

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

CRIMINAL APPLICATION (APL) NO.581 OF 2018

Sainath S/o. Dhannalal Javheri,
Partner of Firm Tikamdas Girdhardas Saraf,
Aged about 60 years, Occ. Business,
At Sarafa Bazar, Amravati,
Tah & Dist. Amravati.

. . . . **APPLICANT**

. . . **VERSUS** . . .

1. State of Maharashtra through
Ministry of Home,
Mantralaya, Mumbai-32.
2. Police Station Officer,
Amravati City, Kolhapuri Gate,
Amravati, Tah. & Dist. Amravati
through its Police Station Officer.
3. Registrar for Money Lending & Deputy
Registrar, Co-operative Societies,
Old Cotton Market, Malviya Square,
Amravati, Tah. & Dist. Amravati. . . . **NON-APPLICANTS**

Shri R.L.Khapre, Senior Advocate assisted by Shri Digvijay Khapre,
Advocate for applicant.

Shri N.S.Rao, Additional Public Prosecutor for Non-applicant
Nos.1 to 3 - State.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 21/01/2021.

ORAL JUDGMENT : (PER AMIT B. BORKAR, J.)

1. Heard.

2. Rule. Rule is made returnable forthwith.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicant has challenged the registration of the First Information Report No.0157/2018 dated 25.5.2018 registered with the non-applicant no.2 – Police Station, at the instance of the non-applicant no.3.

4. The First Information Report came to be registered against the applicant with the allegation that the applicant had advanced loans to the persons, who are residing outside the area of licence granted to the applicant. It is alleged that due to disbursement of loan to the persons outside area of licence, many farmers are denied the benefit of loan waiver scheme of the State Government. With the said allegations, an offence under Section 41 of the Maharashtra Money Lending (Regulation) Act, 2014 (for short “the Act of 2014”) was registered against the applicant.

5. The applicant, therefore, filed the present application challenging registration of the First Information Report. This Court on 1st August 2018 issued notice to the non-applicants for final disposal.

6. The non-applicant no.3 in pursuance of notice, filed reply and it is stated that the licence was issued to the applicant for the purpose of carrying money-lending business in Amravati district. Therefore, it was obligatory on the part of the applicant to carry on the business of money-lending within the area of Amravati district. It is stated that the applicant advanced loan to borrowers who were not resident of Amravati district.

7. We have carefully considered the contents of the First Information Report. After meaningful scrutiny of the First Information Report, in our view, the point involved in the present application is, whether advancing of loans to the borrowers residing outside the area of licence, can attract penal consequences as contemplated by Section 41 of the Act of 2014.

8. To address the question formulated by us and for better appreciation of the contentions urged by the learned Advocates appearing for the parties, it would be advantageous to reproduce the provisions of Section 2 (3) of the Act of 2014, which defines expression, “**business of money-lending**” and the definition of “**debtor**” under Section 2 (7) of the Act of 2014. The

definition of “business of money-lending” in the Act of 2014, reads thus:

“Section 2 (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.”

The definition of “debtor” in the Act of 2014 reads thus:

“Section 2 (7) - “debtor” means a person to whom a loan is advanced whether in cash or kind and includes his successor in interest or surety”.

9. Section 4 of the Act of 2014, which puts an embargo on carrying on of the business of money-lending except in the area for which the money-lender has been granted a licence. Section 4 of the Act of 2014 reads as under:

“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.”

10. The offence registered against the applicant is under Section 41 of the Act of 2014, which reads as under:

“41.Obtaining licence under fictitious name, carrying on money-lending at a place not mentioned in licence, etc.

Whoever,-

(a) obtains a licence in the name which is not his true name or carries on the business of money-lending under the licence so obtained; or

(b) carries on the business of money-lending at any place not mentioned in the licence authorizing him to carrying on such business; or

(c) enters into any agreement in the course of business of money-lending without a valid licence, or under a licence obtained in the name which is not his true name, shall, on conviction, be punished,-

(i) for the first offence, with imprisonment of either description which may extend to one year or with fine which may extend to rupees fifteen thousand or with both, and

(ii) for the second and subsequent offence, in addition to or in lieu of, the penalty specified in clause (i) with imprisonment of either description which shall not be less than five years, where such person is not a company, and with fine which shall not be less than rupees fifty thousand, where such person is a company”.

11. Section 41 of the Act of 2014 creates offence for carrying on the business of money-lending at the place not

mentioned in the licence authorising him to carry on such business.

12. The expression “business of money-lending” has been defined to mean the business of advancing loan. The expression “carries on business” implies that there must be some real systematic and organized course of activities or conduct with a set purpose of monetary profit. There must exist the characteristic of volume, frequency, continuity and system indicating an intention to make a profit . No single test is decisive of the intention to carry on a business. The expression “carrying on business”, has to be interpreted taking into consideration the object and scheme of the Act of 2014. The Act of 2014 and in particular, sub-section (3) of Section 2 defines the business of money lending to mean the business of advancing loans. The Act has defined word “debtor” but neither Section 41 nor Section 4 of the Act of 2014 has any reference to the word 'debtor'. The essential ingredient of offence is the term “carries on business”, which is defined as the business of advancing loans. Therefore the expression “carries on business” needs to be interpreted in relation to the place of advancing of loan and not in relation to where the debtor resides. To constitute a business as

contemplated by sub-section (3) of Section 2 of the Act of 2014, the act of advancing of loan is necessary. It is not dependent on the residence of the debtor. The expression “place” mentioned in the licence in sub-clause (b) of Section 41 of the Act of 2014 cannot be interpreted in relation to the residence of the debtor since the business as contemplated in the provisions of the Act of 2014 is restricted to advancing of loan.

13. In the facts of the present case, the allegations and the material placed on record by the non-applicants, is not that the applicant went outside the district and advanced loans to the debtors residing outside the area of licence. Merely because the applicant had advanced loans to the debtors residing outside the area of licence would not attract the provisions of sub-section (b) of Section 41 of the Act of 2014. Even, in the reply filed by the non-applicants, it is not the case of the non-applicants that the applicant has advanced loan by opening a place of business outside the area of licence.

14. The parameters of exercise of powers conferred on this Court under Section 482 of the Code of Criminal Procedure being settled, that in order to prevent abuse of process of Court

and to secure ends of justice, this power can be exercised, then there is no doubt that this is one case where this power needs to be exercised. In terms of the decision of the Apex Court in the case of **State of Haryana Vs. Bhajanlal , (1992 Supp (1) SCC 335)**, the power under Section 482 of the Code of Criminal Procedure can be exercised by this Court, where the allegations made in the First Information Report, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute an offence under sub-section (b) of Section 41 of the Act of 2014. Therefore, the continuance of the proceedings against the applicant would amount to abuse of the process of Court.

We, therefore, pass the following order:

ORDER

First Information Report No.0157/2018 dated 25.5.2018 registered with the non-applicant no.2 - Police Station is quashed and set aside.

Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE