IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2849 OF 2021

Nikhil Jaywant Patil ...Petitioner
Versus
The State Of Maharashtra And Anr. ...Respondents

Mr. Umesh Pawar for the Petitioner.
Ms. S.D. Shinde, APP for the Respondent/State.
Mr. Utkarsh Desai for Respondent No.2.
Respondent No.2 present in Court.

CORAM : SUNIL B. SHUKRE, AND M.M.SATHAYE, JJ.

DATE : 20th APRIL 2023

P.C.

1. Rule. Rule made returnable forthwith. Learned APP waives service for Respondent No. 1/State. Learned Counsel Mr. Desai waives service for Respondent No.2. Heard finally by consent of parties.

2. This is the case wherein on the basis of the complaint filed by Respondent No.2 Maruti Jadhav, offences punishable under Sections 39 and 45 of the Maharashtra Money Lending (Regulation) Act, 2014 ('the Act of 2014' for short) and also under Section 506 read with Section 34 of Indian Penal Code, have been registered against 9 accused persons. The allegations

made by the complainant are that in order to purchase a land at Khed near Islampur, the complainant had taken loan of Rs.8 lakhs from Islampur Urban Bank at Khed and also private loan of Rs.1 lakh from Sanjay Deshmane. But, the complainant could not eventually payback the entire loan, which he had taken from Sanjay Deshmane with high rate of interest. It is further alleged by him that after six months, Sanjay Deshmane started harassing him and who issued threats on his life that if the complainant failed to repay the principal amount. It is further alleged that in order to satisfy the loan of the main accused Sanjay Deshmane, the complainant started borrowing money in parts from the different persons, so that he could meet the demands of Sanjay Deshmane by paying back to him some amount. One of such persons from whom the complainant borrowed money was Nikhil Patil and the complainant states that he had borrowed from Nikhil Patil, the Petitioner herein an amount of Rs.50,000/- @ 10% interest. The complainant further alleges that similarly he had borrowed different amounts from different persons and the purpose of his borrowing was to repay the loan amount which was due from him to Sanjay Deshmane.

3. The allegations made by the complainant thus show that this is a case wherein, there are separate and distinct transactions of borrowing of money and one of such separate and distinct transaction is the one between the complainant and the present Petitioner. This transaction, going by the complaint made by the

complainant does not appear to be having any relations whatsoever with the principal transaction that complainant had with the main accused Sanjay Deshmane. Then, there are no specific allegations of harassment that Nikhil Patil used to harass the complainant although complainant in general terms says that all the lenders of money used to harass him. These allegations, in our considered opinion, at the most pertain to the offences punishable under Sections 39 and 45 of the Act of 2014 and nothing beyond that. The general allegation of harassment would not be sufficient constitute any offence under Section 506 of IPC. Such allegation of harassment, for that matter, would also not be sufficient to constitute any offence punishable under Section 45 of the Act of 2014, which prescribes penalty for molestation of a debtor for recovering of the debt due by him to the money lender. What kind of molestation allegedly made by a person like the Petitioner ought to have been specified by the complainant. But, that is not the case here. Besides, the molestation must be done by money lender who has a licene of carry on business of money lending. In this case, there is a question as to whether or not the Petitioner would fall in the definition of Money Lender as provided under Section 2(14) of the Act of 2014. The essential ingredients of a person being a money lander is that he must, *inter alia*, be an individual who "carries on business of money lending in the State of Maharashtra". It is well settled principle of law that single and isolated transaction of lending of money would not fall within the expression of "business of money lending". Business of money lending is something in which the lending of money is done or carried out regularly and for the purpose of earning profit. Such regularality of transactions of lending money has not been alleged by the complainant against the Petitioner and therefore, it is doubtful as to whether or not the Petitioner could be called a money lender so as to be covered by the penalty under Section 39 of the Act of 2014, which is about doing money lending without a valid licence. If there is a doubt about the Petitioner being a money lender, there could not be any offence alleged against him which is punishable under Section 45 of the Act of 2014 and in our opinion this is the additional reason why we say that offence punishable under Section 45 of the Act of 2014 does not appear to be prima facie made out against the present Petitioner. Similarly, even offence under Section 39 of the Act of 2014 would not be made out.

4. The discussion so far made in this petition would show that the Petitioner stands quite on different footing than other co-accused persons and the allegations levelled against him indicate that they pertain to a stand alone transaction between the Petitioner on one hand and the complainant on other hand, and therefore, we feel that there could be a settlement in between the complainant and the Petitioner.

5. The learned Counsel for the Petitioner as well as complainant i.e. Respondent No.2 both submit that there has been an amicable settlement between the Petitioner and the Respondent No.2 and now Respondent No.2 does not have any objection if the crime registered against the Petitioner is quashed only as against him. They rely upon the consent affidavit filed in this matter by Respondent No.2.

6. We have gone through the consent affidavit at Exh.B (page No. 18) which shows that there is a voluntary and amicable settlement of the dispute between the Petitioner and the complainant. It further shows that the complainant had some misunderstanding about the Petitioner and now that misunderstanding has been removed. Complainant submits that he has no objection, if the FIR qua the Petitioner is quashed and set aside. We have also made personal inquiry with the Petitioner and the complainant, who are personally present before this Court and who are duly identified by their respective counsel. Both of them endorse to the fact that there has been an amicable settlement reached between them voluntarily and that they have no complaint against each other.

7. In view of facts and circumstances of this case as discussed hereinabove and also the amicable settlement reached between Respondent No.2 and the Petitioner, we are inclined to allow this petition only as against the Petitioner.

8. Accordingly we pass the following order:

(i) The petition is allowed only against this Petitioner and the FIR in Crime No. 413 of 2021 registered at police station Islampur, Sangli is hereby quashed and set aside as against the Petitioner only, subject to the condition that the Petitioner and the complainant shall deposit an amount of Rs.1,000/- each in the account of Central Police Welfare Fund, Bank: Axis Bank, Branch: Worli, A/C No. 914010029005759, IFSC No. UTIB0000060, within a period of four weeks from the date of the order, failing which this order shall stand cancelled automatically and the matter shall be listed before this Court for direction.

(ii) It is made clear that FIR registered against the remaining accused persons has not been quashed and set aside by this Court.

(iii) The Registrar (Judicial-II) is requested to verify the compliance in this matter and if, he is satisfied about the compliance, he shall close the matter and if not, he shall place the matter before this Court for direction.

(iv) Rule is made absolute in the above terms. No order as to costs.

(M.M.SATHAYE, J.) **(SUNIL B. SHUKRE, J.)**