IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.65 OF 2020

1. Balkrushna S/o Arjun Kharat
Age: Major. Occ. Service,
R/o: C/o. P. K. Koyle, House No.4-18-34,
Visnu-Nagar, Aurangabad. ... **Petitioner**

Versus

1. The State of Maharashtra
Through Police Inspector,
Mukunwadi, Police Station,
Tq. & Dist: Aurangabad.

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

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Advocate for Petitioner : Mr. A. B. Chalak
APP for Respondent No.1/State : Mr. M. M. Nerlikar
Advocate for Respondent No.2 : Mr. Santosh Bhosle (Appointed)

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CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.
DATE : 14.01.2021

JUDGMENT : (Per: *M.G. Sewlikar, J.*)

Rule. Rule is made returnable forthwith. Learned A.P.P. and the learned advocate for the respondent no.2 waive service. With the consent of both the sides the matter is heard finally at the stage of admission.

2. By this petition under Article 226 of the Constitution of India and under Section 482 of the Cr.P.C. the petitioner is seeing quashing of the FIR no.839 of 2016 dated 25.08.2016 registered with Police Station Mukundwadi, Aurangabad for the offence punishable under Section 504 and 506 of the I.P.C. and under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014 (hereinafter referred to as the Money Lending Act).

3. It is alleged in the FIR that the informant (respondent no.2) herein that she had taken Rupees One Lakh as hand loan from the petitioner at the time of marriage of her daughter. She had also taken loan of Rupees One Lakh from one Anshiram Dange. She repaid this amount in the month of April 2016 by selling her 30 Guntha land at Dehadiphal, Tq. Dharur, District Beed. Petitioner and the said Dange started demanding interest on the said loan. She had paid Rs.65,000/- to the said Dange and Rs.45000/- to the petitioner. Despite that, petitioner and the said Dange started pestering her for interest of Rupees One Lakh. Therefore, she lodged the FIR against the

petitioner and the said Dange on 25.08.2016 on the basis of which offence as aforesaid came to be registered. This FIR is impugned in this petition.

4. Heard Shri Chalak learned counsel for the petitioner, Shri M.M. Nerlikar learned APP for the State and Shri Santosh Bhosle learned counsel for the respondent no.2.

5. Shri Chalak submitted that on the basis of solitary instance, it cannot be concluded that petitioner is doing money lending business. Isolated instance does not attract the provisions of Section 39 of the Money Lending Act. It has to be proved that there was a continuous and systematic activity. In the absence of any evidence to this effect, it cannot be said that petitioner was doing money lending business.

6. Learned APP Shri Nerlikar and Shri Bhosle submitted that petitioner and Dange had lent the amount to the informant-respondent no.2 and despite paying interest they started demanding more interest and started harassing her. Therefore, offence under Money Lending Act is committed.

7. With the assistance of the learned counsel for the petitioner, learned APP and learned counsel for the respondent no.2, we have carefully gone through the FIR and the papers annexed with the petition. From the

FIR, the allegations against petitioner appear to be that informant-respondent no.2 had taken Rupees One Lakh as hand loan and despite paying the principal amount of loan and interest petitioner was demanding rupees one lakh more towards interest. This is a solitary instance of advancing of loan by petitioner. Whether a solitary instance would amount to doing money lending business is the question before us. Sub-Section 3 of Section 2 of the Money Lending Act defines the expression Business of money lending 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."*

8. Section 39 of the Money Lending Act makes business of money lending without obtaining valid licence punishable with imprisonment which may extend to five years or with fine which may extend to Rs.50,000/- or with both.

9. The word business has been interpreted in the case of **Ka. Icilda Wallang Vs. U Lokendra Suiam; AIR 1987 SC 2047**, in which similar issue had arisen though not in Money Lending Act but in Assam Money Lenders' Act 1934. The definition of business of money lending appears to be *pari materia,* with the definition of business of money lending in the Money Lending Act. The Hon'ble Apex Court observed thus:

> *"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...."*

10. Thus, an isolated transaction of money lending would not be regarded as the business of money lending. In the case at hand too, a solitary instance of money lending is cited. Therefore, the allegations in the FIR, even if accepted at their face value do not make out any cognizable offence under Section 39 of the Money Lending Act. Perusal of the FIR and police papers show that no evidence appears to have been collected by the prosecution to show that petitioner had indulged in multiple money lending activities. Therefore, on the basis of solitary instance it cannot be concluded that petitioner is doing money lending business. Learned counsel Shri Chalak invited our attention to the judgment passed by this Court on 29.03.2019 in Criminal Writ Petiton no. 219 of 2018 to which one of us (T.V. Nalawade, J.), was a party. The said judgment shows that another accused and his wife Dange had challenged the impugned FIR No. 839 of 2016 and the FIR to their extent was quashed.

11. Thus, for the aforesaid reasons continuation of prosecution would be an abuse of process of law. Hence the following order is passed:

ORDER

I) Petition is allowed.

II) Relief is granted in terms of prayer clause-A. Rule made absolute in those terms.

III) Fees of the appointed counsel is quantified @ Rs.4,000/- and it is to be paid through the High Court Legal Services Authority Sub-Committee at Aurangabad.

[M.G. SEWLIKAR, J.] **[T.V. NALAWADE, J.]**

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