IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

59 CRIMINAL APPLICATION NO. 784 OF 2021

SHALINI W/O DINKAR FATTEPURE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
...
Advocate for Applicant : Mr. G. J. Kore
AGP for Respondent No.1-State : Mr. S. J. Salgare
Advocate for Respondent No.3 : Mr. S. N. Patne
....

CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.
DATED : 6th DECEMBER, 2021.
..

ORDER : (PER : **SANDIPKUMAR C. MORE, J.)**

1. By consent of the parties, heard finally at the stage of admission.

2. The applicant / original accused is seeking quashing of F.I.R. dated 06/01/2021 in respect of Crime No. 04 of 2021 registered with Omarga Police Station, District : Osmanabad for the offence punishable under Section 39 of the Money Lending (Regulation) Act, 2014. However, during pendency of this application, charge sheet of the said crime is filed and therefore, the applicant has also prayed for quashing of criminal proceeding bearing R.C.C. No.183 of 2021 pending before the learned Judicial Magistrate (First Class), Omarga, District : Osmanabad arising out of the aforesaid crime.

3. On the basis of complaint of Mahadu Rama Lohar i.e. respondent no.3, respondent no.2, who is a Co-operative Officer, Grade-2, in the office of Assistant Registrar, Co-operative Societies, Omarga, District : Osmanabad has lodged the aforesaid F.I.R. alleging that the present applicant indulged in illegal money lending activity without any valid license and got executed sale deed of land of respondent no.3 against the money lent by her to respondent no.3.

4. Learned counsel for the applicant submits that the allegations levelled against the applicant, are prima facie false and absurd. In fact the transaction between the applicant and respondent no.3 was never of a nature of money lending but it was of sale of land only. He further submits that respondent no.3 initially had also filed similar complaint in respect of so called money lending transaction in the year 2010, but in the said complaint, on enquiry, it was found by the Assistant Registrar, Omarga that prima facie there was no substance in the said complaint about the allegations of money lending as alleged. Learned counsel for the applicant further submits that after having failed in first attempt, respondent no.3 in view of amended Act, has filed this false and frivolous complaint again on the same ground, which is totally false. He further submits that learned single Judge of this Court (**CORAM :**

N. B. Suryawanshi, J.) under his order dated 23/11/2021 passed in Writ Petition No.1466 of 2020 has already quashed the present proceeding lodged by respondent no.3 under Section 18 of Maharashtra Money Lending (Regulation) Act, 2014. Thus, according to learned counsel for the applicant, the aforesaid FIR and criminal proceeding are liable to be quashed.

5. Learned counsel for the applicant also placed his reliance on the following orders and judgments :

I) Mandubai Vitthoba Pawar vs. The State of Maharashtra, 2016(1) Bom. C.R.(cri) 794;

II) Criminal Application (APL) No. 906 of 2017 (Nalkant Kerappa Sangshetti vs. the State of Maharashtra), (CORAM : Sunil B. Shukre and Madhav J. Jamdar, JJ), decided on 30/01/2020 ;

III) Criminal Application No. 255 of 2019 (Nilkant Kerappa Sangshetti and others vs. The State of Maharashtra) (CORAM : T. V. Nalawade & Mangesh S. Patil, JJ), decided on 04/06/2019;

IV) Criminal Writ Petition No.1314 of 2014 (Purushottam Ratanlal Tapade and another vs. The State of Maharashtra) (CORAM: T. V. Nalawade and Smt. Vibha Kankanwadi, JJ.), decided on 29/11/2018;

V) Criminal Application No. 327 of 2019 (Pandurang Satappa Kadam vs. The State opf Maharashtra and others) (CORAM : T. V. Nalawade and M. G. Sewlikar, JJ.) and

VI) Baliram Ashroba Kadape and others vs. State of Maharashtra and others, 2018(3)Mh.L.J. (Cri.) 795.

6. Learned APP submits that on the basis of directions and authorization issued by the Assistant Registrar, Co-operative Societies, Omarga, respondent no.2 has lodged complaint against the applicant. Further as per respondent no.3 i.e. original complainant, has made specific allegations against the applicant about being indulged in money lending activities without valid license. Those allegations are supported by certain documents indicating that the transaction between the applicant and respondent no.3 was not purely of sale of land but in fact it was of money lending as contemplated in the said Act. According to learned APP the FIR against the applicant has been lodged after due enquiry and after securing the legal opinion from District Government Pleader, Osmanabad and therefore, there is no substance in this criminal application and the same is liable to be dismissed.

7. On the other hand, respondent no.3 has also opposed this application by filing his affidavit in reply on record along with certain documents to show as to how the nature of his transaction with the applicant, which is subject matter of this dispute, is of money lending. According to him, registered sale deed dated

01/08/2001 executed by him in favour of the applicant, was only for a security towards hand loan obtained by him from the applicant. Further according to him, he has repaid total amount of Rs.1,65,000/- to the present applicant in respect of the said hand loan but the applicant is avoiding to re-execute sale deed in his favour despite receiving entire amount together with interest. Thus, he also prayed for dismissal of the application.

8. After having gone through carefully from the subsequent complaint of respondent no.3 lodged with Assistant Registrar, Co-operative Societies, Omarga on 30/04/2014, it reveals that respondent no.3 has made allegations that in the year 2001 he borrowed an amount of Rs.1,00,000/- from the present applicant for satisfying his financial needs i.e. for medical treatment of his wife and other household expenses. Accordingly, the applicant on 01/08/2001 gave him an amount of Rs.1,00,000/- as a hand loan on condition to repay the same in double within three years. It is alleged by respondent no.3 in the said complaint that for security of the said hand loan amount he had executed the sale deed of his Gut No. 105/4, situated at Narangwadi, Tq. Umarga to the extent of half portion of 1 H 20 R. It has been alleged further by respondent no.3 that at relevant time the applicant had executed one agreement on a stamp of Rs.20/- on 04/04/2002 in presence of

witnesses along with her husband by mentioning therein that she would re-convey the aforesaid land in his favour after entire repayment of the aforesaid hand loan. Thus, according to respondent no.3, the applicant, despite repayment of the aforesaid hand loan refused to re-register the re-conveyance of the said land in his favour.

9. On perusal of other documents on record, it is evident that respondent no.3 on 14/10/2010 had also filed similar complaint as that of the present complaint dated 30/04/2014 in respect of same transaction between himself and the applicant being a money lending transaction. However, the Assistant Registrar, Co-operative Societies, after making enquiry into the application dated 14/10/2010 came to a conclusion under his order dated 30/12/2010 that the transaction of sale of land between the applicant and respondent no.3 was not at all a money lending transaction and therefore, no criminal action was initiated against the applicant. Thus, it appears that this is a subsequent application of respondent no.3 and that too after amendment in the aforesaid Bombay Money Lenders Act, 1946.

10. Learned counsel for the applicant has also placed on record the order dated 23/11/2021 passed by the learned Single Judge of

this Court (**CORAM : N. B. Suryawanshi, J**.) in Writ Petition No. 1466 of 2020 and on perusal of the same, it is clearly evident that the very complaint dated 30/04/2014 which is the subject matter of present application and also the base for lodging an FIR against the applicant is quashed and set aside. Further it is also observed in the said order that respondent no.3 had also filed RCS No. 176 of 2014 in the court of Civil Judge, Junior Division, Omarga against the present applicant seeking re-conveyance of the aforesaid land. However, the same has been dismissed for want of prosecution. It is significant to note that the learned single Judge of this Court (**CORAM : N. B. Suryawanshi, J.**) has specifically observed in the order dated 23/11/2021 that the subsequent complaint dated 30/04/2014 pertaining to the transaction of 2001 is beyond limitation of five years as the amendment Act of 2014 was promulgated on 04/04/2014 and thereafter the limitation period which was extended to 15 years in stead of 5 years under the amendment dated 25/06/2014 was not available to respondent no.3 while making subsequent application dated 30/04/2014.

11. In the case of **Mandubai Vithal Pawar Vs. State of Maharashtra**, in para 11, the Division Bench of this Court (**Coram: S.S.Shinde & A.I.S. Cheema, JJ**.) has made the following observations:

> "11. The above discussion makes it clear that for it to be a business there has to be a continuous and systematic activity by application of labour or skill with a view of earning income when it could be called "business". In order to do business of money lending, it would be necessary for the State to point out multiple activities of money lending done by the petitioner. Merely referring to one isolated transaction claimed to be a loan transaction or money lending would not be enough to show that the petitioner was involved in "business of money lending" without licence. The FIR in the present matter read as a whole does not spell out that the petitioner was doing "business of money lending". This being so, on the basis of such FIR the prosecution cannot be maintained."

12 In this case, the Court has referred to the view taken by the Hon'ble Supreme Court in the case of **Ka Icilda Wallang and others Vs. U. Lokendra Suiam (dead) by L.Rs**., AIR 1987 SC 2047; and also in the case of **Central Bureau of Investigation Vs. V. C. Shukla and others**, (1998) 3 SCC 410. Thus, by referring the observations made by the Hon'ble Supreme Court in the aforesaid two cases, it is observed that there has to be a continuous and systematic activity by application of labour or skill with a view of earning income, when it could be called as "business". In order to do business of money lending, it would be

necessary for the State to point out multiple activities of money lending. Merely referring to one isolated transaction claimed to be a loan transaction or money lending would not be enough.

13 In the case of **Baliram s/o Ashroba Kadape & others Vs. The State of Maharashtra & others**, 2018 ALL MR (Cri) 2701, this Court (**Coram: S.S.Shinde & A. M. Dhavale, JJ.**), in paragraphs 7, 8 and 9, has made the following observations:

> “7. All the transactions allegedly entered into by the applicants have taken place before 2014 and, therefore, the provisions of Money Lending (Regulation) Act, 2014 would not be applicable. Crime would be governed by old Act i.e. Bombay Money Lenders Act, 1946. The alleged offences as per Act of 2014 are u/s 23, 39, 45 and 48. Section 23 relates to taking of promissory note, acknowledgement or bond by a money lender not disclosing the real nature of transaction or taking blank instrument without mentioning date or amount. Section 39 relates to penalty for money lending without valid license. Section 45 is for molestation or abetting molestation of a debtor for recovery of debt due by him and Section 48 only declares the certain offences shall be cognizable.
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> 8. On going through the papers and hearing arguments, we find that there is absolutely no allegation about molestation of any debtor, so the

> offence u/s 45 does not arise. Section 48 is not an offence. The only offences worth consideration are u/s 23 and 39. The corresponding provisions under Bombay Money Lenders Act, 1946 are Sections 32 & 32(B), respectively. Both these offences are shown as non-cognizable offences u/s 35(A) under the new Act.
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> 9. The Investigating Officer erred in applying the provisions of Maharashtra Money Lending (Regulation) Act, 2014 to the transaction which took place prior to date when this act came into force (24.02.2014). The Act 2014 can't be retrospective. Section 39 under the Act of 2014 is analogous to Section 32B of the old Act, 1946 but under the old act the maximum punishment for the first offence was upto 1 year imprisonment and now it has been increased to 5 years. Under the new act, it has been made cognizable u/s 48 whereas; under old Act, as per provisions of Section 35A, the offence was not cognizable".

14. In view of above ratio laid down in the aforesaid judgment, it is necessary for the prosecution under Section 39 of the Act to establish the fact that a person must be indulged into multiple activities of money lending. However, in the present case, it appears that the transaction between the applicant and respondent no.3 was entered into in the year, 2001 and it is the case of only

single activity. There is absolutely no allegation against the applicant about multiple activities of money transaction with other persons than respondent no.3. Moreover, the similar complaint made by respondent no.3 in the year 2010 with the authority, was not entertained as it was found that there involves no case of money lending. Thus, even assuming the allegations made against the applicant in the FIR are held as proved, we hardly find any offence punishable under Section 39 of the said Act is constituted.

15. Thus, considering the entire aspect and on perusal of entire material brought on record, we do not find that the applicant has indulged in multiple activities of money lending with some other persons than respondent no.3. Therefore, in view of the same and the ratio laid down by the Division Bench of this Court in the judgments as referred above, we pass the following order.

O R D E R

I) The criminal application is hereby allowed in terms of prayer clause “ B ”.

II) The criminal application accordingly stands disposed of.

(SANDIPKUMAR C. MORE, J.) **(V. K. JADHAV, J.)**

vsm/-