**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH, NAGPUR**

**Criminal Application (APL) No.529 of 2017**
***(Santosh s/o. Laxman Devkate and another .vs. State and Ors.)***

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| *Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.* | *Court's or Judge's Orders* |
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*Mr.Ritesh Dawda, Advocate for the applicants.*
*Ms Tajwar Khan, A.P.P. for the Respondent No.1.*
*Mr.R.S.Kurhekar, Advocate for the Respondent No.3.*

**CORAM** : SMT VASANTI A NAIK &
M. G. GIRATKAR, JJ.

**DATE** : 18.9.2017.

The Criminal Application is admitted and heard finally with the consent of the learned Counsel for the parties.

By this Criminal Application, the applicants seek the quashing and setting aside of the First Information Report dt.29.3.2017, registered against them for the offence punishable under Section 39 of the Maharashtra Money-Lending (Regulation) Act, 2014 r/w. Section 34 of the Penal Code.

The respondent no.3 is the original complainant. He had lodged a complaint before the Assistant Registrar, Co-operative Societies, Mahagaon on 22.11.2016 against the father of the applicants namely Laxman Devkate that he was involved in money-lending transactions without a money lending license. It was alleged by the respondent no.3 in the report that Laxman Devkate used to charge heavy interest on the amounts advanced by him as a loan and used to get the sale deeds executed in the name of his wife and his sons viz. the applicants. On the basis of the said report lodged by the non-applicant no.3, the non-applicant no.1 registered the F.I.R. against the applicants, the sons of Laxman Devkate, for the offence punishable under Section 39 of the Maharashtra Money- Lending (Regulation) Act, 2014. The applicants have sought for the quashing and setting aside of the F.I.R.

Mr.Ritesh Dawda, the learned Counsel for the applicants submitted that even if the allegations in the F.I.R. are accepted at their face value, in the entirety, the offence cannot be prima facie made out against the applicants u/s.39 of the Maharashtra Money-Lending (Regulation) Act. It is submitted that Section 39 of the said Act provides for penalty against the person involved in the business of money-lending without obtaining a valid license. It is submitted that in the report lodged by non-applicant no.3, there is no allegation that the applicants were doing the business of money-lending without money-lending license. It is submitted that the allegation of carrying on the business of money lending without money-lending license is made by the non-applicant no.3 against Laxman Devkate, the father of the applicants. It is submitted that in view of the Judgments reported in **2005 (1) SCC 122,** Zandu Pharmaceutical Work Ltd. vs. Mohd. Sharaful Haque and **2004 (6) SCC 522,** State of A.P. vs. Gokonda Linga Swamy and another, the F.I.R. registered against the applicants should be quashed and set aside.

Ms Tajwar Khan, the learned Additional Public Prosecutor appearing for the non-applicant no.1 and

Mr.R.S.Kurhekar, the learned Counsel for the non-applicant no.3 submitted that though the allegations of carrying on the business of money lending without money-lending license is made against the father of the applicants, namely Laxman Devkate, it is also alleged in the report lodged by the non-applicant no.3 that Laxman Devkate used to secure the execution of sale deeds in the name of his wife and the present applicants. It is submitted that since the investigation is in progress, the F.I.R. may not be quashed and set aside.

To consider whether the registration of the F.I.R. against the applicants is justified or not, it would be necessary to consider the provisions of the Maharashtra Money-Lending (Regulation) Act, 2014. The offence is registered against the applicants under Section 39 of the Act. Section 39 of the said Act reads thus :

> *"whoever carries on the business of money-lending without obtaining a valid license, shall, on conviction, be punished with imprisonment of either description for a term which may extent to five years or with fine which may extend to fifty thousand rupees or with both."*

It is apparent from a reading of Section 39 of the Act that the said offence could be registered against a person only if he carries on the business of money-lending without obtaining a valid license. The business of money-lending is defined in Section 2(3) of the Act. The business of money-lending, as per the definition clause means the business of advancing loans whether in cash or kind and whether or not in any connection with or in addition to any business.

It is apparent from a reading of the provisions of Sections 39 and 2 (3) of the Act that the offence under Section 39 of the Act could be registered against a person only if the person is involved in the business of advancing loan whether in cash or kind. It is not alleged by the non-applicant no.3 in the report lodged by him that the applicants were doing the money- lending business by advancing the loans. The allegation in that regard is made only against the father of the applicants Laxman Devkate. In the aforesaid set of facts, the offence could not have been registered against the applicants as even if the allegations in the F.I.R. are accepted at their face value and in the entirety, it cannot be said that the applicants were carrying on the business of money-lending by advancing loans either in cash or kind. Merely because an allegation was made in the report lodged by non-applicant no.3 that Laxman Devkate, the father of the applicants, used to get the sale deeds registered in favour of his wife and the applicants, the offence under Section 39 of the Act could not have been registered against the applicants. Since the allegations made in the F.I.R. do not prima facie make out an offence against the applicants, by relying on the Judgment of the Hon'ble Supreme Court reported in **1992 Supp (1) SCC 335**, State of Haryana .vs. Bhajan Lal, it would be necessary to quash and set aside the F.I.R. registered against the applicants with a view to prevent the abuse of process of

Court and to secure the ends of justice.

Hence, for the reasons aforesaid, the Criminal Application is allowed. The F.I.R. registered against the applicants for the offence punishable under Section 39 of the Act is hereby quashed and set aside. Order accordingly.

**JUDGE** **JUDGE**

***jaiswal*