



W.P.No.28536 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 15.11.2023

Pronounced on : 30.11.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.28536 of 2023

and

W.M.P.Nos.28090 & 31674 of 2023

S.Mohan Kumar

... Petitioner

/versus/

1.State of Tamilnadu
Represented by its
Secretary to the Government,
Home Department,
Fort St.George, Chennai-600 009.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai-600 004.

... Respondents

Prayer: Writ Petition has been filed under Article 226 of Constitution of India, to issue Writ of Mandamus forbearing the respondents from in any manner initiating action under Section 4 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003, as the same is not applicable to the petitioner being the Licensed Money Lender lending loan advances exceeding Rs.10,000/- on the basis of Negotiable Instruments Act and such other security documents by way of mortgage in accordance with law.



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For petitioner : Mr.R.Abdul Mubeen
Mr.C.V.Kumar (WMP.No.31674/2023)

For Respondents : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

ORDER

Writ petition by a licensed Financier, holding Money Lending License in the name of “S.Mohankumar Finance” filed seeking issuance of Writ of Mandamus forbearing the Respondents from in any manner initiating action under Section 4 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003.

2. The grievance of the writ petitioner is that, being a licensed money lender he used to lend money through bank and collect interest as per the Money Lenders Act. One of his borrower who owe him Rs.2.43 crores after issuing a cheque for the said amount and left the cheque to bounce without sufficient fund, lodged a complaint before the respondent police alleging exorbitant interest been demanded and collected by the petitioner in violation of Section 4 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 and Sections 406, 420 and 34 of IPC. When this criminal complaint was pending investigation, the Inspector of Police attached to Central Crime Branch-1, Chennai conducted search of his premises and his daughter's residence.



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During search seized several documents pertaining to other transactions of third parties. His bank account was also freezed. Two Writ Petitions filed, one for return of documents seized and another to refreeze his bank account and to quash the criminal prosecution. Those Writ Petitions are pending.

3. Another borrower with similar allegations filed a complaint against this petitioner and same is pending in C.C.No.1616/2015 before the Special Court for cases investigated by CCB/CBCID at Chennai. To quash that complaint, he filed a quash petition and same was allowed by the Hon'ble High Court.

4. The Association of Chennai Financiers Welfare Association filed W.P.No.23426/2022 before the High Court seeking declaration that section 4 of Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 as unconstitutional. The court disposed the Writ Petition with an observation that if the transaction between the licensed money lender and the borrower falls under the provisions of any other Act other than Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003, that would be governed by the Act under which the transaction been made. Later, this petitioner filed



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W.P.No.22509/2023 to declare Section 4 as unconstitutional but withdrawn it with liberty to file fresh Writ Petition in the manner know to law. Hence the present Writ Petition.

5. The learned Counsel for the petitioner submitted that, the intention behind the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 is to obviate the lower middle class people from being exploited by the financiers and not for huge loan transactions based on negotiable instruments. The definition of loan under Section 2(6) (vi) of the Tamilnadu Money Lenders Act, 1957 excludes advance made on the basis of a Negotiable Instruments exceeding Rs.10,000/-.

6. Under Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003, lending money for interest above the rate of interest prescribed under Section 7 of the Money Lender's Act is prohibited. The Section 4 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 read with Section 2 which defines various form of interest which are exorbitant will clearly indicate that money transaction above Rs.10,000/- through negotiable instruments like pro-notes and cheques will not attract offence of charging



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exorbitant interest.

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7. In short according to the petitioner, any licensed money lenders duly registered under the Money Lenders Act, 1957 and advance loan for a sum above Rs.10,000/- through negotiable instruments cannot be prosecuted for offence under section 4 of Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003, even if he charge exorbitant interest prohibited under the later Act i.e., Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003.

8. The above submission made by the learned counsel bristles with multiple fallacies and they are discussed one by one as under:-

(i) According to the petitioner, the intent of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 was to obviate the lower middle class people from being exploited by the financiers and not for huge loan transactions based on negotiable instruments is a basic error of fact. The history behind this legislation was the suicide of a popular producer of movies, who was put to torture by a money lender demanding exorbitant interest. The transaction between them was not petty amount, but few Crores of Rupees.

(ii) Further, it is relevant to note that the legislators were not oblivious of



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the Money Lenders Act, of 1957 when the later Act, i.e., Tamilnadu Prohibition of Charging Exorbitant Interest Act in the year 2003 was enacted. In section 3 of the Act, there is a reference to Money Lending Act and section 2(1) defines “daily vatti” as collection of interest on daily basis which will work out to an interest rate more than that fixed by the Government under section 7 of the Money-Lenders Act. Likewise, in Section 2(5) “Kanthu vatti” is defined as interest which will work out to an interest rate more than that fixed by the Government under Section 7 of the Money-Lender Act.

(iii) Further under Section 4, it is made clear by the legislators that notwithstanding anything contained in the Tamilnadu Money-Lenders Act, whoever contravenes the provisions of section 3 or molests or abets, the molestation of any debtor for recovery of any loan shall be punishable with imprisonment for a term which may extend to 3 years and also with fine which may extend to Rs.30,000/-.

(iv) When the later legislation having considered the earlier legislation and employ ‘non-obstante clause’, there is no sense in contending that the petitioner with Money Lenders license fall outside the purview of Tamilnadu



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Prohibition of charging Exorbitant interest Act. The definition of 'Kanthu vatti' covers all sort of money transaction which will work out to an interest rate more than the government fixed rate of interest under the Money Lender's Act. The later Act does not prescribe any lower or upper limit regarding money involved like Rs.10,000/- and above or less than Rs.10,000/- meaning to restrict its application for transactions involving huge amount running to lakhs or crores. The Act also neither specify any restrictions about its application to any particular mode of payment nor collection like negotiable instruments.

(v) In the earlier Act (i.e.,) Money Lending Act, the word “loan” is defined as advance of money or in kind for interest, but exclude advance made based on negotiable instruments, exceeding Rs.10,000/-. Whereas the definition of ‘ Loan’ under the later Act is advance of money for daily interest, hourly interest, usurious interest which exceed the rate of interest fixed by the Government.

(vi) The definition of 'Loan' in the Money Lending Act,1957 and in the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 are not one and the same. While in the earlier Act the definition is wider and it relates to



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advancing of money for interest, in the later Act the definition of 'loan' is restricted to the advance of money for interest by any name charged over and above the interest fixed by the Government as per Section 7 of the money lending Act.

(vii) For easy reference and to understand with better clarity, the definition of the term 'loan' in these two Acts are extracted below. A juxtaposition comparison of these definition clearly shows that the object and reasons of these two Acts are conceptually different and the later Act prevails over the former Act as long as the issue is with regard to interest demanded or collected for the loan advanced.

Section 2 (6) (vi) of Money Lenders Act, 1957:

(vi) an advance made on the basis of a negotiable instrument and defined in the Negotiable Instruments Act, 1881 (Central Act XXVI of 1881), exceeding [rupees ten thousand];

Section 2(6) of the Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003 defines loan as under:-.

"loan" means an advance of money for daily vatti, hourly vatti, kandhu vatti, meter vatti or thandal;



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The Section 4 of Tamilnadu Prohibition of Charging Exorbitant Interest

Act 2003 which constitutional validity challenged reads as under:-

4. Penalty.- *Notwithstanding anything contained in the Money-lenders Act, whoever contravenes the provisions of section 3 or molests or abets the molestation of any debtor for recovery of any loan shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to thirty thousand rupees.*

9. The Learned Counsel appearing for the complainant who had filed his intervening application, submitted that this petitioner is evading investigation even after dismissal of his Anticipatory Bail petition. The petitioner was detained under Preventive Detention Act, for indulging in the act of charging exorbitant interest. The Writ Petition filed by the Association for identical relief did not find favour with the First Bench consisting of Hon'ble Chief Justice and Justice N.Mala. The clarification given by the Division Bench in the case filed by the Association is not a liberty to challenge the same provision through its members individually.

10. At this juncture it is also to be recorded that this petitioner earlier moved the High Court with similar prayer in W.P.No.22509/2023 challenging the constitutional validity of Section 4 of the Tamilnadu Prohibition of Charging



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Exorbitant Interest Act, 2003 before the First Bench of this Court. He had withdrawn it and filed this petition for the same relief stating that the First Bench has given him liberty to file a fresh petition.

11. The counsel for the intervenor states that the petition by different means attempt to derail the criminal prosecution launched against him not only for the offence under section 4 of the Tamilnadu prohibition of charging exorbitant interest but also for others IPC offences like cheating and criminal breach of trust. Even after dismissal by two Division Bench, the same issue in different form, sought to be agitated.

12. The object and reasoning for introduction of this Act does not violates any of the provisions of the Constitution to declare it as unconstitutional. Punishing those who fleece the borrowers by charging interest above the rate of interest prescribed by the Government, in different names is in tune with the constitutional provisions both under Part III and Part IV. A reasonable restriction on the rate of interest charged on the money advanced is valid and well within the framework of constitution.



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13. Hence this Court holds that, this Writ Petition is nothing but an abuse of process of law. This court is of a view that it has to be dismissed with costs to curb spurious litigation. Accordingly, this ***Writ Petition dismissed with cost of Rs 10,000/- payable to the High Court Legal Services Authority, Chennai.*** The cost shall be paid within 2 months from the date of receipt of the order. Consequently, the connected Miscellaneous Petitions are also dismissed.

30.11.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/non speaking order
rpl

To:-

1.The Secretary to the Government,
Home Department,
Fort St.George, Chennai-600 009.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai-600 004.

3.The Public Prosecutor, High Court of Madras, Chennai.

Dr.G.JAYACHANDRAN,J.

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Pre delivery Order made in
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