

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
AURANGABAD BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.627/2015

PETITIONER : Mandubai Vitthoba Pawar
Age 85 years, Occu. Nil,
R/o Javalakh, Tq. Kallamb,
Distt. Osmanabad.

...Versus...

RESPONDENTS : 1. The State of Maharashtra
through the Superintendent of Police,
Osmanabad.

2. The in charge Investigation Officer,
Police Station, Shiradhon, Tal. Kallamb,
Distt. Osmanabad.

3. Bapurao s/o Madhavrao Mane,
The Co-operative Officer Grade-I,
Assistant Registrar Co-operative Societies,
Kallamb, Tq. Kallamb,
Distt. Osmanabad.

Shri Undre V.S., Advocate for petitioner
Shri K.S. Patil, App for respodnent - State

CORAM : S.S. SHINDE AND
A.I.S. CHEEMA, JJ.

Date of reserving the judgment : 11.08.2015
Date of pronouncing the judgment : 22.09.2015

JUDGMENT (PER : A.I.S. CHEEMA, J.)

1. This writ petition has been filed by the petitioner – original accused against the FIR No.21/2015 registered against her at Police Station Shiradhon, Tq. Kallamb Distt. Osmanabad under Section 39 of the Maharashtra Money-Lending (Regulation) Act, 2014.

2. The co-operative officer Grade-I Kallamb – respondent no.3, original complainant, has filed the offence alleging that the petitioner committed offence under the Maharashtra Money-Lending (Regulation) Ordinance, 2014. As per the FIR, the petitioner purported to purchase the suit land No.196 by way of registered sale-deed but actually it was money lending transaction of the year 1982. Writ Petition however claims that petitioner had actually purchased the land from Pandurang for consideration in 1982. The FIR has been registered after 33 years. There is civil litigation pending between Pandurang and the petitioner. The petitioner is 85 years old lady and is being harassed by the filing of the FIR. She claims that the FIR needs to be quashed.

3. On behalf of the respondent nos.1 and 3, affidavit-in-reply has been filed. The respondent no.3 is working as co-operative officer Grade-I Assistant Registrar, Co-operative Societies, Kallamb. It is claimed that one Babasaheb gave affidavit against the petitioner claiming that the petitioner had given loan of Rs.9,000/- to the original complainant Pandurang Ghogare and agreement was executed on 7.10.1982 that land admeasuring 40 R would be given back after repayment of Rs.9,000/- with interest. Subsequently, yet another agreement dated 13.8.1991 was executed regarding payment of Rs.9,000/- and that land would be returned to the complainant. There was Regular Civil Suit filed as R.C.S. No.161/1992 regarding the sale-deed in dispute. Copy of the judgment in Regular Civil Suit No.161/1992 is filed finding that the sale-deed dated 7.10.1982 executed by Pandurang in favour of defendant (petitioner) was towards security of loan amount. Respondent no.3 has claimed in affidavit-in-reply that District Level Committee Forum of the State Government has concluded that the petitioner indulged in money lending. Copy of the report filed by the Committee is annexed with the petition. According to the respondents, the petitioner, the complainant and other witnesses

were heard and it was concluded that the petitioner had indulged in money lending. Consequently, the complaint was made and offence has been registered vide Crime No.21/2015.

4. We have heard the learned Counsel for both sides finally. It has been argued by the learned Counsel for the petitioner that now the Maharashtra Money-Lending (Regulation) Act, 2014 has come into force which makes business in money lending without licence an offence under Section 39 of the Act. According to him, relevant Section was 32 B under the earlier Bombay Money-Lenders' Act, 1946. Earlier, under Sections 35 A and 32 B the offence was non-cognizable. However, Section 48 of the new Act makes the offence cognizable. According to him, considering the punishment as was earlier provided under the old Act the punishment being of one year, even if a transaction of 1982 was to be said to be of money lending, the same would be time barred under Section 468 of the Code of Criminal Procedure, 1973. According to him, even otherwise whether the said transaction was money lending or what is still to be decided, as, against the judgment of the civil Court in Regular Civil Suit No.161/1992, the petitioner has filed Regular Civil Appeal No.67/2008 which is pending as can be seen from

Exh.-E filed with the petition. According to the Counsel, for such old transaction, the provisions of new Act could not have been invoked to file complaint to the police station only because the new Act makes the offence cognizable.

5. The learned Additional Public Prosecutor submitted that although the offence is of 1982, after the new Act has come into force, the respondent no.3 could register offence and looking to the provisions of Section 468 of the Code of Criminal Procedure, 1973 there is provision to condone delay. According to him, the civil suit has now been decided and so the authorities could act. At the time of arguments, this Court had posed the question to the learned Additional Public Prosecutor that could a single transaction be covered under the definition of “business in money lending”. The learned Additional Public Prosecutor did not reply to the question posed and made rest of the submissions, as discussed above.

6. Although various questions have been raised by the learned Counsel for the petitioner, we are not entering into those other aspects as they are not necessary to decide the same in the present petition which can be disposed of on one point as was raised by this Court at the time of arguments. On going through the

record, it is clear that the respondent no.3 has filed the offence on the basis of only one transaction which is claimed to be of money lending. Section 39 of the Maharashtra Money-Lending (Regulation) Act, 2014 relied on by the State reads as under :

“39. Whoever carries on the “business of money-lending” without obtaining a valid licence, shall, on conviction, be punished with imprisonment of either description for a term which may extend to five years or with fine which may extend to fifty thousand rupees or with both.”

(Emphasis supplied)

7. The term “business of money lending” has been defined in Sub Section 3 of Section 2 of the new Act as under :

“3. “business of money-lending” means the business of advancing loans whether in cash or kind and whether or not in connection with, or in addition to any other business.”

8. The meaning of the word “business” as found in Black’s Law Dictionary 9th Edition *inter alia* is “a commercial enterprise

carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain”.

9. In the matter of Ka Icilda Wallang and others...Versus...U. Lokendra Suiam (dead) by Lrs., reported in AIR 1987 SC 2047, the Hon’ble Supreme Court while dealing with similar matter has observed thus :

“Both the appellate court and the High Court have found that the plaintiff was not a money-lender within the meaning of Assam Money Lenders' Act, 1934. The High Court observed that a few disconnected and isolated transactions would not make the plaintiff a person engaged regularly in money lending business. The approach of the High Court to the question was correct.”

10. In the matter of Central Bureau of Investigation...Versus...V.C. Shukla and others, reported in (1998) 3 SCC 410, the Hon’ble Supreme Court referred to the word “business” and observed in paragraph no.27 as follows :

“27. Coming now to the word “business”, we need not search for its meaning in

Black's Law Dictionary, or Words and Phrases for this Court has dealt with the word in a number of cases. In Narain Swadeshi Wvg. Mills v. Commr. of Excess Profits Tax a five-Judge Bench of this Court held that the word "business" connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose; and the above interpretation was quoted with approval in Mazagaon Dock Ltd. v. CIT and Excess Profits Tax. Again in Barendra Prasad Ray v. ITO this Court observed that the word "business" is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. ..."

11. The above discussion makes it clear that for it to be a business there has to be a continuous and systematic activity by application of labour or skill with a view of earning income when it could be called "business". In order to do business of money lending, it would be necessary for the State to point out multiple activities of money lending done by the petitioner. Merely referring to one isolated transaction claimed to be a loan transaction or money lending would not be enough to show that the petitioner was

involved in “business of money lending” without licence. The FIR in the present matter read as a whole does not spell out that the petitioner was doing “business of money lending”. This being so, on the basis of such FIR the prosecution cannot be maintained.

12. We have gone through the various documents put on record by the petitioner as well as the respondents. There are not even vague allegations, apart from the present transaction of 1982, that petitioner was advancing loans to people and getting properties transferred. This is apart from the fact that it would be necessary for the FIR itself to spell out in clear terms the transactions which would *prima facie* show that business as such of money lending was being involved into without there being a valid licence.

13. For such reasons, the FIR as it is filed cannot be maintained. We are proceeding to quash the FIR. However, we make it clear that looking to the stage, the quashing of present FIR would be in the nature of discharge of the petitioner and in case the authorities have evidence of multiple transactions, the present transaction may be claimed as one of the transactions.

14. For the above reasons, the writ petition is allowed. First Information Report No.21/2015 registered on 26.3.2015 with Police

Station, Shiradhon, Tq. Kallamb, Distt : Osmanabad against the petitioner is quashed.

No order as to costs.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)

Wadkar