IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 138 of 2007

1) Kirit s/o Bansilal Patil,
Age 35 years,
Occupation : Agriculture.

2) Bansilal s/o Babulal Patil,
Age 62 years,
Occupation: Agriculture
Both R/o Lalbag Colony,
Nandurbar, Dist. Nandurbar. .. **Petitioners.**

Versus

1) The State of Maharashtra.

2) The Police Inspector,
Nandurbar City Police Station,
Nandurbar,
District Nandurbar.

3) Madhav Chintaman Padvi,
Assistant Registrar,
Cooperative Societies,
Nandurbar, Taluka Nandurbar,
District Nandurbar. .. **Respondents.**

Shri. V.D. Hon, Senior Advocate, for petitioners.

Shri. V.S. Badakh, Additional Public Prosecutor, for respondent Nos.1 and 2.

Shri. F.R. Tandale, Advocate, for respondent No.3.

Coram: T.V. NALAWADE &
S.M. GAVHANE, JJ.

Judgment reserved on : 18 September 2017

Judgment pronounced on : 10 October 2017.

JUDGMENT (Per T.V. Nalawade, J.):

1) The petition is filed for following reliefs. Both the sides are heard.

> "(B) Quash and set aside the complaint No.3 of 2007 and complaint No.4 of 2007 registered with Nandurbar City Police Station for the offence punishable under Sections 25(1), (1-A), 32(1), 32(A) and 32(B)(B) of the Money Lending Act (Annexed at Exhibit "M" and "N" respectively).
>
> (C) Quash and set aside the enquiry report dated 25.9.2006 of the respondent No.3 annexed at Exh."G"."

2) Petitioner No.1 is son of petitioner No.2 and they live in Hindu joint family. They own and run Jalaram Jyot Traders shop in the area of Market Committee. Respondent No.3 is authority created under the provisions of the Bombay Money-Lenders Act, 1946 (hereafter called as "the Act") to make inquiry and take action when here is contravention of the provisions of the Act.

3) One Smt. Karunaben Patil, resident of Shinde, Tahsil and District Nandurbar gave complaint to respondent No.3 on 22-2-2006. One Jagannath Fakira Patil, resident of Tikhira, Tahsil Shahada, District Nandurbar gave complaint against the petitioners on 17-6-2006. There were allegations against the petitioners that they were doing money lending business illegally. It was contended in the complaints that they had approached the petitioners in aforesaid shop of the petitioner for taking loan with the belief that petitioners were having money lending licence. It is their contention that they had taken loan from petitioners. Smt. Karunaben had taken loan of Rs.1.50 lakh and she was to pay interest at the rate of 3% per month on this loan. It is the case of Jagannath that he has taken loan of Rs. four lakh and he was to pay interest at the rate of 2% p.m. Both the complainants have contended that when they could not repay some amount and interest, by saying that security was required, their agricultural lands were got transferred by the petitioners in the names of the petitioners and their family members. It is contended that by creating false record of sale, the petitioners have grabbed the immovable property of the

complainants.

4) In view of the aforesaid complaints, show cause notices were issued by the authority to the petitioners for starting inquiry under the Act. Along with the complaints, some record was produced by both the complainants. During inquiry some record was taken over from the aforesaid shop and residential place of the petitioners by the competent authority. Inquiry was held in which opportunity was given to the petitioners to have their say.

5) After making inquiry, the authority has held as follows :

(i) Petitioners were doing money lending business illegally.

(ii) Transactions made with the complainants by the petitioners were of the nature of money lending.

(iii) Compound interest at the rate not permitted by law, was charged by the petitioners.

(iv) Petitioners got executed sale deeds by representing that security was required for the loan amount and they were money lending transactions.

(v) Petitioners sold the lands which were taken by way of security to third party without informing the third party that the lands were shown to be sold under sale deed as security in money lending transactions.

(vii) The petitioners had shown the price of land as Rs.10.5 lakh when the land was sold to the third party but the petitioners had demanded Rs.21.5 lakh as principal amount and interest from the complainants.

With the aforesaid observations and findings the authority had proposed to take appropriate action against the petitioners under the provisions of the Act and action was also proposed under section 13B of the Act.

6) Learned Senior Counsel for the petitioners submitted that the petitioners are agriculturists and the transactions made in their favour were absolute sale transactions and false allegations are made against them. The learned senior counsel submitted that the lands purchased were not suitable for cultivation and so they were sold by the petitioners and this circumstance cannot give an inference that the transactions were made for business of money lending. The learned senior counsel placed reliance on the case reported as **2007(3) ALL MR 275 (Ramesh Dhulatrao v. State of Maharashtra)** and the decision given by this Court at this Bench in *Criminal*

Application No.1150 of 2007 (Hari Shankar Patil v. The State of Maharashtra) by which this Bench by decision dated 8-3-2013 had held that the provisions of Section 13B of the Act cannot be used in respect of immovable property. It is true that in section 13B of the Act the word "pledged" is used and so this section cannot be used for taking possession of immovable property. There cannot be dispute over the propositions made in the aforesaid two cases by this Court. Though there is this circumstance, due to this circumstance the entire report of the competent authority cannot be set aside and the F.I.R. filed by the authority as a public servant cannot be set aside.

7) In the Act, in section 2(2) definition of money lending business is given as under :-

> " "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) There is allegation that in the aforesaid shop the petitioners are doing money lending business. The

circumstances show that the lands purchased by the petitioners were not purchased for cultivation as within one year of the transactions the lands were sold to third party. Further there is circumstance like record showing that the petitioners were demanding Rs.21.5 lakh as the amount due against the principal amount and the interest amount. These transactions do not fall under the exception given in section 2(9) of the Act. The circumstances show that for recovery of the amount the documents like sale deed were got executed in respect of immovable property. Such transactions are not excluded under section 2(9) of the Act.

9) There were many transactions made by the petitioners of giving loan. They had not obtained licence of money lending business as required by section 6 of the Act. Further they had charged rate of interest at the rate of 3% per month. Under the Act, these acts of the petitioners are illegal and due to contravention, cognizance can be taken under sections 5, 6, 34 of the Act though these sections are not mentioned in FIR.

10) The provisions of sections 13, 13A and 13B of the Act show the powers of the authority created under the Act. By exercising the power, record was taken over by the authority and the record is mentioned by the authority in the order. In the cases cited supra on which reliance is placed by the learned senior counsel for the petitioners there was attempt to take possession of the land by using provision of Section 13B of the Act so some orders were made. It was submitted for the petitioners that substantive suit is already filed in respect of the transaction to claim declaration that they were money lending transactions and so the civil Court will decide the nature of the transactions. This submission is not acceptable. If this submission is accepted the aforesaid provisions will become otiose. In view of the provisions of the Act and the report of the competent authority this Court holds that it is not possible to set aside the report prepared by respondent No.3, competent authority. However, it can be said that there will not be question of using provision of section 13B of the Act for taking possession of the lands if the possession is with the petitioners. To that extent some relief can be given to the

petitioners.

11) Considering the facts of this case and the provision of section 35A of the Act offences punishable under sections 5 and 34 are cognizable. In view of these provisions and the aforesaid circumstances crime is registered on the basis of the report given by the competent authority. This Court has no hesitation to hold that it is not possible to set aside the report and the F.I.R.

12) On merits it can be said that, there is prima facie case and there is sufficient material to make out a prima facie case against the petitioners and the material is like chits, accounts, extracts prepared by the petitioners and they are in respect of loan transactions. Affidavits are filed by the complainants in support of their contentions and the record. Jagannath has produced more record like bills and the receipts of charges paid by him even after the date of the transactions showing that he had not parted with the possession. Inquiry made by the office of authority showed that there were not only the aforesaid transactions but more transactions of similar nature were

made and the persons who had taken loan were from Korit, Shinde, Patonda of Nandurbar Tahsil and Shahada, Tikhira and Bupkari of Shahada Tahsil. Even when there was charge of the loan taken from credit society by the debtors, no steps were taken to see that the loan was paid and the charge was removed. These circumstances also are considered by the competent authority. Thus there is record of money lending transactions and the interest at the aforesaid rate was charged by the petitioners. It is not possible to hold that false allegations are made against the petitioners.

13) Before parting with the decision, it needs to be observed that, if the report is submitted by the investigating officer, the Judicial Magistrate can exclude the period for which the investigation was stayed by this Court. In the result following order :

14) The petition is partly allowed. It is hereby declared that the report of the respondent No.3 cannot be used to take possession of the agricultural lands involved in the matter if the possession is with the petitioners and

for that provision of section 13B of the Act cannot be used. The petition in respect of remaining reliefs is dismissed. Interim relief is vacated to that extent. Rule is partly made absolute in the aforesaid terms.

15) Learned Senior Counsel requests for stay to the judgment and order. The request is refused.

Sd/- Sd/-
(S.M. GAVHANE, J.) **(T.V. NALAWADE, J.)**

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