

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

CRIMINAL APPLICATION NO. 744 OF 2014

1. Narayan Kashinath Munjane
Age : 58 years, Occup: Agril,
 2. Kashinath Shamrao Munjane,
Age : 79 years, Occup: Agril.
Both r/o: Nalegaon,
Tq. : Chakur, Dist.: Latur.
- ... Applicants**

VERSUS

1. The State of Maharashtra,
through Police-station,
Chakur, Tq.: Chakur,
Dist.: Latur (Copy to be served on the
Public Prosecutor, High Court of Bombay,
Bench at Aurangabad).
 2. Shri Sanjay Sudhakarrrao Chate,
Age : 49 years, Occu: Govt. Service,
Cooperative Officer Grade – I,
Office of the Assistant Registrar,
Cooperative Societies, Chakur,
Dist.: Latur.
 3. Assistant Registrar,
Cooperative Societies, Chakur,
Dist.: Latur.
 4. District Deputy Registrar,
Cooperative Societies, Latur.
- ... Respondents**

Mr. S. V. Warad h/f Mr. P. G. Rodge for the Applicants.

Mr. M. M. Nerlikar, APP for Respondent - State.

**CORAM : T. V. NALAWADE AND
K. L. WADANE, JJ.**

DATE: : 23rd July, 2018

JUDGMENT (Per K. L. Wadane,J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, the application is taken up for final hearing.

2. The applicants have challenged the first information report bearing Crime No.3029/2008, registered against the applicants for the offence punishable under section 32-B of the Bombay Money Lenders Act, 1946 at the Police Station Chakur, District Lature and the proceeding bearing R.C.C. No.167/2009 pending before the Judicial Magistrate, First Class, Chakur, District Latur. The brief facts of the case may be stated as follows:

3. One Dnyanoba Ram Ganjile (hereinafter, will be referred as original complainant) lodged a complaint before Assistant Registrar – Respondent No. 3 on 16.06.2008, alleging that in the year 1992 he obtained a hand loan of Rs.10,000/- from the applicant No. 2 - Kashinath Shamrao Munjane and by way of a security to the loan he executed a sale deed in respect of land Gat No. 165 admeasuring 1 H 36 R. However, the possession of the land was with the original complainant.

4. In the year 1996, the original complainant, repaid the entire loan amount to the applicant No. 2. After repayment of the loan the applicant

No.2 executed the sale deed in favour of the original complainant on 18.07.1996. However, it was only to the extent of 46 R and thereby, the applicant No. 2 has grabbed remaining portion of 90 R. However, the original complainant was unaware about the same since he was in possession over the land till 2007.

5. In the year 2007, when the original complainant obtained the 7x12 extract of the land, he came to know that the applicant No. 2 has only returned the land to the extent of 46 R. With these allegations, the original complainant had made a complaint against the applicant with the appropriate authority, that complaint was inquired into by the respondent No. 3. During the inquiry, statement of various witnesses from both the sides were recorded and after considering the statements of the witnesses, the respondent No. 2 was unable to conclude the nature of the transaction between the original complainant and applicant No. 2. Therefore, he referred the matter alongwith the record and proceeding to the District Government Pleader Latur. On scrutiny of the papers, the District Government Pleader, Latur, has opined that the nature of the transaction may of money lending. Therefore, the respondent No. 4 directed the respondent No. 2 to lodge the complaint against the applicants. Therefor, the complaint was filed on the basis of which the offence came to be registered as referred above.

6. We have heard the arguments of Mr. S. V. Warad holding for Mr. P. G. Rodge for the Applicants and Mr. M. M. Nerlikar, APP, Mr. for Respondent – State.

7. During the course of argument, the learned counsel for the applicants by referring various documents on record has submitted that the transaction between the original complainant and the applicant No. 2 is of a civil nature and the parties have already moved to the Civil Court for determination of their rights. He further submitted that the applicant No. 2 has filed a suit for permanent injunction and in which he had applied for temporary injunction which is allowed. He further submits that the original complainant and his other family members have also filed suit for declaration that the sale deed executed in favour of the applicant No. 2 is null and void and both the suits are pending. We have perused the entire documents on record, on perusal of the same, it appears that the copy of the agreement for sale dated 07.12.1990 is placed on record. On perusal of the same it appears that by way of this agreement the original complainant - Dnyanoba agreed to sale 1 H and 36 R land of Gat No. 165 and he accepted earnest amount of Rs.1000/-. The total consideration was fixed to Rs.56,000/-. On perusal of the sale deed dated 09.04.1992, it appears that the original complainant had executed a sale deed of the aforesaid land, it was executed before the Sub-registrar of the concerned Taluka on which there was a thumb impression of

Dnynoba - the original complainant and his wife Sagarbai is signed the document in the capacity of witnesses.

8. The main objection or contention of the original complainant is that when after repayment of the loan amount to the applicant No. 2 he executed a sale deed in his favour, however, it was only to the extent of 46 R and this fact only came to know in the year 2007 when he obtained the 7x12 extract of the land. The allegations of the original complainant appears to be false because on scrutiny of further record, it appears that on 24.07.2006 the original complainant had filed an application to the Tahsildar, Tahsil at Chakur for taking mutation entry of his name to the land survey No. 165 to the extent of 46 R. In that application, the original complainant has not mentioned the area of Gat No. 165 to the extent of 1 H 36 R. So from the contents of the application of the original complainant itself it is very much clear that the original complainant has applied for the mutation to the extent of 46 R that indicates the knowledge of the purchase of 46 R land from applicant No. 2. Not only this, in support of his application his statement was recorded by the revenue officer in presence of 2 Panchas namely Shivaj S. Bolegave and Raosaheb Gajele. In his statement also he has stated in the clear words that he purchased a land to the extent of 46 R from Gat No. 164 from the applicant No. 2. Therefore, it cannot be said that the original complainant was unaware about the execution of the sale deed only to the

extent of 46 R in his favour. Apart from the above aspect, the parties have already moved to the civil court for determination of their rights which are pending before the competent court. In view of the above, it appears that this is a civil dispute between the parties.

9. From the record it appears that the complainant has alleged that it was a money landing transaction, however, not a single instances are brought on record to show that the applicant No.2 was indulging in the money lenders business. In such circumstances and considering the entire record, we are of the opinion, *prima facie* no case is made out to establish the offence under Money Lenders Act, therefore, continuation of such criminal proceeding is nothing but an abuse of process.

10. In view of the above, application is allowed, relief is granted in terms of prayer clause 'B' Rule made absolute in the above terms application is disposed of.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)