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

CRIMINAL WRIT PETITION NO. 929 OF 2016

Purushottam s/o Ratanlal Tapade ...Petitioner

VERSUS

The State of Maharashtra
and another ...Respondents

.....

Shri V.P.Latange, advocate for the petitioner
Shri M.M.Nerlikar, A.P.P. for respondent no.1
Shri V.S.Undre, advocate for informant

.....

CORAM : S.S.SHINDE
AND
SANGITRAO S.PATIL, JJ.

DATED : 8.9.2016

PER COURT :

Heard learned counsel appearing for the petitioner and the learned A.P.P. for respondent/State, assisted by Shri V.S.Undre, advocate appearing for the informant.

2. We have carefully perused the pleadings in the petition, annexures thereto, reply filed by respondent no.2 and investigation papers made available for our perusal.

3. Learned counsel appearing for the petitioner invites our attention to the provisions of Section 18 of the Maharashtra Money Lending (Regulation) Act, 2014 (for short, 'the said Act') and submits that when the complaint is filed by a person in his individual capacity, as contemplated under the provisions of Section 18 of the said Act, notice is required to be issued to such person and after adhering to the procedure prescribed under sub-sections (2) and (3) of the said Act, inquiry ought to have been initiated and after completion of the said inquiry, decision should have been taken by the authority for filing the first information report. However, the said procedure, as contemplated under Section 18 of the said Act has not been followed, and therefore, on this ground the first information report deserves to be quashed.

4. Per contra, learned A.P.P. submits that though the respondent/authority tried to serve the notice upon the petitioner, he declined to accept the notice, and therefore, the

respondent/authority proceeded with the inquiry and after completion of the inquiry the first information report was registered. Therefore, he vehemently opposed the prayer in the petition.

5. The provisions of Section 18 (1) to (3) of the said Act read as under : -

> “18. (1) If, on the basis of facts disclosed, during verification under section 16 or inspection under section 17, or by an application from a debtor or otherwise, the District Registrar has reason to believe that any immovable property, which has come in possession of the money-lender by way of sale, mortgage, lease, exchange or otherwise, within a period of five years from the date of verification or the inspection or the date of receipt of application from debtor, in the nature of the property offered by the debtor to the money- lender as a security for loan advanced by the money-lender in course of money-lending, the District Registrar may, himself or through an inquiry officer, to be appointed for the purpose, in the manner prescribed, hold further inquiry into the nature of the

transaction.

(2) If upon holding the inquiry as per sub-section (1), the District Registrar is satisfied that the immovable property came in possession of the money-lender as a security for loan advanced by the money-lender during the course of money-lending, the District Registrar may, notwithstanding anything contained in any other law for the time being in force, after recording the reasons, declare the instrument or conveyance as invalid and may order restoration of possession of the property to the debtor who has executed the instrument or conveyance as a security or to his heir or successor, as the case may be.

(3) Before passing an order or giving decision as per sub-section (2), the District Registrar shall give an opportunity to the person concerned to state his objections, if any, within fifteen days from the date of receipt of notice by him and may also give personal hearing, if he so desires.

…......... …................."

6. Upon careful perusal of the afore said provisions, it is abundantly clear that the

concerned authority has to follow the procedure prescribed before taking the decision to lodge the first information report. Admittedly, in the present case, the petitioner is not given opportunity to put forth the contentions and the decision was taken by the authority to lodge the first information report.

7. In that view of the matter, without entering into the merits of the controversy involved, we deem it appropriate to quash the first information report. Accordingly, we pass the following order :-

The first information report No. 0059 of 2016, dated 12.7.2016 for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014 stands quashed. In case the District Deputy Registrar desires to proceed against the petitioner, he shall strictly follow the procedure prescribed in Section 18 of the Act referred to above. In case he finds sufficient grounds to proceed against the petitioner for the above mentioned offence, he may file the first information report afresh and quashing of the present first information report on the technical ground cannot be construed as an impediment for entertaining another first information report.

8. With the above observations, Writ Petition stands disposed of.

9. The learned counsel appearing for the petitioner submits that the petitioner will appear before the District Deputy Registrar, Osmanabad on 27.9.2016 at 11.00 a.m. The petitioner shall appear before the District Deputy Registrar, Osmanabad accordingly.

(SANGITRAO S. PATIL, J.) **(S.S.SHINDE, J.)**

dbm/crwp929.16