

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 1566 OF 2016**

The Ahmednagar District Central
 Co-operative Bank Ltd., Station Road,
 Ahmednagar
 Through its Chief Executive Officer
 Yeshwant S/o Arjun Lavate
 Age : 56 years, Occ : Service,
 R/o As above.

..PETITIONER

-VERSUS-

The State of Maharashtra
 Through Police Station officer
 Pathardi Police Station,
 Tq. Pathardi, Dist. Ahmednagar.

..RESPONDENT

...
 Mr.N.V. Gaware, Advocate for the petitioner
 Mr.A.A. Jagatkar, A.P.P. for Respondent/State.

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CORAM : S.S. SHINDE & P.R. BORA, JJ.**Dated: December 21, 2016**

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PER COURT :-

Heard Shri Gaware, the learned
 counsel appearing for the petitioner. The
 petitioner bank has prayed for issuance of
 writ, order or directions, permitting the
 petitioner bank to exchange and/or deposit
 the cash amount to the tune of
 Rs.20,03,200/-, which was muddemal in

Sessions Case no.112/2010 in the Court of Additional Sessions Judge, Ahmednagar, in view of the Notification dated 08.11.2016 regarding withdrawal of Legal Tender Character of existing of Rs.500/- and Rs.1000/- bank notes and for that purpose issue necessary orders.

2. It is the case of the petitioner bank that a sum of Rs. 25,00,000/- was robbed from one of the branches of the petitioner bank, out of which an amount of Rs.20,03,200/- was recovered by the Police during the investigation in the crime registered in that regard. The petitioner bank had initially applied for release of the said amount in its favour by filing an application before the Court of Judicial Magistrate, First Class, Pathardi. The said application was rejected by the Judicial Magistrate, First Class on the ground that the offences charged in the concerned case were triable by the Court of Sessions. The petitioner bank, therefore, preferred another application before the Sessions Court at Ahmednagar, praying for release of the recovered amount in its favour. However, the Sessions Court also rejected the application.

The petitioner bank, therefore, was required to file Criminal Writ Petition no.334/2011 before this Court. In the said Petition, this Court vide order dated 2nd May, 2011 directed return of the amount to the petitioner bank subject to following of the procedure as prescribed in para 12 of the judgment of the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai V/s State of Gujarat**¹ and on furnishing surety bond to the satisfaction of the Lower Court. The petitioner bank complied with the said formalities, and accordingly the amount of Rs.20,03,200/- was returned to the petitioner bank after submitting the surety bond containing the terms as prescribed by the Hon'ble Supreme Court in the aforesaid judgment.

3. The learned counsel for the petitioner submits that Sessions Case No.112/2010 has been disposed of by the Sessions Court vide judgment dated 21.11.2012, however, since the trial against absconding accused no.7 is still pending, as per surety bond, the petitioner bank is required to keep the aforesaid amount

1 AIR 2003 SC 638

returned to it in the same form as was received to it. The learned counsel submitted that the amount so received to the petitioner bank from the Court on executing surety bond contains the currency notes of denomination of Rs.1000/- and Rs.500/- along with the notes of other smaller denominations. The learned counsel further submitted that in view of the demonetization of the currency notes of denominations of Rs.1000/- and Rs.500/-, if the currency notes of the said denominations, which are lying with the petitioner bank as aforesaid, are not deposited to the Reserve Bank of India or the State Bank of India before the date stipulated for its deposit, would become valueless and would just remain as waste of papers. The learned counsel further submitted that if it so happens, it would be a loss to the public money. In the aforesaid circumstances, the petitioner bank has prayed for direction as aforesaid.

4. The learned A.P.P. appearing for the Respondent/State has tendered across the Bar the communication received from the Police Inspector, Pathardi Police Station dated 19th December, 2016. The same is taken on record

and marked "X" for identification purpose. From the said letter, it appears that, the Investigating Officer in the crime concerned, has endorsed his no objection for allowing the request so made by the petitioner bank.

5. From the material on record, it is revealed that while the subject amount was returned to the petitioner bank, the formalities as are required to be complied with in view of the judgment of the Hon'ble Supreme Court referred to above were duly complied. The detail panchanama was drawn at the relevant time, which contain the necessary particulars in respect of all the currency notes received to the petitioner bank totaling to amount of Rs. 20,03,200/-, which contain the currency notes of denominations of Rs.1000/- and Rs.500/- along with other currency notes of smaller denominations. The learned counsel for the petitioner also brought to our notice that the aforesaid muddemal was also video-graphed at the relevant time.

7. Considering the fact that in view of the decision taken by the Government to demonetize the currency notes in the

denominations of Rs.1000/- and Rs.500/-, if the petitioner bank is not permitted to either deposit the said amount with the appropriate authority or get it exchanged with new currency notes, irreparable loss would be caused to the petitioner bank. We are therefore, inclined to allow the petitioner bank to get exchanged the aforesaid amount from the appropriate agency/bank authorized therefor.

8. The petitioner bank shall submit the fresh undertaking to this Court and also before the Sessions Court clarifying that the subject amount after the same is got exchanged in the new currency will be retained unless further orders by the Sessions Court and will not be utilized for any other purpose.

9. The Petition stands allowed in the aforesaid terms.

10. The parties shall act upon authenticated copy of this order.

(P.R. BORA, J.)

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(S.S. SHINDE, J.)