IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIM. PUBLIC INTEREST LITIGATION ST. NO. 41 OF 2019

Fauzan Shaikh	)	
1/16 Lehri House	)	
Sofia Zuber Road, Nagpada,	)	
Mumbai 400008.	)	.....Petitioner

Versus

State of Maharashtra	)	
Through The Secretary,	)	
Govt. of Maharashtra,	)	
Mantralaya, Mumbai	)	
Served upon the Addl.Public Prosecutor,	)	
PWD Building, High Court,	)	
Mumbai – 400 032.	)	.....Respondent

Ms. Ushajee Peri i/b. Mr. Aditya Mokashi for the petitioner.
Mr. J. P. Yagnik, APP for the Respondent-State.

CORAM : RANJIT MORE &
SURENDRA P. TAVADE, JJ.

DATE : 11th December, 2019.

Judgment (Per Ranjit More, J.) :

1. The petitioner, in public interest, has approached this Court with following prayers :

> *"(a) To declare that discrimination in the definition of "loan" under Section 2(13) of the Act, between a person*

giving "advance" and a person giving "advance at interest", particularly in the impugned clauses "(j)" and "(k)" thereof, for the purpose of excluding the applicability of the regulatory, confiscatory and penal provisions of the Act, is manifestly arbitrary and renders the impugned clauses "(j)" and "(k)" of Section 2(13) of the Act, ultra vires on the test of Article 14 of the Constitution of India;

(b) Consequently, to issue appropriate guidelines to prevent harassment of the affected borrowers whether agriculturist, individual or entity, at the hands of such money lenders, who without obtaining the license as required under the Act, advances without interest, sums exceeding rupees three lakhs on the basis of negotiable instruments as defined in the Negotiable Instruments Act, 1881 other than a promissory note, or/and any sum exceeding rupees three thousand on the basis of a hundi, mainly for -

(i) Initiating criminal prosecution and, taking other regulatory, confiscatory and penal action as provided in the Act even against such unlicensed money lenders, and

(ii) Precluding such unlicensed money lenders from availing remedies of recovery of a 'legally enforceable debt' under Negotiable Instrument Act, Insolvency Bankruptcy Code, CPC, Specific Relief Act, Contract Act etc;"

2. The petitioner is seeking adjudication of following issues :

(a) Whether discrimination in the definition of "loan" under Section 2(13) of the Act, between a person giving "advance" and a person giving "advance at interest", particularly in the impugned clauses "j" and "k" thereof, for the purpose of excluding the applicability of the regulatory, confiscatory and penal provisions of the Act, is manifestly arbitrary and renders the impugned clauses *ultra vires* on the test of Article 14 of the Constitution of India ?

(b) Consequently, whether guidelines are required to be issued for initiating criminal prosecution, and taking other regulatory, confiscatory and penal action as provided in the Act even against such money lenders, who would advance without interest, sums exceeding rupees three lakhs on the basis of negotiable instruments as defined in the Negotiable Instruments Act, 1881, other than a promissory note, or/and advances any sum exceeding rupees three thousand on the basis of a hundi, without obtaining the license as required under the Act?

3. The petitioner claims that the evil of money lending by unregulated financial sources, individuals is haunting the farmers, agriculturists, non-agriculturists in the State of Maharashtra. He claims that having noticed and read about large number of suicides by debt-ridden victims in the State of Maharashtra, he is compelled to file the present PIL.

4. The petitioner contends that the word “loan” as defined in Section 2(13) of the Maharashtra Money Lending (Regulation) Act, 2014 (for short “the Act”), makes arbitrary and unwarranted distinction between “advance” and “advance at interest”. In view of such restricted meaning given to the term “loan” by restricting its application only to “advance at interest”, the said enactment fails to serve the purpose for which, the Act was enacted. In the submission of the petitioner, in view of the impugned clauses (j) and (k) of Section 2(13) of the Act, the advance which is not at interest and are made on the basis of Negotiable Instrument Act (other than promissory note) or hundi escape the regulatory prohibition contained in Section 4 i.e. requirement of licenses. Moreover, the money lenders advancing such sums also escape the requirements of obtaining licenses and the consequential regulatory, penal and criminal actions under the Act. The petitioner submitted that Section 39 of the Act provides for imprisonment of money lenders, whereas imprisonment of borrower is provided under the Negotiable Instrument Act, 1881. It is also the contention of the petitioner that many such money lenders are showing some transactions of any other trading or business with a view to cover the actual

business of money lending. The persons who are indulging in the business of money lending and escaping the net of the Act in view of the impugned clauses i.e. clauses (j) (k) of Section 2(13) of the Act, not only saves themselves illegally from the punishment provided under the Act but also availing the remedies for enforcing such illegal debt, which is legally not enforceable, if the provisions of the Act would apply to them. Such enforcements of illegal debts through the proceedings under the Negotiable Instruments Act, 1881, the Insolvency and Bankruptcy Code, Code of Criminal Procedure, 1908, the Specific Relief Act, 1963, the Contract Act, 1872 etc. would not be available to the unlicensed money lenders, who are in the business of advancing without interest, if two impugned clauses viz. (j) and (k) of Section 2(13) of the Act are set-aside for being manifestly arbitrary and unconstitutional. Such intention is not contemplated in the object of the Act i.e. to regulate the transactions of money lending thereby the harassment of agriculturists and non-agriculturists at the hands of money lenders is continued unabated in the State of Maharashtra.

5. The learned APP submitted that the instant PIL is frivolous; there is no merit in the contention of the petitioner.

He prayed for the dismissal of the same.

6. The Act of 2014 was enacted to regulate and control the transactions of money lending in the State of Maharashtra on finding the then existing enactments to be inadequate and to take appropriate stringent social and legal measures.

7. The “business of money-lending” is defined in Section 2(3) of the said Act, which reads as under:

> *“2. In this Act, unless the context otherwise requires*
> *(1).....*
> *(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;”*

8. Sections 4 and 39 of the Act make it mandatory for the money lenders to have license for specified area and on specified terms and conditions. Sections 4 and 39 read thus :

> *“4.* ***Money-lender not to carry on business of money-lending except for area under licence and except in accordance with terms of licence***
> *No money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence.*
> *...*
> *....*

> *39.* ***Penalty for making false statement***
> *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."*

9. Section 25 of the Act has some relevance on the issue at hand, therefore, the same is reproduced here :

> *"**25. Delivery of statements of accounts and copies thereof by money-lenders***
> *(1) Every money-lender shall deliver or cause to be delivered every year to each of his debtors a legible statement of such debtor's account signed by the money-lender or his agent of any account that may be outstanding against such debtor. The statement shall show,—*
>
> > *(i) the amount of principal, the amount of interest and the amount of fees referred to in section 26, separately, due to the money-lender at the beginning of the year ;*
> > *(ii) the total amount of loans advanced during the year;*
> > *(iii)the total amount of repayments received during the year ; and*
> > *(iv)the amounts of principal and interest due at the end of the year.*
>
> *The statement shall be signed by the money-lender or his agent, and shall be in any recognized language. It shall be in such form and shall be supplied to the debtor on or before such date as may be prescribed:*
>
> *Provided that, no such statement shall be required to be delivered to a debtor if he is supplied by the money-lender with a pass book which shall be in the prescribed form and shall contain an up to date account of the transactions with the debtor.*

The money-lender shall on or before the aforesaid date deliver or cause to be delivered a statement containing the particulars specified in clauses (i) to (iv)to the Assistant Registrar.

(2) In respect of any particular loan, the money-lender shall, on demand in writing being made by the debtor at anytime during the period when the loan or any part thereof has not been repaid, and on payment of the prescribed fee supply to the debtor, or if the debtor so requires to any person specified in that behalf in the demand, a statement, in any recognized language, signed by the money-lender or his agent, and containing the relevant particulars specified in sub-section (1) within fifteen days from the date of application by the debtor.

(3) A money-lender shall, on demand in writing by the debtor, and tender of the prescribed sum of expenses, supply a copy of any document relating to a loan made by him or any security therefor to the debtor, or if the debtor so requires to any person specified in that behalf in the demand.

(4) For the purpose of this section, "year" means the year for which the accounts of the money-lender are ordinarily maintained in his own books."

10. The rate of interest is fixed by the State Government under Section 31 of the Act and charging or recovering the interest at higher rate is punishable under Section 44, which reads as follows :

*"**31. Limitation on rates of interest***

(1) The State Government may, from time to time, by notification in the Official Gazette, fix the maximum rates of interest to be

charged by a money-lender in respect of secured loan and unsecured loan

[Provided that, in the Scheduled Areas, the rates of interest to be charged by a money-lender shall be fixed by the Gram Sabha, which shall not be more than the maximum rates of interest fixed by the Government under this sub-section.]

(2) No money-lender shall receive from a debtor or intending debtor any sum by way of compound interest on a loan advanced or intended to be advanced or any sum by way of interest at a rate higher than the rate fixed under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, a money-lender shall not charge or recoverf rom any debtor, on account of interest, a sum greater than the amount of principal of loan whether advanced before or after commencement of this Act.

(4) Notwithstanding anything contained in any other law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at rates exceeding the maximum rates fixed by the State Government under sub-section (1) and no agreement in contravention of the provisions of sub-sections (2) and (3) shall be valid.

....

44. Penalty for charging rate of interest in contravention of section 31

Whoever charges or recovers interest in contravention of section 31, shall, on conviction, be punished with fine which may extend to twenty-five thousand rupees, if it is first offence and with fine up to fifty thousand rupees, for the second or subsequent offence.

11. It is not in dispute that though the Maharashtra Money Lending (Regulation) Act, 2014, in its introduction, lays

emphasis on the farmer-debtors and farmers' suicide as trigger for the legislation, however, the protection under the Act is available even to other debtors and not exclusively to the farmers. Even the statutory Form No.1 under Rule 3 of the Money Lending (Regulation) Rules, 2014, also covers the agriculturists and non-agriculturists both.

12. Section 2(13) of the said Act reads as follows :

"2. In this Act, unless the context otherwise requires,—
(1)....
(13) " loan" means an advance at interest whether of money or in kind but does not include,—
(a) a deposit of money or other property in a Government Post Office bank or in any other bank or in a company or co-operative society ;
(b) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860 or any other enactment relating to a public, religious or charitable object ;
(c) a loan advanced by the Government or by any local authority authorized by the Government ;
(d) a loan advanced to a Government servant from a fund, established for the welfare or assistance of Government servants, and which is sanctioned by the State Government ;
(e) a deposit of money with, or a loan advanced by, a co-operative society ;
(f) an advance made to a subscriber to, or a depositor, in a provident fund from the amount standing to his credit in the fund in accordance with the rules of the fund ;
(g) a loan to, or by, an insurance company as defined in the Insurance Act, 1938;
(h) a loan to, or by, a bank ;
(i) a loan to, or by, or deposit with, any corporation

(being a body not falling under any of the other provisions of this clause), established by or under any law for the time being in force which grants any loan or advance in pursuance of that Act ;
(j) an advance of any sum exceeding rupees [three lakhs] made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note ;
(k) an advance of any sum exceeding rupees three thousand made on the basis of a hundi (written in English or any Indian language) ;
(l) an advance made bonafide by any person carrying on any business, not having for its primary object the lending of money, if such advance is made in the regular course of his business ;
(m) except for the purposes of sections 29 and 31, —

(i) a loan, by a landlord to his tenant for financing of crops or seasonal finance, of not more than Rs. 1,000 per acre of land held by the tenant;
(ii) a loan advanced to an agricultural labourer by his employer;"

13. Sub-section (13) of Section 2 of the Act defines the "Loan". Broadly, loan as per the Act is an "advance at interest". However, certain exclusions are specified in the definition for avoiding any doubts. In these exclusions mainly three key words are used, viz., "loan", "deposit" or "advance". In the instant PIL, the petitioner has sought to impugn clauses (j) and (k). According to him, the impugned clauses, if not struck down, would lead to a situation where mere advance "which is not with

interest" would be excluded from the applicability of the penal provisions of the Act. Unlike exclusion clauses (a), (b), (c), (d), (e), (g), (h), (l) and (m) which uses the word "loan, ie., advance at interest or deposit, the impugned clauses (j) and (k) of Section 2(13) of the Act only uses the word "advance" and "not advance at interest", or loan. There is, therefore, clear intelligible differentia in excluding mere "advance which is not at any interest" and not loan, which is "advance at interest" in these exclusion clauses (j) and (k).

14. There cannot be any legitimate intention to include an advance which is not even with any interest whatsoever, to be covered under the net of Act. No intention to put any embargo on the rights of the person who advances any sum without interest is discernible from the statement of object and reasons or the plain reading of the Act. Such mere advances, which are not loan, i.e., advance at interest would therefore be a debt which would be enforceable in law. Therefore, such advance without interest is rightly excluded from the impugned clauses (j) and (k) of Section 2(13) of the Act. The Act seeks to regulate and control the business of money lending and also to restrict the rate of charging interest in respect of both secured and

unsecured loans. Neither there can be business of advancing money without interest nor the Act seeks to put any restrictions on such advances without interest.

15. Thus, such person who advances money without interest on the basis of negotiable instrument as defined under the Negotiable Instruments Act, 1881 other than promissory note or on the basis of hundi is covered under the exclusion clauses (j) and (k) of Section 2(13) of the Act. He cannot be equated with an unregistered money lenders who is advancing the money at interest on the basis of negotiable instrument other than promissory note or on the basis of hundi.

16. Without licence under Section 4 of the Act, the claim of the unregistered money lenders is not legally enforceable as per Section 13 of the Act. Section 13 of the Act reads as follows :

> *"13.* ***Suits by money-lenders not holding licence***
> *(1) No court shall pass a decree in favour of a money-lender in any suit unless the court is satisfied that at the time when the loan or any part thereof, to which the suit relates was lent, the money-lender held a valid licence, and if the court is satisfied that the money-lender did not hold a valid licence,it shall dismiss the suit.*
> *(2) Nothing in this section shall affect the powers of a Court*

> *of Wards, or an Official Assignee, a receiver, an administrator or a Court under the provisions of the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act,1920 or any other law in force corresponding to that Act, or of a liquidator under the Companies Act, 1956, or the Companies Act, 2013, as the case may be, to realise the property of a money-lender."*

17. As per the intent of the legislation, particularly said Section 13 of the Act, the debt of unregistered money lender who is giving loan, i.e., advancing money at interest on the basis of negotiable instrument other than promissory note or on the basis of hundi would not be legally enforceable. However, no such disability can be attached to the debt of the person who merely advances any sum without any interest. The suits by such persons advancing money without interest are not barred under Section 13 of the said Act. Only if the debt is enforceable in law, various legal proceedings under the Negotiable Instruments Act, 1881, Insolvency and Bankruptcy Code, the Code of Civil Procedure, 1908, the Specific Relief Act, 1963, the Contract Act, 1872 etc would be available to a person for recovery of the debt.

18. Thus, the person who grants loan or advances money at interest on the basis of negotiable instrument other than the

promissory note or on the basis of hundi are not covered under the exclusion clauses (j) and (k) of Section 2(13) of the Act. The penal provisions of the Act would be applicable to such persons and they would require the licence under the Act. His debt would not be legally enforceable debt for the purposes of Section 13 of the said Act. Unlicenced money-lender would be liable for the prosecution and other penal actions as provided in the said Act. Consequently, the unregistered money-lenders would be precluded from availing the remedies of recovering of legally enforceable debt under the Negotiable Instruments Act, 1881, Insolvency and Bankruptcy Code, the Code of Civil Procedure, 1908, the Specific Relief Act, 1963, the Contract Act, 1872 etc.

19. On the other hand, a person who merely advances any sum without any interest does not require any registration under the said Act due to exclusion in clauses (j) and (k) of Section 2(13) of the said Act. The penal provisions of the Act are not applicable to such persons. Such person do not require licence under the said Act and is legally entitled to avail the remedies for recovery of legally enforceable debt under the Negotiable Instruments Act, 1881, Insolvency and Bankruptcy Code, the

Code of Civil Procedure, 1908, the Specific Relief Act, 1963, the Contract Act, 1872 etc. The recovery proceedings by such persons who give advance without interest cannot be termed as harassment of borrowers who may be agriculturist or non agriculturist, individual or entity. Since such person who gives advance without interest do not require the licence, neither licence fee prescribed under the Rules for issuance of licence is payable by him nor is there any loss of revenue to the exchequer as alleged on this account. In fact if such a person who gives advance without interest is prosecuted or penalised, the same would be manifestly arbitrary and violative or provisions of Articles 14 and 21 of the Constitution of India.

21. In the light of above, in our considered opinion, the PIL is without any merit and the same deserves to be dismissed. Accordingly, we dismiss the PIL.

[SURENDRA P. TAVADE, J.] **[RANJIT MORE, J.]**