IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.1025 OF 2024

(Nitin s/o Omkarrao Wankhede Vs. Sustainable Agro – Commercial Finance Ltd. and ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

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Mr. D.N. Mudgale, Advocate for the petitioner.
Ms. S.S. Dhote, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 8, 2025.

By preferring this writ petition, the petitioner has challenged the order passed by the Revisional Court i.e. Additional Sessions Judge, Wardha allowing the revision application partly and set aside the impugned order passed by the Judicial Magistrate First Class, Arvi, District Wardha in R.C.S. No.78 of 2023 and trial Court is directed to proceed with the matter as per the law by issuing process against the present petitioner and other co-accused under Section 406, 420, and 120-B of the Indian Penal Code.

2. The original complainant filed Misc. Application No.74/23 under Section 156(3) of the Criminal Procedure Code for registration of offence punishable under Sections 120-B, 406, 420, 468 and 471 of Indian Penal Code against the present petitioner and other co-accused. The original complainant is the financial company registered under the provisions of the Company Act and was running business of disbursing loan. The

co-accused obtained the loan for an amount of Rs.1,48,000/- and the same was disbursed to them after fulfilling the requirement of necessary documents. The accused No.2 is the borrower and accused No.3 is the co-borrower. They both have mortgaged the property bearing No.41/1 ad-measuring 1.26 H.R. are situated at Mouza Sorta, Tah. Arvi, District- Wardha in favour of the company by executing registered mortgage deed dated 07/04/2017 in favour of the respondent. At the time of mortgage they assured that they would repay the amount and accordingly the charge was kept on the said property and the entry was taken in 7/12 extract of the said property in other columns by revenue authority.

3. As agreed the co-accused have not repaid the loan amount as agreed and subsequently the property was sold to the present petitioner. It was alleged that present petitioner was knowing about the transaction between the bank and the co-accused and despite of the same, he has purchased the same. It is alleged that due to the sale of the said property which was mortgaged, the company has sustained the loss. The public money is involved, and therefore, prayed for investigation in the said matter to register the offence against the present petitioner as well as the other co-accused.

4. On 13/06/2023, the Judicial Magistrate First Class, Arvi, District Wardha dismissed the complaint under Section 203 of Code of Criminal Procedure. Being

aggrieved with the same, the original complainant has preferred the revision which was allowed and the J.M.F.C., Arvi was directed to proceed against the present petitioner as well as the other co-accused.

5. Learned Counsel for the petitioner submitted that civil dispute is involved and there is no intention to deceive or cheat the present complainant. As far as the present petitioner is concerned he is the only purchaser, and therefore, the order passed by the Sessions Court is erroneous and liable to be set aside.

6. Learned APP strongly opposed the said contention on the ground that the present petitioner knowingly mortgaged the property only with intention to grab the money and to assist the other co-accused to award the payment of the loan amount and purchased the said property. Thus, the present petitioner has knowingly when there was a charge created on the said property, purchased the property sufficient to show at this stage the intention since inception and the intention since inception is revealed, and therefore, the order passed by the Sessions Judge is correct and no interference is called for.

7. After hearing both the sides and on perusal of the order passed by the Sessions Court it reveals that the Sessions Court has considered the sale-deed which was executed in favour of the present petitioner. It further reveals that purchaser i.e. present petitioner was fully aware about the mortgage deed as there was an entry of

charge in 7/12 extract. There is a specific clause in the mortgage deed that the mortgagee has no right to dispose of mortgaged property without permission of the complainant - finance institution, since there is element of deception since inception, and therefore, the Sessions Court has observed that breach of trust because only to avoid payment of loan amount, the other co-accused has disposed of the property and the present petitioner has purchased the same. The documents on record sufficiently shows the involvement of the present petitioner. The Sessions Judge has also considered the provisions Section 200 of Cr.P.C. in complaint case wherein the Magistrate can take cognizance of the offence made out and then has to examine complainant and his witness. If any, to ascertain whether a *prima facie* case is made out against accused to issue process or not. Such examination is provided in order to find out whether there is or not sufficient ground for proceeding. The *prima facie* inquiry by the Magistrate was required which was not conducted by the Magistrate, and therefore, the order of the Magistrate was set aside. On perusal of the order of the Sessions Judge, I do not find any illegality committed while passing the order. Thus, there is no merits in the petition.

8. Hence, the petition is dismissed.

(URMILA JOSHI-PHALKE, J.)

**Divya*