IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.219 OF 2018

1. Anshiram S/o Ramkaran Dange,
Age 48 years, Occu. Service,

2. Shobha W/o Anshiram Dange,
Age 44 years, Occu. Household,
Both are R/o plot No.34,
Galli No.5, New Hanuman Nagar,
Garkheda Parisar, Aurangabad. ... **Petitioners**

Versus

1. The State of Maharashtra,
Through the Police Inspector,
Mukundwadi Police Station,
Tq. & District Aurangabad.

2. Shobha Bibhishan Dange,
Age 44 years, Occu. Household,
R/o G-13, Near Power house,
Cidco Aurangabad. ... **Respondents**

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Mr. A.B.Chalak, Advocate for Petitioners.
Mr. S.J.Salgare, APP for Respondent-State.
Ms. J.P.Reddy, Advocate for Respondent No.2 (appointed).

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CORAM : T.V.NALAWADE AND
MANGESH S. PATIL, JJ.

DATE : 29.03.2019

<u>JUDGMENT : (Per Mangesh S. Patil, J.)</u> :-

Heard. Rule. The Rule is made returnable forthwith. The learned APP waives service for the Respondent-State. The learned advocate Ms. J.P.Reddy waives service for Respondent No.2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioners are the accused from the Crime No.839 of 2016 registered with Mukundwadi Police Station, Aurangabad for the offences punishable under Sections 504, 506 of the IPC and for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014 and are seeking its quashment.

3. Respondent No.2 lodged the FIR inter alia alleging that at the time of marriage of her daughter she was in need of money. She approached the petitioners for hand loan of Rs.1,00,000/- in the year 2015. In April 2016 she sold her land at her native and paid the money back to

them. But they demanded interest and on that count quarreled with her. She therefore, paid them an amount of Rs.65,000/- as interest. However, they have been repeatedly going to her house and demanding additional amount of Rs.1,00,000/- as interest and abuse and threaten her. On the basis of such report, the crime was registered under Section 504, 506 of the IPC and under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014.

4. It appears that her supplementary statement was thereafter recorded on 26.08.2016 wherein she stated that she had obtained the hand loan of Rs.1,00,000/- from the petitioners on 14.04.2015. Again on 25.07.2015 she was in need of money and had obtained an amount of Rs.15,000/- from the petitioners on 25.07.2015. In lieu thereof they obtained a blank and signed cheque from her bearing No.871422. She further alleged that on 06.05.2015 they had told her that she will have to pay interest @ 10 % else threatened to present the cheque for encashment and to lodge a case against her. She further

gave details of the money paid by her to the petitioners from time to time towards interest. The matter was reported to the Sub Registrar of Co-operative Societies by the Investigating Officer by his letter dated 27.08.2016 stating that it was a case of money lending and the petitioners had no license under the Act to undertake the business. The cheque was recovered, statements of witnesses were recorded. The specimen hand writing of petitioner No.1 and his natural hand writing and the hand writing on the cheque is recovered and sent to the hand writing expert.

5. The learned advocate for the petitioner referring to the decisions in the case of Division Bench of this Court in ***Mandubai Vitthoba Pawar Vs. State of Maharashtra and others ; 2015 SCC Online Bom. 4935*** submits that this Court has already concluded that an isolated transaction of lending money cannot be regarded as a "business of money lending" within the meaning of Section 39, as defined under Sub Section 3 of Section 2 of the Act. Except the alleged money lending

wherein the petitioners advanced Rs.1,00,000/- to Respondent No.2, there is no other instance either reported or found against them of a similar crime. There is no substance in the allegations levelled against the petitioner. Allowing them to face the investigation and trial would be a sheer misuse of process of law and the Crime may be quashed and set aside.

6. The learned APP and the learned Advocate for Respondent No.2 submit that there are specific allegations about the petitioners having lend money to Respondent No.2 against interest she has given details as to the manner and in which the interest was paid from time to time even they obtained a blank and signed cheque from her and therefore there is a prima facie case about them having involved in money lending business and the course of law may not be stalled at this juncture.

7. We have carefully considered the papers of the investigation and the allegations and the FIR as well as the material collected by the Investigating Officer. As far as 'money lending business' is concerned Sub Section 3 of

Section 2 of the Money Lending Act defines it as under :

> *"3. "business of money-lending" means the business of advancing loans whether in cash or kind and whether or not in connection with, or in addition to any other business."*

Section 39 of the Act provides for punishment for carrying on the business of money lending and reads as under :

> *"39. Whoever carries on the "business of money-lending" without obtaining a valid licence, shall on conviction, be punished with imprisonment of either description for a term which may extend to five years or with fine which may extend to fifty thousand rupees or with both."*

The word "business" has been interpreted not only in respect of the money lending legislations of various States but even in respect of the tax matters by various pronouncements. In the case of ***Ka. Icilda Wallang Vs. U Lokendra Suiam ; AIR 1987 SC 2047,*** in respect of a similar provision contained in Assam Money Lenders' Act, 1934 following observations were made :

> *"Both the appellate court and the High Court have found that the plaintiff was not a money-lender within*

the meaning of Assam Money Lenders; Act, 1934. The High Court observed that a few disconnected and isolated transactions would not make the plaintiff a person engaged regularly in money lending business. The approach of the High Court to the question was correct. ....”

The issue therefore is no more *res integra.* Accepting the allegations in the FIR at their face value, except the alleged isolated money lending of Rs.1,00,000/-, there is absolutely no other instance either alleged or found, to prima facie show that they have been indulging in money lending business as defined under Sub Section 3 of Section 2 of the Money Lending Act. It cannot be said that they have committed an offence punishable under Section 39 of that Act.

8. There are some allegations about the petitioners having obtained a blank signed cheque from Respondent No.2 and even the Investigating officer has seized a cheque from them. Though it prima facie bears the signature of Respondent No.2, it has been issued in the name of Shri. Ranjeet Sarjerao Kanhere. There is absolutely no material collected during the investigation

to ascertain as to in what manner and how this cheque could have been issued by Respondent No.2 in his name. Therefore, in our considered view, even this circumstance does not lead us any where muchless to prima facie conclude that the applicants are involved in money lending business which is an offence punishable under Section 39 of that Act.

9. As far as the offences punishable under Sections 504 and 506 are concerned, in our considered view, those are being resorted to with some ulterior motive since the parties are at longer head on account of the money transaction and there is absolutely no prima facie corroboration to the bald and vague statement of Respondent No.2 in the FIR regarding the alleged threats and abuses. The case squarely falls under category 1, 3 and 8 of Bhajan Lal's case.

10. The Writ Petition is therefore allowed in the terms of prayer clause-A. The rule is made absolute in those terms.

11. The fees of the learned advocate Ms. J.P.Reddy appointed to represent Respondent No.2 is quantified at Rs.3,000/- and shall be paid through the High Court Legal Services Authority.

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

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vmk/-