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

CRIMINAL APPLICATION NO.255 OF 2019

Nilkant s/o Kerappa Sangshetti
Age 71 years, Occu. Agri,
R/o Arni post Kanegon,
Tq.Lohara, Dist.Osmanabad .. APPLICANT
VERSUS
1]The State of Maharashtra
(Through P.S.Lohara Dist.Osmanabad)

2]Vyankat Narayan Vibhute,
Age 40 years, Occu.Govt.Service
Co-operative Officer,Grade-2
Office of Assistant Registrar,
Co-operative Societies, Lohara,
Dist.Osmanabad.

3]The District Deputy Registrar
Co-operative Societies,
Osmanabad.

4]Shivaji Kisan Patil
Age 55 years, Occu.Agri.
R/o Nagur, Tq.Lohara
Dist.Osmanabad. .. RESPONDENTS
....
Mr.G.J.Kore, Advocate for applicant.
Mr.P.G.Borade,APP for respondent State.
Mr.T.M.Tandale,Advocate. for Respondent no.4.

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

**RESERVED ON : 25/03/2019.
PRONOUNCED ON : 04/06/2019.**

JUDGMENT : [PER MANGESH S. PATIL,J.] :
Heard.

2] Rule. The rule is made returnable forthwith. The learned APP waived service for the 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 Cr.P.C. the applicant who is the sole accused in Crime No.184/2018 registered with Lohara Police Station, Dist.Osmanabad for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014 (hereinafter the Money Lending Act) is seeking its quashment.

4] One Shivaji Kisan Patil, resident of Nagur, Tq.Lohara, Dist.Osmanabad lodged complaint with District Deputy Registrar of Co-operative Societies, Osmanabad on 8/12/2017. He alleged that land survey no.121 of village Kasti (Bk) is his ancestral property. His father has died. During his life time, his father had sold that land to one Nur Ismaile Dalimbkar as a security for a hand loan transaction. Before he could redeem the land, since Dalimbkar was in need of money, he executed a sale deed of that land in favour of one Balu Baburao Kharade. Since even Kharade started insisting for repayment of money, he obtained loan of Rs.1,50,000/- from the applicant to pay off Kharade. Consequently, Kharade executed a sale deed of the self-same land in favour of the applicant. He thus alleged that he had paid amount of Rs.3 lakh to the applicant, still he was not willing to reconvey the land and was demanding an additional amount of Rs.5 lakh with interest. He also alleged that he continued to be in possession of the land through-out.

5] The District Deputy Registrar, Osmanabad directed Assistant Registrar, Lohara to conduct an inquiry and to submit a report pursuant to the complaint filed by Shivaji Kisan Patil. Accordingly, the Assistant Registrar recorded statements of Shivaji and witnesses Surendra Shamrao Patil, Mohan Raosaheb Patil, Balasaheb Vithalrao Jadhav, Shivaji Deorao More and Tulshiram Kondiba Kshirsagar. He also obtained affidavits of Dalimbkar and Kharade. He also conducted panchanama to ascertain as to who was in actual possession of land Survey no.121. Pursuant to such inquiry, he submitted a report to the District Deputy Registrar holding that there was illegal money lending transaction. The District Deputy Registrar by letter dated 26/7/2018 directed the Assistant Registrar to file complaint against the applicant. Accordingly the respondent no.2 in his capacity as the Assistant Registrar lodged the FIR on 10/2/2018 and the crime was registered as mentioned hereinabove.

6] The learned advocate for the applicant submitted that there was no money lending transaction and it was out and out sale under which he has purchased the land Survey no.121 on 10/3/2006. By virtue of Mutation Entry no.482 dated 14/3/2006 it was duly transferred in his name and since the date of sale deed he has been in its exclusive possession. Since respondent no.4 Shivaji started obstructing his possession he filed Regular Civil Suit No.160/2017 for perpetual injunction against him and his family members. They appeared in the Suit and to wreck vengeance the respondent no.4 lodged the complaint belatedly on 8/12/2017. There was no business of money lending. It was an isolated transaction. There was no other instance. Therefore assuming that it was a loan transaction, still it cannot be said that the applicant was doing any business of money lending which has been made punishable under Section 39 of the Money Lending Act and therefore, the FIR/Crime are liable to be quashed.

7] The learned APP and the learned advocate for the respondent no.4 strongly opposed the application. They submitted that offence has been registered pursuant to a preliminary inquiry conducted by respondent no.2 Assistant Registrar. He has *prima facie* found that it was a money lending transaction under which the applicant has purchased the land which is originally owned by the respondent no.4. Considering the rise in debt trap cases where money lenders have been taking disadvantage of the poverty stricken agriculturists, the applicant cannot be let off at the threshold. The offence is punishable upto 5 years and fine. Necessary ingredients for constituting the offence can easily be discerned and the application may be rejected.

8] Since the applicant is seeking quashment of the crime, the parameters are well set by the Supreme Court in the case of **State of Haryana and others Versus Bhajanlal and others AIR 1992 S.C.604** and one need not repeat them and it would be suffice to bear in mind those.

9] As far as factual aspects are concerned, according to the respondent no.4 and the allegations in the FIR lodged by the respondent no.2, initially the father of the respondent no.4 sold the land to one Nur Dalimbkar under a registered sale deed dated 23/5/1997 for a consideration of Rs.30,000/-. By Mutation Entry no.370, the name of the purchaser was also mutated to the revenue record immediately. Thereafter, Nur Dalimbkar sold the same land to one Govind Baburao Kharade under the registered sale deed dated

25/5/2003 for a consideration of Rs.60,000/-. Immediately, by virtue of Mutation Entry no.375 the land was mutated in the name of the purchaser. It is thereafter that by another registered sale deed dated 10/3/2006 Govind Baburao Kharade sold the self-same land to the applicant for a consideration of Rs.1,50,000/-. Pertinently, by Mutation Entry no.482 name of the applicant was also immediately mutated in the revenue record of the land. It is also equally important to note that the applicant has not purchased the land from respondent no.4 directly.

10] Similarly, even while executing the sale deed by Nur Dalimbkar in favour of Govind Kharade or by latter in favour of the applicant, conspicuously neither there is any reference in the sale deeds that those were being executed at the request of the respondent no.4, even the latter is not a consenting party or even an attesting witness to any of those. There is also no contemporaneous document to witness that these sale deeds were executed at his request. There is absolutely no record to show that any attempt was made by the respondent no.4 to get the land reconveyed if at all the sale deeds were executed only by way of security for repayment of loan with a condition/agreement to reconvey it if the amount was repaid. Therefore, on facts itself, except the bald allegation made by the respondent no.4 and made by the respondent no.2 in his FIR, there is absolutely no material to *prima facie* show that the applicant has purchased the land with any agreement to reconvey it to the respondent no.4 and that was purely a money lending transaction and not an out and out sale.

11] Besides, it is trite that an isolated transaction of lending money is not sufficient to brand a person to be a money lender and there must be some material to demonstrate that he is carrying on the business of money lending which is prohibited under the Money Lending Act.

12] Further there is absolutely no whisper that the respondent no.4 had agreed to repay the money with interest which is a concomitant for constituting transaction as a loan within the meaning of Section 2(13) of the Money Lending Act.

13] Again it is pertinent to note that even the sale deed under which the applicant purchased the land is dated 10/3/2006 and the offence can be said to have been committed prior to the year 2014 when the present Money Lending Act came into force. Hypothetically, assuming that it was a money lending transaction entered into in the year 2006 would constitute an offence punishable under Section 32-B of that Act which is *pari materia* same as Section 39 of the Money Lending Act, 2014, under the old Act the maximum punishment for the first offence was upto one year of imprisonment whereas under the new Act it is upto five years and as has been held by a Division Bench of this Court in the case of Balasaheb Ramrao Bade and others V/s The State of Maharashtra and another in Criminal Application No.4/2019 vide judgment dated 9/4/2019, it would constitute a non-cognizable offence. If that be so, no FIR under Section 154 of the Cr.P.C. could have been lodged directly in the police station and the respondent no.2 ought to have filed either a complaint directly to the Magistrate concerned, or the police ought to have merely registered a non-cognizable report under Section 155 of the Cr.P.C. None of the sort having taken place, in our considered view, this would be an added reason as to why the FIR is liable to be quashed.

14] In the result, on facts as well as on legal parameters, the applicant cannot be made to face the investigation and the possible charge and it would be a sheer abuse of the process of law, if he is made to face it.

15] The Criminal Application is therefore allowed in terms of prayer clause “B”.

The Rule is accordingly made absolute in these terms.

(MANGESH S. PATIL,J.) **(T.V.NALAWADE,J)**

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