

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO. 3039 OF 2018**

Ramdas Ganpatrao Fartade,
Age : Major, Occ. Agriculturist,
R/o. At Pot Borphal Taluka AUSA,
District Latur.

... APPLICANT

VERSUS

1. The State of Maharashtra,
Through its Police Inspector,
AUSA Police Station,
Taluka AUSA, Dist. Latur
2. Vilas Baburao Galphade,
Age : 46 Years, Occ. Service,
An Authorized Officer and Co-operative
Officer Class-1, Affiliated to Assistant
Registrar, Co-operative Societies, AUSA
Taluka AUSA, District Latur.
3. Dattatraya Vasant Salunke,
Age : 35 Years, Occ. Agriculture,
R/o. Borphal Tal. AUSA, Dist. Latur

... RESPONDENTS

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Advocate for the Applicant : Mr. D. P. Munde

A.P.P for Respondent No.1 : Mr. M.M. Nerlikar

Advocate for Respondent No.2 & 3 : Mr. M.D. Shinde

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**CORAM : T.V. NALWADE AND
M. G. SEWLIKAR, JJ.**

DATE : 04.02.2020.

JUDGMENT(PER T.V. NALWADE, JJ) :-

Rule. Rule made returnable forthwith. By consent heard
both the sides for final disposal.

2. The present proceeding is filed for relief of quashing of FIR No. 36/2018 registered with Ausa Police Station, District Latur for the offences punishable under Sections 39, 45 and 48(c) of the Maharashtra Money Lending (Regulation) Act, 2014. By making amendment the relief of quashing of the case is also claimed and the case is bearing Regular Criminal Case No. 166 of 2018 which is presently pending in the Court of learned Judicial Magistrate First Class Ausa, District Latur.

3. The crime was registered on the basis of report given by respondent No.2 i.e. The Assistant Registrar, Co-operative Societies, Ausa. Respondent No.3 Dattatraya Salunke is original complainant and he had given complaint to the authority for taking action under the provision of aforesaid special enactment. It is contention of Dattatraya that land bearing Gat No. 604 admeasuring 25 R situated at village Borfal Taluka Ausa was given to present applicant by way of security in the year 2003 by his father and loan of Rs. 62,000/- was taken. It is contended that there was agreement to re-convey the property after making repayment of loan amount. It is contended that, in the year 2017, his father had requested the applicant to re-convey the land but land was not re-conveyed and on 20.07.2017, the father of the informant died.

It is contended that after death of father when he again approached the applicant, he realized that applicant had agreed to sell the property to one Dattatraya Shrimant Salunkhe and some document was executed. He has contended that it was not outright sale, it was mortgage document and the transactions was of money lending nature.

4. The papers of the investigation show that after getting the complaint, the authority took search of residential place of the applicant but nothing objectionable was found in his house. It appears that original complainant then filed civil suit also to challenge the aforesaid transaction. The First Information Report dated 24.02.2018 is given by The Assistant Registrar and he has mentioned two persons like present applicant and one Dattatraya Shrimant Salunkhe as the money lenders. Allegations is made that they had doing money lending business without obtaining the license.

5. The submissions made and the record shows that Dattatraya Shrimant Salunkhe has made many transactions and some record giving inference of money lending business is also collected from him. As against the present applicant, there is record of only one transaction but that too is of sale.

The provision of aforesaid Act came into force in the year 2014 and there is no record to show that even prior to 2014 many such transactions were made by the present applicant. Not a single transaction was made by the present applicant after coming into force of the aforesaid Act. The circumstances that the transactions of the year 2003 came to be challenged after the year 2017 speaks loud about the intention of the parties. The learned counsel for the informant submitted that the witnesses on the said document have given statements to the effect that it was loan transaction. He submitted that the applicant has agreed to transfer the property to aforesaid Dattatraya Shrimant Salunkeh shows that he has join hands with Dattatraya and they are together doing money lending business. In view of the provision of Section 39 of the aforesaid Act, it can be said that aforesaid transaction made in favour of applicant which is apparently out and out sale cannot be used to show that he was doing money lending business even prior to 2014. There is no record to show that after 2014 he had purchased any immovable property and there is no record to show that he is doing money lending business with other accused. If the property purchased in the year 2003 by the applicant is now being sold to other persons, from that circumstances inference is not

possible that he had joined hands in the year 2003 with the money lender. Opportunity was given to the informant to show that there is any relationship between the present applicant and other accused. In reply the informant has tried to show that the applicant is distantly related to other accused. This contention is not sufficient in view of the aforesaid circumstances. This contention is also disputed by the applicant. Due to all these circumstances, this Court holds that asking applicant to face the prosecution for the aforesaid offences will be abuse of process of law. In the result, following order :-

ORDER

- I. Application is allowed.
- II. Relief is granted to the applicant in terms of prayer clause B-1.

Rule made absolute in those terms.

(M.G.SEWLIKAR, J.)

(T.V. NALAWADE, J.)

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