proceed further was without any substance."**

While referring the judgment of the Honourable Apex Court in *K. Narayana Rao's case* and *Anoop Kumar's case*, Court said it was about the opinion given by an Advocate and there is a lot of distinction between the skills of an Advocate and a panel valuer of the Bank, who is an Engineer. An Engineer is expected to give his opinion on physical inspection of the property, but whereas an Advocate is expected to give opinion based on his legal knowledge and skills in the branch of law. **Therefore, opinion of a**

legal practitioner cannot be equated with the valuation report submitted by a panel valuer and the principles laid down in the above two judgments cannot be applied to the present facts of the case.

- (1) When the petitioner gave valuation reports, despite defective title or non-existence of property, in view of the conspiracy between the borrowers, the petitioner and the Bank employees, the complainant Banks parted with huge amount and sustained huge loss.
- (2) If this principle is applied to the facts of the present case, the surveyor or the panel valuer of the property, who caused loss, shall be made liable in difference of the loss. If the panel valuer exhibited conscious criminal or culpable negligence as a valuer and committed breach of his duty and caused loss, it amounts to criminal misconduct *prima facie*. Therefore, based on the material available on record, this Court cannot exercise power under Section 239 Cr.P.C. to discharge this petitioner for various offences referred supra.
- (3) When the Court finds that there is *prima facie* material to proceed against this petitioner, it cannot exercise the power under Section 397 read with 401 Cr.P.C. to set aside the orders impugned in these revisions.
- (4) Court dismissed all the revision cases.
- (5) **Valuer/ accused/ Petitioner lost his case.**

PRVENTIVE METHODOLOGIES:

1. Accept the assignment for valuation directly from the authorized officer of the bank only. (May be through e-mail, letter etc.).
2. Obtain necessary documents e.g., copy of sale deed, agreement to sale, if any, copy of approved layout plan and building plan along with the development permission issued by the competent authority and a latest NEC cum title clearance report issued by the Panel Advocate of the Bank. Accept the documents from the Bank only in hard copies or scan documents through e-mail. Write a letter for deficiency of documents, if any, to provide at the earliest.
3. Match the property location with respect to the description given in Legal Opinion and sale deed, proposed agreement to sale, if any, and with the approved layout and building plan. If there

is any mismatch, then try to find out with other reliable and Government/ semi-government/ local authority resources or with your own database if you have for that particular locality else seek further clarifications from the borrower keeping the Banker informed as well simultaneously.

4. Check for any easement rights, ROU within the property which might be existing though not reflected in the title clearance report. **Make sure that we are valuing only the rights and interest connected with the property under the assignment.**
5. Do the valuation report in the format supplied by the Bank or financial institution with additional remarks/ clarifications wherever required, e.g., selection of correct and appropriate base(ies), approach with reasons, back ground information of the property, if any, point out the irregularity/ illegality found on site with respect to the approved layout plan and building plan etc. Your own report would defend you, if you have sufficient material to show within the valuation report that you have observed utmost duty of care for making the assignment complete in all respect.
6. Take a selfie with the borrower or his authorized representative, representative of the bank, keeping the property in background as evidence of having visited the site personally in presence of the borrower and the banker. Paste this selfie in your report.
7. Do not submit the hard copies of the report to the client bank through borrower/s. Even, if it required to submit through the borrower/s then send a scan copy of the same report to the Bank through their official e-mail ID and take the confirmation of having received the same and the bank has found the hard copy in order as per the scan report.

References:

1. Indian Kanoon website for the Judgment of G. Satyanand Rao vs The State, C.B.I. Hyderabad, on 27 August, 2018 (Telangana High Court).
2. Indian Penal Code, 1860.

..... WISHING YOU ALL A GREAT CAREER AHEAD