IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1414 OF 2015

Digambar Ganpat Patil,
Age-65 years, Occu:Agril. & Business,
R/o-6, Joshi Peth, Janki Niwas,
Jalgaon.

...APPLICANT
(Orig. Complainant)

VERSUS

1) The State of Maharashtra,

2) Raju s/o Dattatraya Mujumdar,
Age-57 years, Occu:Business,
R/o-Chandralok Apartment, Flat No.9,
1st Floor, Mahabal Colony, Jalgaon.
(Orig. Accused)

...RESPONDENTS

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Mr.V.S. Bedre Advocate for Applicant.
Mr.C.V. Dharurkar, A.P.P. for Respondent No.1.
Mr.Girish Rane Advocate for Respondent No.2.

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CORAM: A.I.S. CHEEMA, J.

DATE : 26TH NOVEMBER, 2015

ORDER :

1. Heard learned counsel for the Applicant and learned counsel for Respondent No.2. Heard

learned A.P.P. for State. Perused record.

2. As per the complainant, there was an attachment of the property of Respondent No.2 - accused by the Bank and to help him, the complainant advanced an amount of Rupees Two Lakhs and calculating the interest, the Respondent No.2 - accused had issued cheque of Rs.Two Lakhs Seventy Two Thousands, which bounced. The learned counsel submits that trial Court wrongly held that it was money lending transaction and thus the transaction was hit under the provisions of Bombay Money Lenders Act.

3. Learned counsel for Respondent No.2 - accused relied on the cases of **Nanda Dharam Nandanwar vs. Nandkishor Talakram Thaokar, reported in 2010(2) Bom.C.R. (Cri.) 108, Anil Baburao Kataria vs. Purushottam Prabhakar Kawane, reported in 2010(3) Bom.C.R. (Cri.) 860** and **Mulchand Ramji Saiya vs. Premji Ratanshi Gangar**

and another, reported in 2011(3) Bom.C.R. (Cri.) 682 and submitted that in those matters it was found that the transaction was hit under the provisions of the Bombay Money Lenders Act because the complainant therein had indulged in money lending without licence. According to the counsel, even here the money was advanced and the cheque taken calculating the interest, the transaction would be money lending and thus it would be hit under Bombay Money Lenders Act, 1946.

4. The facts of the Judgments referred shows complainants therein indulged in multiple transactions. The Judgment of the trial Court does not show that there were any multiple transactions of advancing of money by the complainant. The question is, whether single transaction of advancing loan with interest would get hit by the Bombay Money Lenders Act, 1946. Whether such transaction could be termed as business in money lending, is required to be seen. The Judgment of

the trial Court appears to have appreciated facts on a wrong premise. The evidence and law on the subject needs to be re-appreciated.

5. For the above reasons, Application is allowed. Leave is granted. Application be converted into Appeal.

6. Appeal is **Admitted.** The learned A.P.P. waives notice for Respondent No.1, after admission of the Appeal. Mr. Rane, learned counsel waives notice for Respondent No.2 after admission of the Appeal.

7. Paper Book be got prepared.

8. Action under Section 390 of the Code of Criminal Procedure be taken against Respondent No.2- accused in the trial Court.

[A.I.S. CHEEMA, J.]

asb/NOV15