IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 997 OF 2020

Bipin Bhalabhai Bhavsar ...Petitioner
Versus
HDFC Bank Limited and Anr. ...Respondents

Mr. Arun H. Mehta i/b Akshar Laws, for the Petitioner.

Mr. Girish Thanvi, for the Respondent No.1.

Mr. S. S. Hulke, A.P.P for the Respondent No.2 – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 30th AUGUST, 2021

<u>P.C.</u> :

1. Heard learned counsel for the parties.

2. By this petition, the petitioner has impugned the order dated 11th June 2019, passed by the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai, below Exhibit – 1, in C.C. No.945/SS/2019, issuing process as against the petitioner for the offence punishable under Sections 138 r/w 141 of the Negotiable Instruments Act (for short 'NI Act') as well as the order dated 11th February 2020, passed by the learned Additional Sessions Judge, Sessions Court, Greater Mumbai in Criminal Revision Application No.1396 of 2019, by which the learned Sessions Judge was

pleased to reject the petitioner’s revision application.

3. Learned Counsel for the petitioner submits that the respondent No.1 – HDFC Bank Limited has suppressed vital documents whilst filing the complaint under Section 138 of the NI Act. He submits that the said document which has been suppressed by the respondent No.1 – HDFC Bank Limited is at Exhibit - ‘C’ on page 24 of the petition i.e. the letter dated 23rd July 2013 addressed by the petitioner to the respondent No.1 – HDFC Bank Limited. He submits that in the said letter dated 23rd July 2013, the petitioner has specifically stated that ‘it is requested to return the earlier undated cheque no.002890, drawn on Bank of Baroda, Prabhadevi Branch, which is not over 4,50,00,000/-’. He submits that the said letter was written in 2013 whereas the respondent No.1 – HDFC Bank Limited in their complaint filed in 2019 in para 10 has stated that the petitioner had instructed the bank to deposit the said cheque bearing No.002890 drawn on Bank of Baroda for a sum of Rs.4,48,56,000/- lying with the respondent No.1 – HDFC Bank Limited in January 2019, towards part payment of outstanding liabilities. He submits the said averment made in the complaint, to the knowledge of the respondent No.1 – HDFC Bank Limited is false and is contrary to the document at page 24. He submits that non-disclosure of the said document, which is on page 24 is fatal and as such the

complaint is liable to be dismissed.

4. Learned Counsel for the respondent No.1 – HDFC Bank Limited opposes the petition. He submits that no interference is warranted in the impugned order. He submits that the submissions advanced by the learned counsel for the petitioner are all triable issues and cannot be gone into writ jurisdiction.

5. Perused the papers. The respondent No.1 – HDFC Bank Limited has filed a complaint as against the petitioner and others in the Court of the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai, alleging an offence punishable under Sections 138 r/w 141 of the NI Act. Vide order dated 11th June 2019, the learned Magistrate issued process as against the petitioner and others for the alleged offence punishable under Sections 138 r/w 141 of the NI Act. Being aggrieved by the order issuing process, the petitioner challenged the same in revision. The said revision application filed by the petitioner was dismissed by the learned Additional Sessions Judge, Sessions Court, Greater Mumbai, vide order dated 11th February 2020. The learned Judge after observing that merely because there is no reference to the notice dated 23rd July 2013, the avernment made in the complaint cannot be disbelieved nor can it be said that the

respondent No.1 – HDFC Bank Limited has suppressed any material particulars. According to the respondent No.1 – HDFC Bank Limited, there is a specific avernment made by them in the complaint in para 10. The said paragraph 10 of the complaint reads as under:-

> *"10. That, since, the complainant was continuously following up for its payment of outstanding dues towards satisfaction of its legal debts and liabilities as stated herein, the Accused instructed the Complainant Bank to deposit the cheque bearing No.002890 drawn on Bank of Baroda, for a sum of Rs.4,48,56,000/- (Rupees Four Crores Forty Eight Lakhs Fifty Six Thousand Only) lying with the Complainant in January, 2019 towards part payment of outstanding liabilities and assured that the Accused shall maintain sufficient balance in bank account wherefrom cheque has been issued and the said cheque shall be cleared on its presentation. The said cheque was issued by Accused No.1 and signed by Accused Nos.2 and 3 on behalf of Accused No.1."*

6. Although, learned counsel for the petitioner, alleges that the respondent No.1 – HDFC Bank Limited has suppressed the document on page 24 i.e. the letter dated 23rd July 2013, sent by the petitioner to the respondent No.1 – HDFC Bank Limited, the said letter will have to be proved by the petitioner during the course of the trial. The complaint cannot be quashed on the sole ground of suppression of letter dated 23rd July 2013, a document produced by the petitioner.

7. Since, it is a matter of trial, no interference is warranted in writ jurisdiction. Accordingly, no infirmity is found in the impugned order

dated 11th June 2019, passed by the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai, below Exhibit – 1, in C.C. No.945/SS/2019, as well as the order dated 11th February 2020, passed by the learned Additional Sessions Judge, Sessions Court, Greater Mumbai in Criminal Revision Application No.1396 of 2019.

8. The Petition is accordingly dismissed and disposed of as such.

9. All contentions of all parties are kept open during trial. The learned Judge shall conclude the trial, on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.