IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.421 OF 2017

1. Eknath Ramchandra Kukade,
Aged about 62 years,
Occ: Agriculture.

2. Sau. Sanjutai Eknath Kukade,
Aged about 53 years,
Occ: Agriculturist.

3. Sau. Jaimala Shaligram Kukade,
Aged about 73 years,
Occ: Agriculture.

All R/o Pathardi, Tah. Telhara,
District Akola. .... **APPLICANTS**

...V E R S U S...

1. State of Maharashtra through
A.P.P., Police Station Telhara,
District Akola.

2. Kanhaiyalal Shrikisan Sikchi,
Aged adult, Occ: Not known.

3. Daudayal Shrikisan Sikchi,
Aged adult, Occ: Not known.

Both R/o Pathardi, Tah. Telhara,
District Akola. .... **NON-APPLICANTS/ RESPONDENTS**

Mr. R.V. Shirulkar, Advocate for Applicant.
Mr. N.R. Rode, APP for Non-Applicant 1/State.
Mr. A.B. Mirza, Advocate for Non-Applicants 2 & 3.

CORAM: **ROHIT B. DEO, J.**
DATE: **12th FEBRUARY, 2021.**

ORAL JUDGMENT:

The applicants are assailing the judgment dated 10.02.2017 rendered by the learned Additional Sessions Judge-1, Akot whereby Criminal Revision 14 of 2013 preferred by the applicants challenging the order dated 08.03.2013 in Regular Criminal Case 169 of 2006 rendered by the learned Judicial Magistrate First Class, Telhara, of rejecting the application preferred by the applicants seeking discharge from offences punishable under Section 32(a), 33, 34 and 35(a) of the Bombay Money Lenders Act, 1946 (Act), is dismissed.

2. Before I advert to the factual matrix and the question which arises in the context of the submissions canvassed, it may be noted that the grievance of Mr. Kanhaiyalal Sikchi and Mr. Daudayal Sikchi, the respondents 2 and 3 herein is redressed as far back as in 2001. Mr. Kanhaiyalal Sikchi and Mr. Daudayal Sikchi are the owners of an agricultural field. They lodged a complaint with the authority under the Act alleging that financial assistance was availed from the applicants and since they were not

in a position to return the loan, and were intimidated and threatened, they executed sale-deed of the said agricultural field in favour of applicants 2 and 3 on 16.04.1987. Admittedly, the agricultural field is re-conveyed in favour of the brother-in-law of Mr. Kanhaiyalal Sikchi and Mr. Daudayal Sikchi.

3. In my considered view, continuation of the trial shall amount to an abuse of the process of law and the applicants have made out a case for this Court to invoke inherent powers.

4. The cognizance taken by the police is jurisdictionally vitiated.

5. Offence punishable under Section 32A is non-cognizable. While Section 34 is invoked, offence punishable under Section 34 is made cognizable only if the allegation is contravention of the provisions of Section 5. The applicants do not hold a licence under the Act and axiomatically Section 5 of the Act does not come into play. Section 33 is indeed cognizable. It would, be therefore, necessary to examine on broad probabilities, whether a case is made out under Section 33 since, the police otherwise could not have taken cognizance.

6. Section 33 of the Act reads thus:

> ***33.*** *(1) Whoever molests, or abets the molestation of, a debtor for the recovery of a debt due by him to a creditor shall, on conviction, be punishable with imprisonment of either description which may extend to three months or with fine which may extend to Rs. 500 or with both.*
>
> *Explanation.—For the purposes of this section a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing —*
>
> *(a) obstructs or uses violence to or intimidates such other person, or*
>
> *(b) persistently follows such other person from place to place or interferes with any property owned, or used by him or deprives him of, or hinders him in, the use thereof, or*
>
> *(c) loiters near a house or other place where such other person resides or works, or carries on business, or happens to be, or does any act calculated to annoy or intimidate such other person,*
>
> *shall be deemed to molest such other person:*
>
> *Provided that a person who goes to such house or place in order merely to obtain or communicate information shall not be deemed to molest.*

7. The *sine qua non* ingredient is that certain acts are done with the intent to cause the debtor to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing. The words obstruction or use of violence or

intimidation connote such acts as are intended to be done to cause the debtor to do any act which he has a right to abstain from doing. The material in the charge-sheet must make out a specific case of obstruction or violence or intimidation of such nature as can bring into play the provisions of Section 33 of the Act. The only material in the charge-sheet is the statement of Mr. Kanhaiyalal which alleges that the applicants were after him to repay the loan and threatened him. It is not clarified as to what was the nature of the threat. It is obvious that a creditor shall continue to follow up with the debtor to recover the dues. It is equally possible and conceivable that a creditor may threaten the debtor that he would approach the Court of law and file a civil suit. Obviously, such a threat cannot constitute an offence under Section 33. In this view of the matter, in my opinion, the cognizance taken by the police is bad in law.

8. The other aspect of the matter is the issue of limitation. In contradistinction with the provisions of the Maharashtra Money-Lending (Regulation) Act, 2014 the act did not have any provision dealing with the period of limitation for initiating action under the Act. The provisions of Section 468 of the Code would therefore, be applicable and since the maximum

punishment for the most serious offence is not more than two years, the period of limitation would be three years in terms of Section 468 (2)(c) of Cr.P.C.

9. Section 468 of the Cr.P.C. reads thus:

> ***468. Bar to taking cognizance after lapse of the period of limitation.—***
>
> *(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.*
>
> *(2) The period of limitation shall be—*
>
> *(a) six months, if the offence is punishable with fine only;*
>
> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
>
> *(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*
>
> *[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]*

10. In the factual matrix while the sale-deed, which according to Mr. Kanhaiyalal Sikchi and Mr. Daudayal Sikchi is executed on 16.04.1987, the report is lodged with the Police Station on 18.06.2006. Obviously, cognizance is taken after the

period of limitation.

11. In any view of the matter, this application deserves to be allowed, and is accordingly allowed in terms of prayer clause (i) which reads thus:

> (i) quash and set aside the order dated 10/2/2017 passed in Criminal Revision No.14/2013 by Additional Sessions Judge-1, Akot and further quash and set aside the order dated 8/1/2013 passed below Exh.36 in Regular Criminal Case No.169/2006 by Judicial Magistrate First Class, Telhara.

JUDGE

NSN