

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1321 OF 2014

Jagan Sahebrao Sarkate

.. Applicant

Versus

The State of Maharashtra and Another

.. Respondents

Mr.S.R.Shirsat, Advocate h/f Mr.S.S.Jadhvar, Advocate for the applicant.

Mr.S.D.Kaldate, Advocate for the respondent/ State.

CORAM : SMT.SADHANA S. JADHAV,J.

DATED : 05.05.2015

PER COURT :-

. Heard. Rule. Rule made returnable forthwith with the consent of parties.

2. The applicant herein was an accused in M. Case NO.203 of 2007. The applicant was tried for offence punishable under Section 409,406,408,420 read with 34 of the Indian Penal Code and under Section 37 A.D.[2] of the Banking Regulation Act. Pursuant to the directions under Section 156[3] of the Criminal Procedure Code M.Case No. 203 of 2007 was registered against the applicant at New Mondha Police Station, Parbhani. The applicant was arrested. The applicant had filed an application seeking

bail under Section 439 of the Criminal Procedure Code. By an order dated 15th October, 2009 this Court [**Coram:** K.U.Chandiwal, J.] had directed the applicant be enlarged on bail in RCC No.467 of 2008 pending before the Judicial Magistrate, First Class, Court No.1 at Parbhani. This Court had observed that the applicant herein was working as a Chairman of the Cooperative Bank and that he had flouted the rules and prevailing norms of Reserve Bank of India [RBI]. There were irregular and illegal purchases of the property. This court has further observed that the complainant, namely, Sudhakar Kada and others had filed complaint in respect of flouting of the rules in relation to five deposits in the sum of Rs.49,000/- each. The applicant was directed to deposit an amount of Rs. 2,45,000/-. Pursuant to direction of this court the applicant has deposited an amount of Rs. 2,45,000/- in Yeshwant Urban Co-operative Ban ltd. i.e. Respondent No. 2, on 20.11.2009. This Court had specifically passed an order to the effect that such deposit "will be without prejudice to his rights".

3. During pendency of the trial the original complainant had filed an application before respondent No. 2 bank to reimburse the deposited amount of Rs. 2,45,000/- in his favour. Accordingly, the bank had disbursed the said amount infavour of the complainant.

The complainant had not cooperated with the prosecution as he had received the amount. The applicant was acquitted by the learned 8th Judicial Magistrate, First Class, Parbhani vide judgment and order dated 21.07.2011. After the appeal period was over the applicant herein filed Criminal Misc. Application No.601 of 2013 seeking liberty to withdraw the amount of Rs.2,45,000/- deposited by him in the account of respondent No. 2 bank as a condition precedent for being enlarged on bail. The applicant had specifically averred that the judgment and order of acquittal has attained finality. The bank had caused appearance in the said application and had apprised the court of fact that the said amount was deposited pursuant to the direction of the Hon'ble High Court and therefore the applicant had no authority to seek withdrawal of the said amount. The learned Magistrate by an order dated 04.12.2014 has been pleased to reject the said application on the ground that there is no specific direction given by Hon'ble High Court in respect of disbursement of amount at the end of trial. Learned Magistrate had further observed that the applicant would be at liberty to file an application before the Hon'ble High Court. The applicant herein has approached this Court under Section 482 of the Criminal Procedure Code since the learned Judicial Magistrate, First Class, Parbhani had observed that the applicant is

at liberty to move the High Court for necessary directions.

4. It is a matter of record that respondent No.2 bank had reimbursed the complainant and returned amount infavour of the complainant without any orders from any court. Respondent No.2 bank had not taken any steps to obtain necessary directions either from the High Court or from the Court who was seized with RCC No.467 of 2008 and had created third party interest. In fact the bank was a third party. The bank was not a complainant. While returning the amount to the original complainant the bank had not issued any notice to the present applicant and the applicant was not even apprised of fact that the amount is being returned to the original complainant. As on today also the respondent no. 2 bank has filed an affidavit and has placed reliance upon the fact that the amount was deposited pursuant to orders passed by this Court while enlarging the accused on bail. In fact, the proceedings or an application under Section 439 of the Criminal Procedure Code is not a recovery proceeding as is termed by the Hon'ble Apex Court in the catena of decisions. The bank had no authority to create any third party interest. The applicant has been acquitted by the Trial Court. The respondent bank or the State of Maharashtra has not assailed the said judgment and order

of acquittal and hence the same has attained finality. In view of this the applicant herein had rightly filed an application before the Judicial Magistrate, First Class, Parbhani seeking return of amount which was deposited in the bank only to demonstrate the bonafide of accused/applicant. Section 452 of the Criminal Procedure Code specifically contemplates that;

452. Order for disposal of property at conclusion of trial.

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in

sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term " property " includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

5. The respondent No.2 bank had temporary dominion over the party. It was incumbent upon the bank to obtain necessary directions either from the High Court or the trial Court before disbursing the amount in favour of the complainant. The High Court had specifically observed that the amount be deposited without prejudice to the rights of the applicants. The respondent No.2 was bestowed the status of a custodian and therefore the respondent No.2 ought not to have disbursed the amount in favour of the complainant.

6. Learned counsel for the respondent submits that the learned Judicial Magistrate, First Class, Parbhani

while acquitting the accused has not passed any order to hand over the delivery of the property to the applicant since he has acquitted and therefore the application filed by the present applicant was not maintainable. Needless to say that although there is no specific order to that effect, an application was filed before the Judicial Magistrate, First Class, Parbhani and has granted liberty. In view of the fact that the amount was deposited pursuant to the orders passed by this Court, and taking into consideration facts and circumstances of the case and submissions advanced across the bar, since the applicant is acquitted of all offences leveled against him, he is entitled to receive the amount deposited by him only to show his bonafide. The amount of RS. 2,45,000/- be returned to the applicant within a period of eight weeks from the date of receipt of this order.

6. The application is allowed in above terms and is accordingly disposed of.

[SMT. SADHANA S. JADHAV, J.]