<u>IN THE HIGH COURT OF JUDICATURE OF BOMBAY</u>
<u>BENCH AT AURANGABAD</u>

CRIMINAL WRIT PETITION NO.331 OF 2020

RAMCHANDRA TOTARAM MULTANI
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Mr. R. S. Deshmukh, Senior Advocate i/by. Mr. D. R. Deshmukh, Advocate for the petitioner
Mr. S.P. Sonpawale, APP for Respondent no. 1
Mr. S. V. Dixit, Advocate for Respondent No.2

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CORAM : R. M. JOSHI, J.
DATE : AUGUST 01, 2023

PER COURT :

1. The petitioner, by this petition, seeks quashing and setting aside of the impugned Judgment and Order dated 08.01.2020 passed by the learned Sessions Judge, Ahmednagar in Criminal Revision No.178 of 2019, which was preferred against the orders passed by the learned Judicial Magistrate First Class, Ahmednagar, in Regular Criminal Case No.342 of 2018 dated 13.06.2019 and 09.10.2019.

2. It is the case of the petitioner that the original accused nos.1 and 2 induced him for sale of Flat No.402, 4^{th} Floor, Sindhri

Sagar Apartment, Ulhasnagar for consideration of Rs.65,00,000/-. It is contended that a sum of Rs.6,00,000/- was obtained by the original accused and an irrevocable General Power of Attorney came to be executed in favour of the petitioner. The said flat was mortgaged with respondent no.2 i.e. Kalyan Janata Sahakari Bank Ltd., Kalyan Branch. Tripartite meeting took place in the bank in which it was agreed by the bank that it will handover the original documents to the petitioner on receipt of mortgage amount of Rs.59,00,000/-. A letter was issued on 31.05.2013 to that effect. On 01.06.2013, the co-accused by issuing letter confirmed settlement proposal of loan for Rs.59,00,000/- and also admitted to have received Rs.9,00,000/- by Demand Draft. Thereafter the petitioner paid further amount of Rs.20,00,000/- to the respondent no.2 - Bank. When the petitioner went to deposit further sum of Rs.30,00,000/- with the bank, they refused to receive the said amount. The petitioner therefore sent legal notice to the bank calling upon it to execute a sale-deed in respect of the flat in question in favour of petitioner after accepting the balance consideration of Rs.30,00,000/-. This notice was not replied by the bank. The petitioner therefore filed Reg. Civil Suit No. 278 of 2013 before the learned Civil Judge Junior Division, Ulhasnagar. Bank appeared in the said proceeding and filed its say.

3. It is first contention of petitioner that on 12.10.2013, petitioner lodged First Information Report bearing Crime No. I-340 of 2013 under Section 420 r/w. 34 of Indian Penal Code with Kotwali Police Station, Ahmednagar, against original accused i.e. Ratanlal Kundnani and his son Bunty Kundnani. It is his contention that during the investigation the police had arrived at a conclusion that the proceeds of crime i.e. the muddemal of Rs.29,00,000/- are with bank. During the investigation of the said crime, the police had directed the proposed co-accused to handover the proceeds of the crime of Rs.29,00,000/-, but in vain. The petitioner therefore filed application before the Judicial Magistrate First Class thereby seeking direction to the police to seize sum of Rs.29,00,000/- from the bank and to deposit the same in the Court. However, the said application came to be rejected by order dated 05.11.2014 and, therefore, the petitioner moved application before the Sessions Judge, Ahmednagar being Revision Application No.41 of 2015. The said application also came to be rejected by the learned Additional Sessions Judge vide order dated 06.01.2016. The petitioner then approached this Court and

filed Criminal Writ Petition No. 124 of 2016 challenging the said order.

4. After completion of investigation of the said crime, charge-sheet came to be filed bearing No.I-159 of 2016 before Judicial Magistrate First Class, Court no.1, Ahmednagar against the accused which was numbered as R.C.C. No.342 of 2018. In the said proceeding, an application was filed by petitioner for direction to police to seize muddemal of Rs.29,00,000/- and to deposit the same in the Court. The said application was allowed by learned JMFC directing the respondent no.2 - Bank to deposit the amount of Rs.29,00,000/- with further direction to the bank not to allow any transaction of disbursement of the amount from the said account till the above mentioned amount is deposited in the Court. Against the said order, an application was moved by respondent no.2 - Bank, but the same came to be rejected. The bank being aggrieved by these orders preferred an application under Section 397 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') being Criminal Revision Application No.178/2019 before the Sessions Judge, Ahmednagar. The learned Sessions Judge allowed the said revision application and

set aside the impugned orders passed by the learned JMFC, which has resulted in filing of instant petition.

5. Learned Senior Counsel for the petitioner states that during the course of investigation, it was found that the proceeds of the crime of Rs.29,00,000/- was in the custody of the bank. Thus, according to him, an application was rightly moved before the learned JMFC and the same came to be allowed justifiably. While assailing the impugned judgment and order passed by the learned Sessions Judge, it is submitted that he has exceeded the powers of revisional court as contemplated under Section 397 of the Code of Criminal Procedure, 1973 (CrPC). It is his contention that the learned Sessions Judge could not have re-appreciated the material on record in order to arrive at a different finding than the one drawn by the learned Magistrate.

6. On the other hand, the learned counsel for respondent no.2 - Bank opposed the said contention by submitting that the amount deposited with the bank was not by the present petitioner and further, in absence of any contract between the bank and the

petitioner, there is no reason or justification directing the bank to deposit the said amount in the Court. In this regard he submitted that the petitioner herein has already filed civil proceeding for specific performance of the contract and in the said suit relief of refund of sum of Rs.29,00,000/- is also sought from the defendant. Thus, according to him, this is not the case wherein any interference is required in the order passed by the learned Sessions Judge.

7. Perusal of the record indicates that the respondent no. 2 Bank is no-way concerned with the crime in question. There is no allegation that the bank was party to the transaction between the petitioner and the accused persons. It is pertinent to note that, in the First Information Report there is absolutely no allegation against any of the bank officials to the effect that they are hand in glove with the co-accused with an intention to cheat the petitioner. Though it is sought to be argued on behalf of the petitioner that there was agreement between him, accused and the bank, however except for the correspondence made with the bank, there is nothing on record to show that any tripartite agreement was entered into between them. As it is rightly observed by the learned Sessions Judge that the said

communication received by the bank was without prejudice. In such circumstances, there was no breach of contract between the bank and the present petitioner. The borrower of the loan had transacted with the bank and the amount came to be deposited in the name of loanee. It is immaterial as to whether the said amount was deposited by the petitioner or by any other person. Since the said amount was admittedly deposited in the accounts of the bank towards the discharge of the loan, it cannot not be said to have any connection with the crime alleged by the petitioner against the accused. The learned Sessions Judge has rightly held that for want of privity of contract between the petitioner and the respondent no.2, no directions could have been issued to the bank to deposit the amount in the court. It is further pertinent to note that the petitioner has already filed the civil suit against accused being Special Civil Sit No. 342 of 2013 for specific performance of contract. In the said suit, apart from the relief of specific performance, in alternative the order of refund of Rs.29,00,000/- is also sought. It is thus clear that as far as the amount of Rs.29,00,000/- is concerned, the respondent bank cannot be held to be responsible for return of the same to petitioner.

8. The learned JMFC had clearly exceeded its jurisdiction while passing order directing the bank to deposit the amount. The said order was passed in complete ignorance of the facts and law. Thus, the learned Sessions Judge therefore was fully justified causing interference with the same while exercising the powers under Section 397 of the CrPC. In the result, there is no merit in the petition and hence, **the petition stands dismissed**.

[R. M. JOSHI]
JUDGE

GGP