IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.466 OF 2015

The Osmanabad District Central
Co-operative Bank Ltd., Head Office
Osmanabad, Dist. Osmanabad
through its Managing Director ... **PETITIONER**

VERSUS

1. The State of Maharashtra
through in-charge City Police Station,
Osmanabad, Dist. Osmanabad.
2. The Nagpur District Central Co-operative,
Bank Ltd., Head Office Ruikar Road,
Gandhisagar through its
Managing Director, Nagpur
3. The Maharashtra State
Co-operative Bank Ltd.,
Regional Office, Dr. Dhananjay
Gadgil Marg, Mahal, Nagpur ... **RESPONDENTS**

...

Advocate for petitioner : Mr. R.R. Deshpande
Addl.P.P. for respondent/State : Mr. M.M. Nerlikar
Advocate for respondent No.2 : Mr. M.V. Samarth, Senior advocate i/b. Mr. R.M. Vaidya and Adv. V.P. Ingle
Advocate for respondent No.3 : Ms. Vaishali Patil Jadhav

...

WITH
CRIMINAL APPLICATION NO.2224 OF 2015

Nagpur District Central Co-operative
Bank Ltd. Head Office at Ruikar Road,
Gandhi Sagar, Nagpur, Taluka and
District Nagpur through its Office in
Charge Court Section
Mr. Rajesh Marotrao Vaidya, ... **APPLICANT**

VERSUS

1. The State of Maharashtra
through Police Inspector,
Osmanabad City Police Station,
Osmanabad, Taluka and Dist. Osmanabad

2. Osmanabad District Central Co-operative
Bank Ltd., Head Office, Osmanabad
Taluka and Dist. Osmanabad
through its Chief Executive Officer ... **RESPONDENTS**

...

Advocate for Applicant : Mr. M.V. Samarth, Senior advocate i/b.
Mr. R.M. Vaidya and Adv. V.P. Ingle
Addl.P.P. for respondent/State : Mr. M.M. Nerlikar
Advocate for respondent No.2 : Mr. R.R. Deshpande

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CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

Reserved On : 01.03.2024
Pronounced On : 19.03.2024

ORDER (PER : MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matters are heard finally at the stage of admission.

2. The learned advocates of both the sides have taken us through the checkered history and the peculiar facts and circumstances leading to the direction of the Supreme Court in Special Leave Petition (Crl.) No.6074/2017 dated 20.11.2023, for taking decision in both these matters pertaining to two specific issues. Firstly, in respect of the amount of interest released by the respondent – Maharashtra State Co-operative Bank (M.S.C. Bank) in favour of Nagpur District Central Co-operative Bank Ltd. (N.D.C.C. Bank), which is respondent No.2 in the Writ Petition and the applicant in the Criminal Application, on an amount of Rs.30 crore lying with the M.S.C. Bank which was frozen pursuant to a

direction of the Supreme Court in Special Leave to Appeal (Criminal) No.3162/2013 dated 11.04.2013, in view of the fact that originally on a request by the Investigating Officer under Section 102 of the Code of Criminal Procedure which was directed to be seized by the learned CJM. Secondly entitlement to the interest accrued thereon, thereafter.

3. Parties are unanimous that in view of the directions of the Supreme Court, all the contentions of the parties have been kept open and the rival claims of the petitioner – Osmanabad District Central Co-operative Bank Ltd. (O.D.C.C. Bank) and the N.D.C.C. Bank are to be decided.

4. There is no dispute about the fact that pursuant to a request made by the Investigating Officer who was investigating the Crime No.106/2002 registered with Police Station Osmanabad for the offences punishable under Section 406, 409, 420 read with Section 34 of the Indian Penal Code on 08.05.2002, an amount of Rs.30 crore, stated to be the amount in the crime, was frozen. This amount was lying with the N.D.C.C. Bank.

5. After the charge-sheet was filed in Regular Criminal Case No.398/2002 since the FIR was filed on behalf of the O.D.C.C. Bank, it filed an application under Section 451 of the Code of Criminal Procedure and sought a direction against the N.D.C.C. Bank to refund the amount which was a property in the crime (a little less then Rs.30 crore). The

application was allowed. N.D.C.C. Bank was directed to pay the amount to the O.D.C.C. Bank, subject to certain stipulations including a condition of furnishing a bank guarantee in favour of the Court to the tune of Rs.40 crore.

6. Aggrieved by the order, N.D.C.C. Bank challenged it in this Court by filing Writ Petition No.3/2005. Simultaneously N.D.C.C. Bank filed Criminal Application No.3218/2005 in that writ petition stating that an amount of Rs.30 crore which it had invested in M.S.C. Bank, be earmarked for compliance of the order, till the writ petition was decided. By the order dated 17.02.2006 the application was allowed and the M.S.C. Bank was directed to earmark the amount of Rs.30 crore and directed that such earmarking would be subject to the result of the writ petition.

7. Criminal Writ Petition No.3/2005 was finally decided by this Court on 13.03.2013. The writ petition was dismissed and the order of the learned CJM, on application of the O.D.C.C. Bank under Section 451 of the Code of Criminal Procedure, was confirmed.

8. The N.D.C.C. Bank challenged the order of this Court in writ petition No.3/2005 by preferring Special Leave to Appeal (Crl.) No.3162/2013. By the order dated 11.04.2013 the SLA was dismissed. It was directed that the amount lying with the M.S.C. Bank would remain frozen till final decision in the trial. The trial was also directed to be concluded within six months.

9. It appears that in the meantime the M.S.C. Bank released an amount of Rs.19,23,11,986/- which was interest accrued on the amount of Rs.30 crore which stood frozen as mentioned herein above.

10. By filing Writ Petition No.466/2015 the O.D.C.C. Bank *inter alia* seeks direction to the M.S.C. Bank to pay to it, Rs.30 crore which stood frozen, by way of interim custody, during pendency of the trial and direction against the N.D.C.C. Bank to refund the amount of interest received from the M.S.C. Bank and injuncting the M.S.C. Bank from paying any further interest on that amount to the N.D.C.C. Bank.

11. Simultaneously the N.D.C.C. Bank has preferred Criminal Application No.2224/2015 seeking direction to release the amount of Rs.30 crore with the M.S.C. Bank in its favour.

12. By a common order dated 16.12.2016 in both these matters, this Court had dismissed the criminal writ petition as well as the criminal application in the light of the order passed by the Supreme Court in SLA (Crl) No.3162/2013 dated 11.04.2013, whereby, the amount lying with the M.S.C. Bank was directed to remain frozen till final decision in the trial.

13. It is in the backdrop of the aforementioned circumstances the Special Leave Petition (Crl.) No.6074/2017 filed by the O.D.C.C. Bank against the dismissal of the Writ Petition No.466/2015 was disposed of on 20.11.2023 expressly directing this Court to decide only the two issues:

i. Entitlement to the amount already released by the M.S.C. Bank in favour of the N.D.C.C. Bank.

ii. Entitlement of amount of interest accruing thereafter.

14. The learned advocate Mr. Deshpande for O.D.C.C. Bank would submit that the crime was registered on an FIR filed by the O.D.C.C. Bank. Pursuant to a request made by the Investigating Officer under Section 102 of the Code of Criminal Procedure the amount of Rs.30 crore with the N.D.C.C. Bank was frozen. On its application under Section 451 of the Code of Criminal Procedure the learned C.J.M. had directed the principal amount of Rs.30 crore to be released in its favour subject to certain conditions. The challenge of the N.D.C.C. Bank to the order of the learned C.J.M. was refuted by this Court in Criminal Writ Petition No.3/2005. The attempt of the N.D.C.C. Bank to challenge the decision of this Court confirming the order of the CJM was also dismissed by the Supreme Court which directed the amount of Rs.30 crore laying with the M.S.C. Bank to be frozen till final decision in the trial. He would therefore submit that when the O.D.C.C. Bank has been held entitled to the principal amount, any interest accrued thereon would be a property in crime and the O.D.C.C. Bank is entitled to receive it.

15. Per contra, the learned Senior advocate Mr. Samarth for the N.D.C.C. Bank would submit that the amount of Rs.30 crore which is lying with the M.S.C. Bank is its amount. By the interim order passed in Criminal Writ Petition No.3/2005 it was earmarked till final decision of

the writ petition. Though the writ petition was dismissed, there was no further order passed therein, in respect of the principal amount of Rs.30 crore that was earmarked pursuant to the interim order. Though the Special Leave to Appeal No.1275/2017 of the NDCC Bank was dismissed, the principal amount of Rs.30 crore was directed to be frozen. Consequently, the N.D.C.C. Bank being the depositor of the amount with the M.S.C. Bank it is entitled to and has been rightly paid the interest accrued thereon.

16. The aforementioned facts and circumstances clearly demonstrate that by the order passed by the learned CJM on the application of the O.D.C.C. Bank preferred under Section 451 of the Code of Criminal Procedure, which was confirmed up to the Supreme Court, it would have been entitled to receive the amount of Rs.30 crore.

17. However, though the order was confirmed by this Court in criminal Writ Petition No.3/2005 and although the Appeal of the N.D.C.C. Bank was dismissed by the Supreme Court, it had directed the amount lying with the M.S.C. Bank to remain frozen till final decision of the trial.

18. Pertinently, by an interim relief in Writ Petition No.3/2005, this Court had, instead of compliance with the direction in the order passed by the CJM to the N.D.C.C. Bank, to pay the amount of Rs.30 crore lying with it to the O.D.C.C. Bank, had accepted its request to earmark its deposit of Rs.30 crore with the MSC Bank till final decision of

the Criminal Writ Petition. However, apparently no further order was passed while disposing of the criminal writ petition, which was simply dismissed. To repeat, on a challenge by the N.D.C.C. Bank to the decision of dismissing the Criminal Writ Petition No.3/2005 though the appeal was dismissed, the amount of Rs.30 crore lying with the M.S.C. Bank was directed to remain frozen till final decision in the trial.

19. If such is the state of the matter, though the N.D.C.C. Bank was the depositor of the amount of Rs.30 crore lying with the MSC Bank, all the orders of the lower courts stood merged in the final order passed in SLA No.3162/2013 and the MSC Bank could not have treated the interest component which accrued thereon as something having any independent status. If the consequence of all the aforementioned orders and the directions of the Supreme Court was that the amount of Rs.30 crore which was lying with the M.S.C. Bank was to remain frozen till final decision of the trial it was implied that even the interest accrued thereon should have been treated as frozen. The N.D.C.C. Bank was not entitled to and the M.S.C. Bank could not have transferred the interest of Rs.19,23,11,986/- to N.D.C.C. Bank.

20. Needless to state that since the observations of the trial court while passing order on the application of the O.D.C.C. Bank under Section 451 of the Code of Criminal Procedure treating the amount of Rs.30 crore as a property in the crime, has not been interfered with by this Court in Criminal Writ Petition No.3/2005 or the Supreme Court in

Special Leave to Appeal No.3162/2013, the trial court will have to pass appropriate order while concluding the trial in respect of entitlement of O.D.C.C. Bank or N.D.C.C. Bank to claim the amount of Rs.30 crore together with the interest accrued thereon from the date it stood earmarked pursuant to the interim order passed by this Court in Criminal Writ Petition No.3/2005 dated 17.02.2006 till conclusion of the trial.

21. Similarly, even the interest to be accrued after the aforementioned interest was disbursed by M.S.C. Bank to the N.D.C.C. Bank would be a subject matter for the trial court to decide at the conclusion of the trial as contemplated under Section 452 of the Code of Criminal Procedure.

22. There is one more aspect which needs to be emphasized. The N.D.C.C. Bank has filed the present application apparently without ever making any attempt to assert its claim over the amount of Rs.30 crore directed to be frozen, by moving any application under Section 451 of the Code of Criminal Procedure. On the other hand, the O.D.C.C. Bank could move such an application and was able to obtain an order of the trial court under the same provision. This in our considered view would be an additional circumstance which would weigh against the N.D.C.C. Bank.

23. In view of such peculiar state of affairs, it would be appropriate that since O.D.C.C. Bank as well as N.D.C.C. Bank are the Cooperative Banks, considering the fact that already the N.D.C.C. Bank

has earned almost Rs.20 crore by way of interest, instead of directing it to refund it, the amount can be secured by directing it to furnish a bank guarantee to the tune of amount of interest received by it, that is Rs.20 crore, whereas, the interest which accrues thereafter can be allowed to be withdrawn by the O.D.C.C. Bank subject to its furnishing an undertaking to this Court that it would refund the amount as per the decision of the trial court.

24. To sum up, the N.D.C.C. Bank was not entitled to claim the interest accrued on the amount of Rs.30 crore which was earmarked and lying with the M.S.C. Bank, which it had offered in lieu of complying with the directions of the trial court on the application of the O.D.C.C. Bank under Section 451 of the Code of Criminal Procedure, whereas, since the observation of the trial court to treat it as a property in the crime has reached finality, the O.D.C.C. Bank is entitled to claim the interest accrued thereon, however, subject to furnishing an undertaking to refund it.

25. Both the proceedings are accordingly disposed of. Rule is made absolute in the above term.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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