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

CRIMINAL APPLICATION NO. 442 OF 2016

Ramesh S/o Ghevarchand Khinwansara,
Age : 68 years, Occu. Agri & Business,
R/o. Bangali Pimpala, Tq. Georai,
Dist. Beed. Applicant**...**

Versus

1. The State of Maharashtra.

2. Mithu S/o Dadarao Aarad,
Age : 70 years, Occu. Agril.,
R/o. Bangali Pimpala, Tq. Georai,
Dist. Beed. Respondents**...**

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Mr Yuvraj S. Choudhari, Advocate for the petitioners
Mr K. D. Mundhe, APP for respondent/State
Mr C. V. Thombre, Advocate for respondent No.2.
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CORAM : R. M. BORDE & A. M. DHAVALE, JJ.

DATE : 12TH JUNE, 2017

ORAL JUDGMENT (Per R. M. Borde, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. The applicant is praying for quashment of the proceedings initiated against him pursuant to lodging of FIR at the instance of respondent No. 2 with the Police Station Chaklamba, Tq. Georai, Dist.

Beed, for the offences punishable u/s 32, 34 & 39 of the Bombay Money-Lenders Act, 1946 (in short “the Act”), on 16.01.2016. It is alleged in the FIR lodged by informant that, land bearing Gut No. 1123 adm. 48 R & land bearing Gut No. 1125 adm. 1 H 24 R belonging to his family, was sold to one Pandurang Kharmate. There appears to be a transaction of conditional sale entered into between the informant and Pandurang Kharmate and there was also a contemporaneous agreement that on return of money within a specified period the land will be re-transferred to the informant and in view thereof, Pandurang Kharmate appears to have agreed to re-transfer the property. It is alleged in the FIR that, the informant on account of extreme need for money was compelled to enter into agreement relating to transfer of the land and borrowed a sum Rs. 40,000/- from Ramesh - the applicant herein. The rate of interest agreed was 2%. It is alleged that, in order to save the charges required for registration of the documents, the property was recorded in the name of Shobhachand Manikchand Nahar and Suvalal Lalwani in the year 1994. After demise of Suvalal, the property has been recorded in the name of Sanjay and Ashok in the year 2015. It is further alleged that the amount borrowed from Ramesh was returned back to him by the informant in the year 1998, however, he has refused to re-transfer the land in favour of the informant. It is contended that, the accusedapplicant is carrying on business of money lending without having a valid license and has illegally grabbed the land belonging to the respondent No. 2. It is, therefore, urged to take appropriate action against the applicant.

3. The counsel appearing for the applicant contends that, in fact the transaction of sale was entered into in the year 1993 initially with Pandurnag Kharmate whereas; subsequent transfer of the property is also not in favour of the applicant. The applicant contends that, in fact, he has no concern with the alleged sale transaction. It is denied that the applicant is involved in money lending activities. It is also contended that, in view of the judgment delivered by the Nagpur Bench in the matter of ***Ramesh Dhulatrao Gawhale & Ors. Versus State of Maharashtra & Ors.*** reported in *2007 (3) All.M.R. 275*, the provisions of the Act, 1946 are not attracted in the instant case as the act deals with money lending transactions concerning the movable properties. It is contended that, even if the allegations contained in the FIR taken to be true at their face value, no offence is made out under the said Act. It is also contended that, the offence is alleged to have taken place in the year 1994 and the cognizance thereof is taken in the form of registration of FIR on 16.01.2016. The applicant cannot be prosecuted for alleged offence after lapse of more than 22 years. It is also contended that, the offence is registered against the applicant under Section 32 of the Act, 1946 which

relates to entry of wrong sum in bond, is not attracted in the instant matter.

4. Section 32 of the Act provides that, no money-lender shall take any promissory note, acknowledgement bond or other writing which does not state the actual amount of the loan, or which states such amount wrongly or execute any instrument in which blanks are left to be filled after execution. Sub-section (2) of Section 32 provides that, whoever contravenes the provisions of subsection (1) shall, on conviction, be punishable with fine which may extend to [Rs. 5,000] or with imprisonment of either description which may extend to [two years] or with both.

5. On bare perusal of the provisions of Section 32 of the Act, 1946, it is evident that the said provisions relate to movable property or a transaction in the nature of a promissory note, acknowledgement bond or other writing which does not relate to immovable property. Section 34 of the Act provides for penalties whereas; Section 39 of the said Act is rule making power provided under the Act. The contravention of the provisions of the said act is not specifically spelt out in FIR.

6. Without going into the merits of the contentions and taking into consideration the contents of the FIR at its face value, primarily it appears that the alleged transaction is not referable to the applicant. The another hurdle in proceeding with the matter is limitation for taking cognizance of offence which is provided under Section 468 of the Code of Criminal Procedure and in respect of the offences punishable with imprisonment for one year, the cognizance of the offence shall have to be taken within a period not exceeding one year. The Act of 1946 is also not recorded under the Schedule prescribed by the State of Maharashtra in view of the State amendment to Section 468 of Code of Criminal Procedure. In identical circumstances, cognizance in respect of the offence taken after the lapse of 23 years was directed to be quashed in the matter of ***Mandubai Vitthoba Pawar Versus The State of Maharashtra & Ors*** *in Criminal Writ Petition No. 627 of 2015* decided by the Division Bench of this Court on 22.09.2015.

7. For the reasons aforesaid, the criminal proceedings initiated against the applicant in pursuance to registration of FIR bearing No. 08/2015 dt. 16.01.2016 for offences punishable u/s 32, 34 and 39 of the Bombay Money-Lenders Act, 1946, deserves to be quashed and same is accordingly quashed.

8. Rule is made absolute in the above terms with no order as to costs.

[A. M. DHAVALE]
JUDGE

[R. M. BORDE]
JUDGE

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