

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1524 OF 2016

1. Shivaji Ramchandra Nimbalkar	}	
Age-55 years, Occu: Agriculturist	}	
	}	
2. Ganesh Pandurang Nimbalkar	}	
Age: 30 years, Occu: Agriculturist	}	
All R/at: Kurawali, Tal: Indapur, Dist:-	}	
Pune.	}	...Petitioners

V/s.

1.The State of Maharashtra	}	
	}	
2. Giridhar Maruti Kadam	}	
Age: 68, Occu: Agriculturist	}	
R/at: Kurawali, Tal: Indapur, Dist:-	}	...Respondents
Pune.	}	

Mr. S.S. Kulkarni a/w. Mr. Devidas J. Jadhav for petitioners.
Mr. Sushant Prabhune for respondent no.2.
Mr. K.V. Saste-APP for the State.

CORAM : SUNIL B. SHUKRE &
M.M. SATHAYE, J.J.

DATED : APRIL 10, 2023.

ORAL JUDGMENT : (PER SUNIL B. SHUKRE, J)

. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by

consent of learned counsel for the parties.

3. On the basis of the complaint lodged by the respondent no.2, Giridhar Maruti Kadam, Walchandnagar Police Station, Pune (Rural) registered offences punishable under sections 32(B), 34 and 35 of the Bombay Money Lending Act, 1946 on the allegations that the sale deed dated 28.05.2003 executed by the complainant was sham and bogus and the underlying transaction was a money lending transaction entered between the petitioners and the respondent no.2, without the petitioner having any licence under the provisions of the Bombay Money Lending Act, 1946 (hereinafter referred to as 'the Act' for short)

4. Learned counsel for the respondent no.2 has taken a preliminary objection as to the maintainability of this petition contending that, the matter is pending before the trial court since the year 2012 at the stage of framing of the charge and therefore, the petitioner would have an alternate remedy of seeking discharge from the case by filing a suitable application before the trial Court. According to learned counsel for the petitioner, filing of charge-sheet itself was abuse of process of law and therefore, it is necessary for this Court to invoke its extra ordinary jurisdiction under Article 226 of the

Constitution of India and its inherent power under section 482 of Cr.P.C. for interfering in this matter.

5. Upon careful consideration of the allegations made in the F.I.R and also the prayers made in Regular Civil Suit No. 151 of 2011 and Regular Civil Suit No. 453 of 2012 respectively, filed by son of the respondent no2 and respondent no.2, we find substance in the argument of the learned counsel for the petitioner and no merits in the submissions of the learned counsel for the respondent no.2.

6. The entire basis of offences registered against the petitioner vide Crime No. 8 of 2012 is a registered sale deed dated 28.05.2003, which is a document which respondent no.2 alleges that it has been executed under coercion brought upon him by the petitioner and that it was basically a money lending transaction and the property, which is shown to have been sold to the petitioner, was actually to stand as a security for repayment of money borrowed by respondent no.2, from the petitioner. However, it will contradict with the prayers made in Regular Civil Suit No. 151 of 2022, filed by son of respondent no. 2. We find that one of the prayers, which is prayer clause (b), seeks declaration from the Civil Court that sale deed dated 28.05.2003 was sham and bogus and that, it was only a money lending transaction and

therefore, it was not binding upon the plaintiff i.e. son of respondent no.2.

7. The moment such a claim is made by the plaintiff, the plaintiff or for that matter, his father, cannot file a criminal complaint with police alleging that the sale deed in question is bogus and sham, having been executed in violation of the provisions of the Act. Such a criminal complaint can be filed by him only after declaration to that effect is made by Civil Court of competent jurisdiction. But, the occasion for the Civil Court to make such a declaration never arose as subsequently the said plaintiff withdrew the suit and by the order passed on 09.09.2017 at Exhibit-1, the learned Presiding officer of the Court of Civil Judge Junior Division, Indapur disposed of the suit as withdrawn.

8. The aforesaid order of the disposal of the suit as withdrawn had reduced Crime No. 8 of 2011 registered with the Walchandnagar Police Station to something which necessitated filing of a closure report by the Investigating Officer, but, it appears that by that time charge-sheet had already been filed and therefore, such closure report could not be filed by the Investing Officer. The trial Court, however, could have nevertheless taken cognizance of this Order dated

09.09.2017 passed by Civil Court and passed an order for discharging the petitioner from the criminal case. But, it appears that such order has not been passed by the trial Court and now the trial court has also proceeded to frame the charge against the petitioner. We do not think that now, the charge can be framed by the trial Court against the petitioner as, by the own act of son of the complainant, the complainant admits that the sale deed in question was not in the nature of the money lending transaction and any further proceedings in the matter thereafter, would be nothing but an abuse of the process of law.

9. There is one more civil suit filed by the complainant which was registered as Regular Civil Suit No. 453 of 2023. In this Civil Suit, the complainant made a different prayer. The complainant sought a declaration from the civil Court that sale deed dated 28.05.2003 which is in question here, together with some other documents are in fact, mortgaged deeds. The complainant also prayed for redemption of mortgage upon payment of certain sums of money, as directions of the Civil Court, to the petitioner. Making of such a prayer itself shows that the respondent no.2 is admitting the fact that the document in question was not in the nature of money lending transaction and was

actually a mortgage deed, and that is why he sought a declaration to that effect from the Civil Court. It's a different matter that this Civil Suit has dismissed in default, by the order passed on 21.09.2017, which order stands even today and thus has attained finality.

10. Thus, it can be seen that due to subsequent admissions given by the respondent no.2, the allegations made against the petitioner had been rendered untruthful and, therefore, proceeding any further with the trial of the petitioner in this case would amount to abuse of process of law. We are, therefore, inclined to allow this petition.

11. The petition is allowed in terms of prayer clause (a) which reads as under :

“(a) That this Hon’ble Court be pleased to issue appropriate writ, order or direction, to quash the F.I.R. dated 02.04.2012 which is registered as C.R. No. 8 of 2012, with Walchandnagar Police Station, Tal: Indapur, District-Pune and charge-sheet No. 19 of 2012 as against the petitioners”.

12. Rule is made absolute in the above terms.

(M.M. SATHAYE, J)

(SUNIL B. SHUKRE, J)