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

CRIMINAL WRIT PETITION NO. 343 OF 2017

Uttam Bhikaji Belkar,
Age : 32 years, Occu. Service & Agriculture,
R/o. Waranwadi, Taluka-Parner,
Dist. Ahmednagar. **Petitioners...**

Versus

1. The State of Maharashtra,
Through Police Inspector,
Parner Police Station,
Parner, Taluka-Parner,
Dist. Ahmednagar.

2. Anusaya Sukhdeo Gayakhe,
Age : 57 years, Occu. Agriculture,

3. Balasaheb Sukhdeo Gayakhe,
Age : 41 years, Occu. Agriculture,

Respondent Nos. 2 and 3
R/o. Warwandi, Taluka-Parner,
Dist. Ahmednagar.

4. The Assistant Registrar,
Cooperative Societies, Parner
Presently preceded over by
Sahebrao Dattatray Patil,
Age : 38 years, Occu. Service,
R/o. Loni Road, Parner
Taluka-Parner, District-Ahmednagar. **Respondents...**

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Mr Amol K. Gawali, Advocate for the petitioner
Mr V. M. Kagney, APP for respondent/State
Mr G. K. Thigale, Advocate h/f Mr S. M. Sangale, Advocate for respondents No. 2 and 3

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CORAM : R. M. BORDE &
A. M. DHAVALE, JJ.

DATE : 22TH JUNE, 2017.

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

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

2. The petitioner is praying for quashment of the First Information Report bearing Crime No. I-14/2017, registered at Parner Police Station, Dist. Ahmednagar, for offences punishable u/s 420 of the Indian Penal Code and Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014, on 19.01.2017. It is alleged in the FIR that, the petitioner has entered into a transaction of money lending on 20.04.2009 by way of executing a document which is claimed to be a money lending transaction. It would not be necessary to record the factual details since, it is not a matter of dispute that the transaction of 2009 which is claimed to be the basis, is the only isolated transaction which is claimed to be a money lending transaction.

3. On perusal of the FIR, it does appear that the offence is allegedly committed in the year 2009, and as such, the provisions of Maharashtra Money Lending (Regulation) Act, 2014 shall not have any applicability. The allegations levelled against the petitioner shall have to be scrutinized within the framework of the Bombay Money Lenders Act, 1946.

4. Section 5 of the Bombay Money Lenders Act, 1946 provides, no money-lender shall carry on the business of money-lending except in the area for which he has been granted licence and except in accordance with the terms and conditions of such licence. Section 34 of the Bombay Money Lenders Act, 1946 prescribes the penalty for contravention of the Act and sub-section (a) of Section 34 provides the punishment of simple imprisonment for a term which may extend to one year or with fine which may extend to Rs. 5,000 or with both, for the first offence. The contravention alleged against the petitioner is in respect of carrying on business of money lending. It has not been controverted that, after due investigation, it is revealed that the petitioner has allegedly transacted only with the respondent and there is only one transaction which is claimed to be a money lending transaction. For constituting a business of money lending, there must be multiple transactions, however, in the instant

matter it has not been alleged nor has been brought to our notice either by respondent-complainant or State that the petitioner is found to be involved in multiple money lending transactions. Reference needs to be made to a report of Assistant Registrar, who has investigated into the matter and has also reported that there is only one transaction involving the petitioner, which is alleged to be a money lending transaction and the same is instant one. Reference can be made to a judgment in the matter of ***Ka Icilda Wallang and others....Versus...U. Lokendra Suiam (dead) by Lrs.***, reported in *AIR 1987 SC 2047*, wherein the Supreme Court has observed as under:

> *"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's 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. ...."*

5. The Division Bench of this Court in the matter of ***Mandubai Vitthoba Pawar Versus The State of Maharashtra & Ors***. (Criminal Writ Petition No. 627/2015) *decided on 22.09.2015*, has also concluded that for constituting a business of money lending "there has to be a continuous and systematic activity by application of labour or skill with a view of earning income and then and then 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 attract the provisions of the Act and to brand the petitioner to be a person involved in business of money lending without having any license."

6. Thus, the isolated transaction allegedly entered into by the petitioner with the complainant cannot bring him within the framework of Section 5 of the Bombay Money Lenders Act, 1946, to brand him as a person carrying on business of money lending. Since the petitioner cannot be branded as a person carrying on the business of money lending, the provisions relating to imposition of penalty contained in Section 34 of the Bombay Money Lenders Act, are not attracted.

7. Even assuming Section 34 of the Bombay Money Lenders Act, 1948 provides for penalty of simple imprisonment for a period of one year in the event of finding of guilt of accused for contravention of provisions of the Act, Section 468 of the Code of Criminal Procedure provides bar for taking cognizance after lapse of the period

of limitation. Sub-section 2(b) of Section 468 of Cr.P.C. provides for the period of limitation of one year for taking cognizance of the offence if the offence is punishable with imprisonment for a term not exceeding one year. Even in the instant matter, the offence is allegedly committed in the year 2009 whereas; FIR is lodged in the year 2017, which is clearly beyond the prescribed period provided u/s 468 of the Cr.P.C.

8. The respondent has already initiated civil proceedings in the shape of Regular Civil Suit No. 356 of 2014, which is stated to be pending. In the suit presented by the respondent, it has not been alleged that the petitioner has entered into money lending transaction. Even otherwise, we do not find sufficient material to brand the petitioner as a person conducting the business of money lending.

9. For the reasons recorded above, the petition deserves to be allowed and same is accordingly allowed.

10. The FIR bearing Crime No. I-14/2017, registered with Parner Police Station, Dist. Ahmednagar, on 19.01.2017, for offences punishable u/s 420 and Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014, stands quashed.

12. Counsel appearing for the respondent has put-forth a contention relying upon the provisions of Section 18 of the Maharashtra Money Lending Act, 2014. The argument is not relevant for the purpose of determination of controversy before us.

13. Rule is made absolute accordingly.

[A. M. DHAVALE]
JUDGE

[R. M. BORDE]
JUDGE

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