IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3719 OF 2021

Ganesh Hambirrao Kadam, Age 28 Years, Occu: Agriculture & Business, Residing at: Survey No.50, NanaiBaug, B.T. Kawade Road, Mundhwa, Taluka Haveli, District Pune-36. **PETITIONER**

- **VERSUS** -

1. The State of Maharashtra, through Saswad Police Station, Saswad, Pune.
2. Shaila Ramchandra Jagtap, Age: 52 years, Occ: Agriculture & Household, Residing at Plot No.7, Shree Vinayak Housing Society, Saswad, Taluka Purandar, District Pune. **RESPONDENTS**

WITH
CRIMINAL WRIT PETITION NO. 6351 OF 2021

Pratik Rajendra Jagtap, Age 25 Years, Occu: Agriculture Residing at: Durvatara Datta Purva Society, House No.1, Saswad, Taluka Purandar, District Pune. **PETITIONER**

- **VERSUS** -

1. The State of Maharashtra, through Saswad Police Station, Saswad, Pune.
2. Shaila Ramchandra Jagtap, Age: 52 years, Occ: Agriculture & Household, Residing at Plot No.7, Shree Vinayak Housing Society, Saswad, Taluka Purandar, District Pune. **RESPONDENTS**

Shri Nilesh Wable, counsel for the petitioner in both the criminal writ petitions.
Mrs. S.D. Shinde, Additional Public Prosecutor for the respondent no.1-State.
Shri Prasad Nagargoje i/by Shri Saiprasad Wadkar, counsel for the respondent no.2.

CORAM : NITIN W. SAMBRE AND R.N. LADDHA, JJ.
DATE : JULY 06, 2023

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. In both these criminal writ petitions, the petitioners who are accused in Crime No.236 of 2021 registered with respondent no.1-Police Station, Saswad, are seeking quashing of not only the offence punishable under Section 506 read with Section 34 of the Indian Penal Code, 1860 and Section 39, 45(a), (b) and (c) of the Maharashtra Money Lenders Regulation Act, 2014 but also Summary Case No. 520 of 2022. For the sake of convenience, accused persons/petitioners - Ganesh and Pratik are being referred to by their name and the respondent no.2-Shaila is being referred to as 'complainant'.

3. The facts necessary for deciding the criminal writ petitions are as under :-

The complainant approached the respondent no.1-Police Station by filing complaint dated June 21, 2021 alleging that in 1995 her husband Ramchandra had purchased a plot from Shree Vinayak Housing Society at Saswad and had carried out construction of about 1100 square feet. It is claimed that in the said property the complainant was residing with her husband Ramchandra and her two sons. In 2018, she sustained major health ailment and the treatment of which had costed her heavily and then she lost her younger son Vaibhav which resulted in piling up loan liability which she had obtained from various persons.

Swapnil, elder son of the complainant, realizing that for the satisfaction of the debts he would have to opt for the loan, contacted Pratik Jagtap who introduced him to Ganesh Kadam.

4. Considering the financial need of the complainant and her family members, it is claimed that Ganesh had provided handloan of Rupees Fifteen Lakhs through cheque and the interest levied was 7% per month. It is claimed that an agreement of sale as well as a Power of Attorney was executed towards security. In the agreement of sale dated July 10, 2020 so also the Power of Attorney which are registered documents, the consideration paid to the complainant was shown to be Rupees Two Lakhs and the balance consideration of Rupees One Lakh Fifty Thousand was to be paid in five installments. It is claimed that the complainant regularly paid interest to Pratik. In January-2021, the husband of the complainant had suffered kidney ailment and thereafter during pandemic a default was claimed to be committed in payment of interest. It is alleged that Ganesh demanded interest at the rate of 15% per month on entire amount and since the complainant and her family members failed to pay interest as demanded, Ganesh alongwith Pratik issued threats on phone with regard to dispossession, causing hurt, etc. It is claimed that Pratik had acted as a messenger for Ganesh in the matter of issuing threats for payments.

Alleging that the aforesaid incidents occurred between January 2021 to June 2021, the complaint came to be lodged which has resulted in registration of Crime No.236 of 201 in which Ganesh and Pratik are already chargesheeted.

5. Ganesh and Pratik were arrested in the aforesaid offence and were released on regular bail. Ganesh and Pratik are seeking quashing of the aforesaid crime and consequential summary trial on the ground that the provisions of Maharashtra Money Lenders Regulation Act, 2014 are not attracted in the case in hand as there is no evidence with regard to Ganesh indulging in the business of money lending. It is claimed that based on the isolated incident of alleged money lending which is denied by Ganesh and Pratik, it is urged that the offence punishable under the provisions of the Maharashtra Money Lenders Regulation Act, 2014 cannot be inferred against them as the ingredients cannot be said to be satisfied. It is their further contention that even the offence punishable under Section 506 of the Indian Penal Code, 1860 viz. criminal intimidation cannot be said to be established as what is claimed in the complaint as well as evidence is as regards threat of injury. According to the counsel for the petitioners, the registered Power of Attorney, Agreement of Sale dated July 10, 2020 so also the Leave and License Agreement sufficiently establishes that the intention of the complainant of selling the property in question to the Ganesh. According to the counsel for the petitioners, the complainant has suppressed the material fact as regards existence of registered Leave and License Agreement which permitted her to continue to occupy the premises in question. The counsel for the petitioners would further urge that even if what has been stated in the First Information Report is taken on its face value to be correct, still the offence alleged against Ganesha and Pratik cannot be inferred. It is claimed

that there are compelling circumstances for the complainant as could be inferred from the contents of the First Information Report which has prompted her husband to agree to sell the property and handover the possession of the same. It is claimed that the husband of the complainant had obtained 'No Objection Certificate' from Shree Vinayak Housing Society on his own for the purpose of sale and development of Plot No.7 which speaks of a voluntary act on the part of the family members of the complainant. As such, it is claimed that the prosecution against Ganesh and Pratik in the aforesaid offence is liable to be quashed and set aside.

6. As against above, Mrs. S.D. Shinde, learned Additional Public Prosecutor appearing for the respondent no.1 and Shri Prasad Nagargoje, learned counsel for the complainant would urge that the defence of the petitioners cannot be look into and appreciated at this stage of the proceedings. It is further claimed that there is enough evidence on record to connect the petitioners with the crime in question. According to the learned counsel for the respondents, the nature of events which took place leading to the registration of offence viz. the execution of the Power of Attorney and Agreement of Sale with Possession sufficiently establish the offence of money lending. Similarly, it is claimed that the ingredients of offence of criminal intimidation can be inferred in view of the threats issued by Ganesh and Pratik. That being so, it is prayed by the learned counsel for the respondents that both the criminal writ petitions are liable to be dismissed.

7. We have appreciated the rival contentions.

8. Ganesh and Pratik have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 praying therein not only the quashing and setting aside of Crime No.236 of 2021 punishable under Section 506 read with Section 34 of the Indian Penal Code, 1860 and Sections 39, 45(a), (b) and (c) of the Maharashtra Money Lenders Regulation Act, 2014 but also Summary Criminal Case No. 525 of 2022. The basis for lodging the complaint is the receipt of an amount of Rupees Fifteen Lakhs by the complainant which she claims to be in the form of a handloan. It is claimed by the complainant that after receipt of Rupees Fifteen Lakhs, the Agreement of Sale and the Power of Attorney was executed at the behest of the complainant. Such execution of the documents which are registered under the Registration Act are based on the 'No Objection Certificate' obtained by the husband of the complainant from the concerned Housing Society.

9. The fact remains that the execution and registration of these documents is on July 10, 2020. On the very same day, Ganesh claimed to have received possession of the property in question under the registered Agreement of Sale and Power of Attorney upon payment of part consideration. Ganesh thereafter claimed to have executed a Leave and License agreement in favour of the complainant which is also a registered document. A careful

perusal of the entire investigation papers including that of the statements of witnesses viz. the husband of the complainant, son Swapnil and the complainant herself does not reflect the fact that the execution of the Leave and License Agreement was brought to the notice of the Investigating Agency. The suppression of such material fact which is about existence of a registered Leave and License Agreement between Ganesh and the complainant sufficiently speaks of the intention and mentality of the complainant of implicating Ganesh and Pratik in an offence based on incomplete narration of correct facts. Apart from above, if the events narrated by the complainant in the First Information Report are appreciated, it is seen that the complainant herself admitted about the receipt of the amount of Rupees Fifteen Lakhs from Ganesh through cheque so as to clear the outstanding dues which were incurred because of the handloan obtained by her and her family members to meet the pressing need of clearing medical bills in relation to her and her husbands ailments. The aforesaid factual matrix primarily leads to explain the reason for which the complainant admitted the existence of a transaction viz. receipt of Rupees Fifteen Lakhs from Ganesh.

10. In this background, if we appreciate the claim put forth in the complaint about the Maharashtra Money Lenders Regulation Act, 2014 is concerned, the fact remains that there exists a solitary transaction *inter se* allegedly between Ganesh and the complainant. Even if such solitary act of issuing handloan is considered to be true based on the allegation made in the

First Information Report, still such solitary act cannot be said to be an activity of carrying out business of money lending. The aforesaid issue fell for consideration before the Division Bench of this Court in the matter of *Anup Versus State of Maharashtra* [**2020 ALL MR (Cri) 2497**]. This Court while dealing with such an issue has observed that the term 'business' has two elements; one of continuity and other of aim of gain which should together form a series of transactions before they could collectively constitute a business. This Court has then noted that a singular or occasional advance of loan without there being any serial advances would not amount to any business of money lending. Paragraphs 26, 27, 28 and 29 of the said judgment read thus:-

> "*26. The dictionary meaning of the word "business" would show that when an activity is carried out as a business, it is done regularly and habitually for profit or gain and that the activity has a predominantly commercial flavour of consistent nature.*
>
> *27. In the case of Smt. Janaki Bai Chunnilal Vs. Ratan Melu and another, reported in AIR 1962 Madhaya Pradesh 117, Full Bench of Madhya Pradesh High Court interpreting, inter-alia, provisions made under Section 11 F of C.P. and Berar Money-Lenders Act which laid down that no person shall carry on the business of money lending in any district unless he holds a valid certificate in respect of that district, a provision identical to the provision of Section 10 of Bombay Money Lenders Act, 1946, made significant observations and clarified what the term "business" would mean. It held that the term "business" has two elements, one of continuity and the other of the aim of gain which should together form a series of transactions before they could collectively constitute a business. These observations suggest that a singular or*

occasional advance of loan without their being any serial advances, would not amount to any business of money lending. Observations made in paragraph 13 of the judgment being relevant are reproduced thus:-

> *"Secondly, business is a complex concept which cannot be defined with precision. In my opinion, at least the two elements of continuity and the object of gain should interlace a series of transactions before they could collectively constitute a business."*

28. Thus, the dictionary meaning as well as the interpretation of the term "business" given by a Full Bench of Madhya Pradesh High Court in the above referred case would show that a business is an activity which is carried out regularly with the dominant object being of earning profit or gain. That would mean that any lending of money occasionally or irregularly and not as a part of any commercial enterprise carried on consistently with a view to earn livelihood or profit, would not be covered by the definition "business of money lending" and as such it would not attract in any way any offences relating to or arising from carrying on of money lending business without licence, in the present case, Sections 32 B and 33 of 1946 Act.

29. We must say that what is true about "business of money lending" as defined in the 1946 Act is also true about this expression appearing in the Money Lending Act, 2014 and so, no offences even under 2014 Act would be attracted in the present case."

11. In the backdrop of aforesaid observations of this Court, if we consider the allegations of money lending in the case in hand, we have already discussed hereinabove that there was a solitary transaction of Rupees Fifteen lakhs of handloan as alleged by the complainant which was received by her through cheque and failure to repay the said amount with interest accrued thereon has prompted her to file a complaint under the provisions of the

Maharashtra Money Lenders Regulation Act, 2014 so also under Section 506 read with Section 34 of the Indian Penal Code, 1860 i.e. criminal intimidation with common intention. The singular transaction between the complainant and Ganesh with alleged aid of Pratik in any event cannot be stretched to the extent of inferring about the element of business of money lending being carried out by Ganesh. The singular ocular transaction and absence of multiple transactions of money lending between Ganesh and the complainant or for that matter between Ganesh and any third party would lead to the only conclusion that the alleged conduct of the complainant in the First Information Report and charge-sheet does not point out that Ganesh was engaged in the money lending business. A similar view is also expressed by the Division Bench at Aurangabad Bench in *Mandubai Vithoba Pawar Versus The State of Maharashtra & Others* [**(2016) 1 Bom CR (Cri) 794**].

12. As far as the offence of criminal intimidation punishable under Section 506 of the Indian Penal Code, 1860 is concerned, the basis for the same appears to be issuing threats on phone, oral threats by Ganesh and Pratik of dispossession in case of failure to pay the interest and getting forceful possession from the complainant. So, what is claimed is a threat issued of causing injury to the property of the complainant for which the basis appears to be the alleged money lending transaction.

13. The basis for alleged threats is the money lending transaction and we have already held that the very ingredients of the offence punishable under the Maharashtra Money Lenders Regulation Act, 2014 cannot be inferred in the case in hand. Once it is held that the petitioners cannot be said to be prosecuted for the offence punishable under the provisions of the Maharashtra Money Lenders Regulation Act, 2014, the allegations of issuing threats based on the same also cannot be sustained. As such, it cannot be said that the complaint or the investigation papers satisfy the ingredients of Sections 506 and 34 of the Indian Penal Code.

Once the loan transaction is admitted by the complainant and the events which are narrated by the complainant in the First Information Report prompts that when the complainant had assured to return the amount which she had obtained as loan, then demanding such amount by the principal like Ganesh cannot be said to satisfy the ingredients of offence under Sections 506 and 34 of the Indian Penal Code. In support of the aforesaid observation, we have taken the allegation in the First Information Report to be true at its face value. The complainant herself had conceded that it was Pratik who introduced her son to Ganesh through whom the transaction of hand loan was completed. Both the petitioners in such an eventuality perhaps had demanded the return of the amount which was admittedly due and recoverable from the complainant as has been admitted by her in the complaint.

14. In the aforesaid eventuality, if we appreciate the reasoning referred above, in our opinion the case of the petitioners for quashing of not only offence but also the trial can be said to be made out in view of law laid down by the Apex Court in the case of *State of Haryana & Others Versus Ch.Bhajanlal* [**AIR 1992 SC 604**]. The Apex Court has observed in paragraph 108 of the said judgment as under :-

> "*108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under section 156(1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code.*
>
> *3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the*

> *same do not disclose the commission of any offence and make out a case against the accused.*
> *4. Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
> *5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
> *6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act into (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress or the grievance of the aggrieved party.*
> *7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive or wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

In our opinion, the case of the petitioners is covered under Clause 1 and 7 of the judgment of the Apex Court in *Ch.Bhajanlal* (supra).

15. The fact remains that the offence is allegedly based on the alleged transaction of money lending. The documents such as Power of Attorney, Agreement of Sale with Possession and the Leave and License Agreement are the registered documents. In such an eventuality, what can be noticed that there exists a civil dispute *inter se* between the parties. In such an eventuality, we deem it appropriate to observe that the parties are at liberty

to initiate such civil proceedings as shall be permissible and available for redressal of their grievance. Needless to clarify that such civil proceedings, if so initiated by either of the parties be decided in accordance with law without being influenced by the findings recorded hereinabove. As such, both these writ petitions stand allowed in terms of Prayer Clauses (B) and (B1). Rule is made absolute in aforesaid terms. Order accordingly.

(R.N. LADDHA, J.) **(NITIN W. SAMBRE, J.)**

APTE