IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.221 OF 2021

SURESH RACHKYA KALE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Anil M. Gaikwad, Advocate for Applicants
Mr. V.S. Badakh, APP for Respondent No.1
Mr. R. R. Karpe, Advocate for Respondent No.2

...

CORAM : MANGESH S. PATIL &
M.M. SATHAYE, JJ.

DATE : 6 March 2023

ORDER (MANGESH S. PATIL, J.) :-

Heard learned Advocate for the applicants, learned APP for respondent No.1 - State and learned Advocate for respondent No.2 - informant.

2. By invoking the powers under Section 482 of the Code of Criminal Procedure, applicants, who are the accused in Crime No.1929 of 2020, subsequently registered as RCC No.20 of 2021 for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014 and under Sections 504, 506 read with 34 of the Indian Penal Code (IPC), are seeking quashment of the FIR.

3. The learned Advocate for the applicants would refer to the provisions of Section 39 of the Maharashtra Money Lending (Regulation) Act, which contemplates that the accused is carrying on the business of money lending. Business of money lending has been referred to in Section 2(3) to mean, "*business of advancing loans whether in cash or kind and whether or not in connection with, or in addition to any other business*".

He would also refer the decision of this Court in the matter of ***Anup Niranjan Dodiya and Another vs. State of Maharashtra and Another***; ***2020 DGLS (Bom.) 1114***, *(Nagpur Bench)* to buttress his submission that an isolated transaction of money lending would not be an offence.

The learned Advocate would further submit that except the transaction with the informant referred to in the FIR, no other incident could be traced by the Investigating Officer and is conspicuously absent in the entire charge-sheet. Consequently, the isolated transaction even if it is treated as money lending for time being, would not constitute the business of money lending.

4. The witnesses, whose statements have been recorded under Section 161 of the Code of Criminal Procedure, merely allege about money lending by the applicants on the basis of the hearsay evidence. It would be gross misuse of process of the Court to allow the prosecution to go on with the quality of the

evidence available. The case is squarely covered by the instances incorporated in ***State of Haryana and Others vs. Ch. Bhajanl Lal and Others***; **AIR 1992 SC 604**.

5. The learned APP for respondent No.1 and learned Advocate for respondent No.2, who is original informant, strongly oppose the application.

6. We have considered the rival submissions and perused the charge-sheet. The definition of "carrying on business of money lending" is provided in Section 2(3). Section 39 of the Maharashtra Money Lending (Regulation) Act, makes the case of carrying on business of money lending as an offence. The consistent view of this Court, not only under the current law but even its predecessor holds that an isolated transaction of money lending is not punishable.

7. However, the FIR *ex facie* refers to at least two documents of two different dates which are got executed by the applicants from the informant in respect of two different sums. Both these documents are annexed to the charge-sheet.

8. There is nothing to indicate that the subsequent writing was nothing but re-affirmation of the earlier debt and that being not the stand of the applicants even in the entire application, the

bare look of the charge-sheet would indicate that though the persons involved are the same wherein the applicants have lent money and the informant and her family members have executed these writings and there is no interconnection between the two transactions which appear to be separate and independent. It cannot be said that it was an isolated transaction of money lending.

If that be so, at this juncture, this Court, while exercising powers under Section 482 of the Code of Criminal Procedure, cannot reach to a conclusion that the ingredients for constituting offence under Section 39 of the Maharashtra Money Lending (Regulation) Act, cannot be made out.

9. Over and above, the applicants are being charged for the offences punishable under Sections 504, 506 read with 34 of IPC also and there is nothing to indicate that those allegations are false and concocted. The applicants' case is not covered by any of the instances from ***Ch. Bhajan Lal and Others*** (supra) case.

10. The application is dismissed.

(**M.M. SATHAYE**)
JUDGE

(**MANGESH S. PATIL**)
JUDGE

SPT