

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

Criminal Writ Petition No. 01314 of 2014

District : Osmanabad

1. Purushottam s/o. Ratanlal Tapade,
Age : 61 years,
Occupation : Business.

2. Sau. Lata w/o. Purushottam Tapade,
Age : 58 years,
Occupation : Household.

Both R/o. Kalamb,
Taluka Kalamb,
Dist. Osmanabad.

.. Petitioners.

versus

1. The State of Maharashtra,
Through Police Inspector,
P.S. Kallamb,
Dist. Osmanabad.

2. Chandrakant s/o. Pandharinath
Bansode,
Age : 52 years,
Occupation : Service,
As Assistant Registrar,
Co-op. Societies,
Kallamb, Taluka Kallamb,
Dist. Osmanabad.

3. Shamshoddin Hasmoddin Sayyad,
Age : 54 years,
Occupation : Agriculture &
Business,
R/o. Moha, Taluka Kallam,
Dist. Osmanabad.

.. Respondents
(No.02 -
Original
complainant)

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Mr. V.P. Latange, Advocate, for the petitioners.

*Mr. R.V. Dasalkar, Additional Public Prosecutor,
for respondents no.01 and 02.*

Mrs. M.A. Kulkarni, Advocate, for respondent no.03.

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**CORAM : T.V. NALWADE &
SMT. VIBHA KANKANWADI, JJ.**

**Date of reserving
the judgment : 24th October 2018.**

**Date of pronouncing
the judgment : 29th November 2018.**

JUDGMENT *[Per Smt. Vibha Kankanwadi, J.] :*

01. Present petition has been filed under Article 226 of the Constitution of India as well as by invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure, for quashing the first information report bearing Crime No. 98/2014, dated 03.11.2014, registered with Kallam Police Station, Kallam, District Osmanabad, for offence punishable under Section 39 of the Maharashtra Money Lending Act, 2014.

02. Petitioner no.01 is the husband of petitioner no.02. Petitioner no.01 is a businessman. He runs agricultural shop in the name and style as Sagar Traders at Kallam. Respondent no.03, Shamshoddin, was also having an agricultural shop by name Irfan Krushi Seva Kendra in the same

village. He used to purchase seeds and fertilizers from petitioner no.01. Cordial relations developed between petitioner no.01 and respondent no.03. Wife of respondent no.03, by name, Shakilabi was the owner of agricultural land bearing Gut No. 248 admeasuring 01 Hectare 20 R, situated at village Moha, Taluka Kallam, District Osmanabad. She wanted to sell the said property and, therefore, she entered into a sale deed in the name of petitioner no.02 on 10.09.1993 for a consideration of Rs. 20,000/-. It was a registered sale deed. Possession of the suit property was handed over to petitioner no.02 on the date of sale. Mutation entry bearing No. 1193 was effected on 06.12.1993 in favour of petitioner no.02. Since the date of sale, either respondent no.03 or his wife had no concern over the said land. Respondent no.03 used to take goods from petitioner no.01 on credit. Sometimes he used to pay the amount by cash or by way of cheque. However, later on there were huge dues which respondent no.03 was not willing to pay. Petitioner no.01 was insisting upon the payment. But in order to avoid the payment, respondent no.03 started making complaints against the petitioners, stating that the transaction of sale was, in fact, a security document but, in fact, he had taken money as loan. After the said complaint was made to the District Deputy Registrar, Co-operative

Societies, Osmanabad and Assistant Registrar, Co-operative Societies, Kallam, respondent no.02 issued notice to the petitioners on 18.03.2008. Petitioner no.01 appeared and submitted his say. The enquiry went from 2008 to 2010 for final hearing, but again in the year 2013, respondent no.02 had recorded statement of respondent no.03. According to him, he has paid some of the amount and some amount is remaining towards the goods which have been taken on credit.

03. In the meantime, petitioner no.02 had filed Regular Civil Suit No. 49 of 2008 before Civil Court against respondent no.03, which came to be allowed and respondent no.03, his wife and others were restrained from interfering with the peaceful possession of petitioner no.01 over the suit property. The said decree is challenged by respondent no.03 before District Judge, Osmanabad, in R.C.A. No. 284 of 2014, which is still pending. During the pendency of the said appeal, an application came to be filed by the petitioners under which they had sought police protection for harvesting crop from Gut No.284. It was granted and police protection was given. Now, after lapse of six years, respondent no.02 has filed FIR against the petitioners contending that the transaction was a money lending transaction. It is

stated that the respondent no.02 has not followed the legal pronouncements by this Court. Civil Court had already adjudicated the issue and, therefore, the Assistant Registrar ought to have declined to exercise his jurisdiction. On these grounds, the petitioners pray for quashment of the FIR.

04. Respondent no.02 i.e. Assistant Registrar, Co-operative Societies, Kallam, District Osmanabad, has filed affidavit in reply. It is stated that during the course of enquiry, he has recorded statements of adjoining owners of the land. They have stated that the crop was taken by respondent no.03 and he has come to the conclusion that the transaction executed in the nature of sale deed dated 10.09.1993, is in fact, a money lending transaction. He had sought legal opinion and after receiving legal opinion, he has filed the FIR.

05. Criminal Application No. 6942 of 2014 was filed by respondent no.03, Shamshoddin, to add him as respondent in the petition. However, by order dated 22nd June 2015, this Court had granted last opportunity to file further affidavit, in case, he is so advised. Though he has not filed any affidavit, his application is allowed.

06. Heard learned Advocate Mr. V.P. Latange for the petitioners. Heard learned Additional Public Prosecutor Mr. R.V. Dasalkar for respondents no.01 and 02. So also, heard learned Advocate Mrs. M.A. Kulkarni for respondent no.03. Perused the documents on record.

07. It has been submitted on behalf of the petitioner that, wife of respondent no.03 had sold the property in the year 1993 to petitioner no.02. Thereafter, till 2008, there was no dispute. When respondent no.03 and his wife tried to obstruct possession of petitioner no.02, she filed suit which came to be decreed. Specific finding has been given that plaintiff i.e. present petitioner no.02 possess the suit land by virtue of sale deed. Further, in the year 2013, an order came to be passed in Regular Darkhast No. 16 of 2013, which was filed in view of Section 151 of the Code of Civil Procedure, granting police protection to petitioners to harvest crop from the said land. This order is not challenged, though the decree is subjudice in appeal. When Civil Court has given a specific finding regarding possession, unless it is set aside, Assistant Registrar will not have any kind of jurisdiction to come to the conclusion that respondent no.03 is in possession of the suit land. Reliance has been placed on the decision in *Ramesh*

Dhulatrao Gawhale & others Vs. State of Maharashtra & others [2007(3) ALL MR 275], wherein it has been held that the enquiry contemplated under Money Lending Act is not an administrative enquiry but a quasi judicial enquiry and authority acts as a statutory authority. But the jurisdiction of the authority under Section 13-B of the Maharashtra Money-Lenders Act, 1946, does not apply to cases of sale / assignment or mortgage of immoveable property as security. He also submitted that even though all the documents were submitted to the District Government Pleader, Osmanabad, he has simply stated that FIR should be lodged. When the matter was sent for opinion to the Government Pleader, without giving any kind of opinion as to whether offence is made out or not, simply directions are given and as a result of which the FIR has been lodged which can be said to be without application of mind by the statutory authority. Further reliance has also been placed on the decision in *Hari Shankar Patil & others Vs. State of Maharashtra & others [2013(2) Bom.C.R.(Cri.) 651]*, wherein the FIR lodged by Assistant Registrar was quashed and set aside stating that the respondent no.03 is not an authority to decide the question of title of immoveable property.

08. Per contra, it has been submitted by the learned Additional Public Prosecutor that, thorough

enquiry was made and it was transpired that there were also other transactions between petitioner no.01 and others. Respondent no.02 has come to the conclusion on the basis of enquiry made that, the document and sale deed was a sham document. Therefore, when the matter is yet to be fully investigated, FIR need not be quashed.

09. Here, in this case, it appears that initially complaint was made respondent no.03, Shamshoddin, regarding the nature of transaction in 2008. The document of sale deed came to be executed on 10.09.1993. Thus, since 10.09.1993, till 2008, no action was taken by respondent no.03. After the sale deed was executed, mutation entry was immediately taken on 06.12.1993 vide No. 1193. This conduct is definitely required to be considered. Further, in the statement or in the affidavit in reply, it is only stated that Shamshoddin's wife has paid Rs. 1,05,000/- towards interest on principal amount but it is not clarified when ultimately that amount came to be given. Further fact, which comes in the way is that, the matter was taken before Civil Court by petitioner no.02 by way of suit i.e. R.C.S. No. 59 of 2008. The decree came to be passed on 14.09.2010. Specific contention was raised that, in the year 1998, Shamshoddin had paid the amount.

Why Shamshoddin had not taken any legal action against the petitioners after 1998 and kept mum till 2008, appears to have been not explained by him. After the evidence was led by both the parties, the Civil Court had come to the conclusion that petitioner no.02 is in peaceful possession of the suit property. There was obstruction at the hands of respondent no.03 and his wife and, therefore, suit came to be decreed, Shamshoddin and his wife were restrained from disturbing peaceful possession of petitioner no.02. It is stated that the said decree is under challenge in appeal. However, it appears that no interim order has been prayed by respondent no.03 and his wife. On the contrary, when in Regular Darkhast No.16 of 2013, an application was filed for granting police protection, it has been allowed on 07.10.2013. We are constrained to take note of all these facts for the simple reason that in spite of all these documents, respondent no.02 has stated that the neighbours gave statement before him that Shamshoddin and his wife are still in possession and are cultivating the land. When Civil Court has already arrived at a conclusion and no other legal order has been taken, respondent no.03 and his wife cannot say that they possess the suit land.

10. Merely on the basis of statements of the

adjoining holders, how Assistant Registrar can come to the conclusion that the sale deed is sham and bogus, is also a question. In his affidavit in reply, he has stated that he has received four more complaints against petitioners but he says that the enquiry in respect of those complaints is pending. Therefore, unless that enquiry is completed, he cannot say that in respect of those transactions any offence is committed by the petitioners. We have constrained ourselves to consider the transaction of respondent no.03 and his wife.

11. Powers have been given under the Money Lending Act to the respondent no.02. So also, Government had accorded him authority to make enquiry. Before taking any criminal action, it was incumbent upon respondent no.02 to go through all the documents. When Civil Court had come to a specific conclusion, he cannot arrive at a contrary conclusion. Therefore, the FIR lodged by respondent no.02 is based on half cooked enquiry. Further, it can also be seen that though he had sent all the documents for legal opinion, the legal opinion that was given by District Government Pleader is not concrete. Therefore, the basis on which the FIR has been lodged is shaky. It would be injustice to ask the petitioners to face trial on the basis of such evidence and enquiry.

Therefore, case is made out to exercise powers of this Court under Article 226 of the Constitution of India as well as Section 482 of the Code of Criminal Procedure, to quash and set aside the FIR.

12. Hence, the following order :-

(a) The criminal writ petition is hereby allowed.

(b) Relief is granted in terms of prayer clause "B".

(c) Rule made absolute in the above terms.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

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