

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 04 OF 2019**

- 1) Balasaheb s/o Ramrao Bade,
Age 32 years, Occ. Agriculture,
R/o. Gavandhara, Tq. Kille Dharur,
District Beed.
- 2) Madan s/o Govind More, Age 52
years, Occ. Agriculture, R/o. Kari,
Tq. Kille Dharur, Dist. Beed.
- 3) Anita w/o Madan More, Age 50
years, Occ. Agriculture,
R/o. as above. ... **Applicants.**

VERSUS.

- 1) The State of Maharashtra,
Through Police Inspector,
Police Station, Dharur,
Tq. Dharur, Dist. Beed.
- 2) Shivaji Bapurao Ghule,
Age 49 years, Occ. Service,
As Assistant Registrar,
Co-Operative Societies Dharur,
Tq. Dharur, Dist. Beed. ... **Respondents.**

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Mr. Thombre S.S., Advocate for Applicants.
Mr. Borade P.G., A.P.P. for respondent No. 1.
Mr. C.V. Thombre, Advocate for Assist to P.P.

**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

Date of reserving the Judgment : 19.03.2019

Date of pronouncing the Judgment : 09.04.2019

JUDGMENT (PER MANGESH S. PATIL, J.) :

Heard.

2. Rule. The rule is made returnable forthwith. The learned APP
waives service for respondent State. With the consent of both the sides the

matter is heard finally at the stage of admission.

3. In this proceeding under section 482 of the Code of Criminal Procedure, the applicants who are the accused in Crime No. 279/2018 registered with Police Station Dindrud District Beed for the offence punishable under section 39 of the Maharashtra Money Lending (Regulation) Act, 2014 (hereinafter, "the Act"), are seeking its quashment.

4. Facts leading to the filing of this application may be summarized as under:

One Dattatraya Ramkisan More and his wife Vithabai More resident of Kari Tq. Dharur District Beed lodged a complaint with District Registrar Co-Operative Societies Beed inter alia alleging that the applicants are indulging in illegal money lending and were threatening them. One Shri. S.D. Neharkar was appointed to carry out the enquiry. He submitted report dated 24.05.2017 holding that there was no money lending. Shri. Dattatraya Ramkisan More then challenged that order before the District Magistrate who directed the matter to be enquired afresh by constituting a three member committee. The committee conducted a fresh enquiry and submitted a report to the District Registrar of Co-Operative Societies confirming that there was a money lending transaction. The applicants had indulged into and had committed an offence punishable under section 39 of the Act. Pursuant to such report and the directions of the superior, informant Shivaji Bapurao Ghule who is the Assistant Registrar Co-Operative Societies, Dharur lodged the F.I.R. and the crime was registered. Being

aggrieved the applicants are before this Court.

5. The learned advocate for the applicants vehemently submits that applicant No. 1 had purchased a land admeasuring 80 Are for consideration of Rs. 1,80,000/- under a registered sale-deed dated 03.11.2010 from Dattatraya and his wife. Since the applicant No. 1 was in need of money he sold a portion admeasuring 40 Are out of that land to the applicant No. 3 under a registered sale-deed dated 02.05.2011 for a consideration of Rs. 1 lakh. Since it was an out and out sale conveying title to the land, the applicant No. 1 filed Regular Civil Suit No. 72/2017 against Dattatraya More and his wife and family members seeking perpetual injunction restraining them from obstructing his possession over the remaining 40 Are portion. The learned Civil Judge has also granted interim injunction in his favour. Similarly even the applicant No. 3 has filed Regular Civil Suit No. 71/2017 against Dattatraya More and his wife and family members in respect of the portion purchased by him from the applicant No. 1 and even he has been granted interim injunction. Thus according to the learned advocate there is no element of any money lending much less carrying a business of money lending which is prohibited under the Act.

6. The learned advocate for the applicants would then submit that since the transaction has taken place prior to coming into the force of the Act in the year 2014, as held in the similar set of facts by Division Bench of this Court in Criminal Application No. 3884/2017 by the order dated 09.02.2018 the F.I.R. is liable to be quashed.

7. The learned advocate for the applicants would then submit that in fact the offence has been registered only on the basis of preliminary verification under section 16 and inspection under section 17 of the Act and the enquiry is yet to be completed. Therefore the F.I.R. has been lodged prematurely. The enquiry under section 18 of the Act is still in progress and the informant should have waited till any final decision was taken.

8. The learned advocate then submitted that as far as the applicant No. 2 is concerned there are absolutely no allegations about he having indulged in illegal money lending business but he is being implicated merely because he happens to be the husband of applicant No. 3.

9. Lastly, the learned advocate submits that the fact situation is squarely covered by the categories laid down in the case of **State of Haryana Vs. Bhajan lal, A.I.R. 1992 SC 604** and the application may be allowed.

10. The learned APP submits that it is not the fact that the F.I.R. has been lodged without any enquiry. He submits that an enquiry was duly commenced by a committee of three member which is in progress under section 18 of the Act. It has been prima facie found that the applicants have indulged in business of money lending illegally. A suitable opportunity deserves to be extended to the prosecution to substantiate the allegations which can take place only during the course of trial and the application therefore may be rejected.

11. As far as legal aspects are concerned, the learned APP submits that during the course of enquiry several transactions have transpired wherein the applicants have prima facie purchased lands against money lent, even after coming into force of the Act in the year 2014. The transaction with Dattaraya More and Vithabai More pertains to the period prior to the year 2014 and to their extent it would be covered by the predecessor of the Act namely the Bombay Money Lenders Act as is held by this Court in Criminal Application No. 3884/2017 (supra). But the F.I.R. lodged on the basis of subsequent transactions as well, which have taken place after coming into force of the Act and which makes the offence cognizable. Therefore in the peculiar fact situation, the applicants are not entitled to seek any benefit from the decision in Criminal Application No. 3884/2017.

12. We have carefully considered the papers of the investigation including the report submitted by a three member committee comprising of Tahsildar, Police Inspector and Assistant Registrar. Indeed, we are in complete agreement with the decision of the Division Bench of this Court in Criminal Application No. 3884/2017, in respect of the applicability of the provisions of the Act qua the offences committed prior to coming into force of the Act. As is observed in the judgment dated 09.02.2018, section 39 of the Act is analogous to section 32-B of the Bombay Money Lenders Act, 1946. Under the old Act the maximum punishment for the first offence was up to one year of imprisonment whereas under the new Act it is up to five years. Under section 35A of the old Act the offence punishable under

section 32-B was not cognizable, whereas by virtue of Section 48 of the New Act, the offence punishable under section 39 is cognizable. Consequently, when the alleged offence qua the original complainants Dattatraya and Vithabai was committed prior to coming into force of the new Act, prima facie it does appear that no first information report could have been lodged directly under section 154 of the Code of Criminal Procedure and only a non cognizable report under section 155 of the Code of Criminal Procedure should have been registered.

13. However, as is pointed out by the learned APP and rightly so, the enquiry though has been initiated under the provisions of Section 16 and 17 of the Act on a complaint lodged by Dattatraya, it is not restricted to the transactions which had taken place between the applicants and Dattatraya and his wife. During the enquiry which forms the basis for lodging the F.I.R., which is not expected to be an encyclopedia, the three member committee has taken note of many other transactions with different persons entered into after coming into force of the Act. Statements of several witnesses have also been recorded like Dhondiram Popale, Vasant Kashid, both of whom have corroborated the version of Dattatraya, about the applicant No. 1 having got the sale-deed of the land executed as a security for repayment of money lend by.

14. A careful perusal of the report of the three member committee further reveals that one Dhondiram Tukaram Popale has sold his land to the son of the applicant No. 2 on 13.02.2013 and the latter re-conveyed it to the

former on 06.02.2018.

15. Several other sale-deeds were produced by the applicants during that enquiry some of which pertain to year 2016 and 2018. The report of the committee specifically mentions that the sale-deeds No. 137/2016, 874/2016, 136/2013 and 274/2014 were found to have been executed in the name of applicant No. 1 and his family members whereas the sale-deed No. 146/2018 has been executed in the name of son of the applicant No. 2. It is thus prima facie apparent that some of the transactions entered into in the form of purchase of lands in the alleged money lending transactions pertain to the period after coming into force of the Act in 2014. In view of such state of affairs, the applicants are not entitled to reap any benefit from the decision of this Court in the case of Criminal Application No. 3884/2017 (supra).

16. Taking into account over all conspectus of the matter and the fact situation as well the law governing it in our considered view the Crime cannot be quashed.

17. The Criminal Application is rejected.

18. The rule is discharged.

(MANGESH S. PATIL, J.)

(T.V. NALAWADE, J.)

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