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

CRIMINAL APPLICATION NO. 5781 OF 2017

1. Subhash s/o Dasu Jadhavar,
Age 60 years, Occ. Pensioner
& Agril, R/o. Hiwarda, Tq.
Bhoom, Dist. Osmanabad.

2. Jayshri w/o Subhash Jadhavar,
Age 55 years, Occ. Household &
Agril. R/o. As above. ... **Applicants**
(Ori. accused)

VERSUS

1. The State of Maharashtra,
Through Police Station Bhoom,
Tq. Bhoom, Dist. Osmanabad.

2. Balaji s/o Jyotiram Mete,
Age 40 years, Occ. Service,
R/o, C/o. Assistant Registrar,
Co-Operative Societies Samarth
Nagar, Bhoom, Tq. Bhoom,
Dist. Osmanabad. ... **Respondents**

…

Advocate for Applicants : Mr. S. A. Wakure.
APP for respondents /State : Mr. Dhasalkar.

CORAM : T.V. NALAWADE &
K. L. WADANE, JJ.

DATE : 4th July, 2018.

JUDGMENT (PER K.L. WADANE, J.) :

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

2. This application is filed by the applicants under the provisions of section 482 of the Code of Criminal Procedure for relief of quashing of first information report bearing Crime No.202/2017, registered at Bhoom Police Station, District Osmanabad and criminal case pending against him in the Court of Judicial Magistrate First Class, Bhoom. The offence is registered against the applicants for the offence punishable under section 39 of the Maharashtra Money Lending (Regulation) Act 2014 (hereafter shall be referred as "Act of 2014").

3 The complaint was filed by the respondent No. 2, who was serving as an Assistant Registrar, Co-Operative Societies, Bhoom, District Osmanabad. Initially, the original complainant namely Shrimant Mundhe lodged a complaint with respondent No. 2 stating that there was money lending transaction between him and the applicant No. 1 in the year 1996. It is further alleged by the original complainant that he has executed a sale-deed in favour of applicant No. 2 (wife of applicant No. 1) and it was for the land admeasuring 1-H 60-R. It is further alleged that in the year 1998 the land to the extent of 80-R was returned to the original complainant and remaining land was retained by the applicants. The complaint submitted by the original complainant was enquired and its report was sent to the District Government Pleader, Osmanabad, who opined that the transaction appears to be a money lending transaction. Therefore, on the basis of the complaint filed by the respondent No. 2, offence came to be registered.

4. We have heard the arguments of Mr. Wakure, learned counsel for the applicants and learned APP Mr. Dhasalkar.

5. Mr. Wakure, learned counsel, during the course of arguments submits that the alleged money lending transaction was of 1996, therefore, now, in view of the provisions of Section 18 of the Act of 2014, the original complainant is not entitled to get the possession of the land . Mr. Wakure, learned counsel, further submits that when the matter was sent to the District Government Pleader for opinion no opportunity was given to the applicants to plead their case. However, from the record it appears that the applicants have represented themselves before the respondent No. 2. When respondent No. 2 enquired into the matter the applicants have submitted their written arguments. That apart, this Court has to see on the basis of allegations made by the original complainant and statement of witnesses that whether there is sufficient grounds to constitute the offence under the Act of 2014 or not ?

6. Mr. Wakure, learned counsel for applicants has taken us through the contents of the first information report and other relevant papers of enquiry conducted before the respondent no. 2 and the papers of investigation. Considering the submissions made by Mr. Wakure, we are of the opinion that for quashment of first information report or the criminal proceeding, following factors are to be taken into consideration : (i) the allegations taken at their face value do not make out the offence, (ii) the

allegations are inherently improbable and (iii) the criminal proceeding is manifestly attended with malafides for wreaking vengeance.

7. Looking to the above broad aspects, we have carefully gone through the statement of the original complainant and his son Maruti and statement of witness Ramling Gore. We have also gone through the copy of complaint filed by the applicant No. 2 against son of the original complainant namely Maruti under section 138 of the Negotiable Instruments Act. We have also gone through the copies of sale-deed, placed on record. From these documents it appears that there was money lending transaction between applicant No. 1 and the original complainant Shrimant Mundhe since 1996. On perusal of the statement of Shrimant Mundhe and his son Maruti Mundhe, it appears that there is series of money lending transactions between the applicants and the original complainant and his son.

8. Besides the transaction of 1998 there is mention that witness Maruti obtained Rs. 50,000/- from the applicant No. 1 and the rate of interest was 5 %. At the time of payment of loan the applicant No. 1 has obtained two blank cheques for the purpose of security and this transaction had taken place two years before the statement of Shrimant before the police on 21.10.2017. Further it reveals from the record that when the original complainant and Maruti before five to six months have requested the applicant No. 1 to accept the loan amount of Rs. 50,000/- and return the land,

on which applicant No. 1 agreed to return the land, however, till the date, no land was returned to him.

9. On 25.04.2017, applicant No. 1 came to the house of the original complainant and threatened him to kill. After this incident the original complainant has sent a written complaint to the Bhoom police station. Knowing it, the applicant No. 2 by taking disadvantage of blank cheques given by Maruti, filed a complaint under section 138 of the Negotiable Instruments Act, by misusing two blank cheques. Similar is the version of witness Maruti Mundhe. Another witness Ramling Gore also supports the money lending transaction before two years between applicant No. 1 and Maruti.

10. So looking to the series of the money lending transaction and its consequences it appears that it continues from 1996 till the date of filing of the complaint. Prima-facie it appears that the allegations in the complaint are supported with the other documents such as copies of the sale-deed and the copy of complaint under section 138 of the N.I. Act. The return of the immovable property may not be possible in view of the provision of Section 18 of the Act of 2014, however, it does not mean that the police are barred from taking cognizance of the cognizable offence i.e. offence punishable under section 39 of the Act of 2014. There are specific allegations against the applicant No. 1 about the illegal money lending transaction that too without

holding valid licence in contravention of Section 39 of the Act of 2014. From the record it appears that it is contended by the applicant No. 2 that since Maruti is her relative, therefore, certain amount was given to him by way of hand loan. Looking to the specific allegations made by the original complainant with details of transaction from time to time, we do not feel that the first information report or criminal case levelled against the applicants is groundless.

11. Mr. Wakure, learned counsel for applicants submits that there was no opportunity given to the applicants to represent them and relied upon the observations of this Court in Criminal Writ Petition No. 929 of 2016 (Purushottam Tapade V/s. State of Maharashtra). However, from the record it appears that, the applicants have diligently represented themselves before the respondent No. 2.

12 In view of the above, we do not find substance in the application, therefore, it needs to be dismissed. Accordingly it is dismissed. Rule is discharged. Pending Criminal Application is disposed of.

(K. L. WADANE, J.) **(T.V.NALAWADE, J.)**

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