IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 94 OF 2020

1. Sanjivini W/o Dinesh Deshmane
Age : 49 years, Occ : Agri.,
R/o Netaji Nagar, Tuljapur Khurd,
Tuljapur, Tq. Tuljapur,
Dist. Osmanabad

2. Dinesh S/o Bhagwan Desmane
(Since deceased)

..APPLICANT

-VERSUS-

1. The State of Maharashtra
(Through P.S. Tuljapur, Tq. Tuljapur,
Dist. Osmanabad).

2. Sudarshan Namdev Shinde
Age : 35 years, Occ : Govt. Service,
Co-operative Officer, Grade-2,
Office of Assistant Registrar,
Co-operative Societies, Tq. Tuljapur,
Dist. Osmanabad

3. Sahebrao Chandarkant Bhise
Age : 40 years, Occ : Agri.,
R/o Vivekanand Nagar, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad

..RESPONDENTS

AND

CRIMINAL APPLICATION NO. 102 OF 2020

1. Sanjivini W/o Dinesh Deshmane
Age : 49 years, Occ : Agri.,
R/o Netaji Nagar, Tuljapur Khurd,
Tuljapur, Tq. Tuljapur,
Dist. Osmanabad

2. Dinesh S/o Bhagwan Desmane
(Since deceased)

..APPLICANT

-VERSUS-

1. The State of Maharashtra
(Through P.S. Tuljapur, Tq. Tuljapur,
Dist. Osmanabad).

2. Sudarshan Namdev Shinde
Age : 35 years, Occ : Govt. Service,
Co-operative Officer, Grade-2,
Office of Assistant Registrar,
Co-operative Societies, Tq. Tuljapur,
Dist. Osmanabad

3. Bhujang Sopan Mahankraj
Age : 40 years, Occ : Agri.,
R/o Honala, Tq. Tuljapur,
Dist. Osmanabad

..RESPONDENTS

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Advocate for Applicants : Mr.Ganesh J. Kore
APP for Respondent- State : Mr.A.M. Phule
Advocate for respondent No.3 : Mr.Rohit Patwardhan h/f Mr.Satej Jadhav

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CORAM : SMT. VIBHA KANKANWADI AND
ROHIT .W. JOSHI, JJ.
DATED : 27 NOVEMBER, 2024.

JUDGMENT (PER ROHIT. W. JOSHI, J.) :

. Present applications are filed under section 482 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as "Cr.P.C." for brevity) for quashing F.I.Rs. and consequent criminal cases registered against the applicants, for the offence punishable under

Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014 (Hereinafter referred to as “the Act of 2014” for brevity). Applicant no.1 is wife of applicant No.2. Applicant No.2 has expired on 22.09.2020. Learned counsel for the applicants has produced on record the death certificate dated 30.09.2020 issued by Municipal Council, Tuljapur. The same is taken on record and marked as “Exhibit-A”. The prosecution against applicant No.2 in both the applications, therefore, stands abated.

2. Criminal Application No.94/2020 is filed in order to challenge F.I.R. No.436/2019 dated 28.12.2019. After filing of the application, charge-sheet No.94/2020 dated 30.11.2020 came to be filed, pursuant to which, Regular Criminal Case No.100/2021 came to be registered against the applicants, for the offence punishable under section 39 of the Act of 2014, which is pending before the learned Judicial Magistrate, First Class, Tuljapur. This FIR is lodged by respondent No.2, Co-operative Officer, Grade-II, Tuljapur on a complaint regarding illegal money lending made by respondent No.3 – Sahebrao Bhise.

3. Likewise, Criminal Application No.102/2020 is filed in order to challenge F.I.R. No.437/2019 dated 28.12.2019 lodged by the same Officer on a complaint regarding illegal money lending made by respondent No.3 – Bhujang Mahankraj. The prosecution has filed

charge-sheet No.95/2020 dated 30.11.2020, pursuant to which Regular Criminal Case No.101/2021 is registered against the applicants, for the offence punishable under section 39 of the Act of 2014, which is pending on the file of the learned Judicial Magistrate, First Class, Tuljapur.

4. It will be pertinent to mention here that the applicants in the present matters are arrayed accused in both the F.I.Rs. In both F.I.Rs. allegations regarding money lending business being carried out by the applicants without licence are levelled. Both the F.I.Rs. refer to the same sale transactions in order to allege that the applicants are indulging in illegal money lending business. Since the facts involved in both the matters are identical, we are deciding both the matters by common judgment.

5. The allegations in both the matters are that the applicants, who are husband and wife, are indulging in illegal money lending business. It is alleged that while advancing money to needy borrowers, the applicants have adopted a practice of obtaining the sale deeds with respect to immovable properties from the borrowers which in fact are executed only for the purpose of creating security for repayment of loan amount and once the loan amount is repaid, the property is reconveyed to the borrower or his/her family members. In sum and substance, the allegations are that the said transactions are merely a

camouflage to cover illegal money lending transactions. Respondent No.3 in both the matters had initially lodged complaints regarding illegal money lending business by the applicants with Officers under the Act of 2014. The complaints have been investigated by the Officers and accordingly, respondent No.2 was directed by his superior to lodge the F.I.R. against the applicants. Both above F.I.Rs. have been registered on the complaint made by respondent No.2, who is working as Co-operative Officer, Grade-II at Tuljapur.

6. In both the complaints, the allegations are pertaining to the following four sale transactions :-

Sr. No.	Date of sale deed in favour of the applicants	Date of reconveyence	Name of the vendor/borrower
1.	27.05.2009	11.06.2012	Baliram Mahankraj
2.	16.05.2015	30.05.2016	Yuvraj Patil
3.	12.01.2009	04.09.2013	Bhusang Mahankraj
4.	11.06.2012	23.09.2013	Baliram Mahankraj

7. We have heard Mr. Ganesh J. Kore, learned counsel for the applicants, Mr. A.M. Phule, learned APP for respondent No.1 and Mr. Rohit Patwardhan h/f Mr. Satej Jadhav, learned counsel for respondent No.3.

8. We have perused the F.I.Rs., charge-sheets and documents filed with the charge-sheets.

9. Learned advocate for the applicants contends that the Act of 2014 has come into force on 16.01.2014, and therefore, the said section will not apply to the sale transactions at Sr.Nos.1, 3 and 4 above, in as much as, a penal provision cannot have retrospective operation. He further contends that the Act of 2014 has repealed The Bombay Money Lenders Act, 1946, under which the offence of money lending without licence was a non-cognizable offence, and therefore, F.I.Rs. could not have been registered against the applicants, in relation to the aforesaid three sale deeds. As regards second sale transaction, which is dated 16.05.2015, he submits that although the sale transaction and the reconveyence are after the commencement of Act of 2014, merely on the basis of the said solitary sale transaction, it can not be said that the applicants are engaged in illegal money lending business. He further submits that from 16.01.2014 i.e. the date of commencement of Act of 2014 till 28th March, 2021 i.e. the date of filing of the charge-sheet, there is only one sale transaction. The period between the commencement of Act of 2014 and filing of the charge-sheet is around 7 years. He, therefore, submits that even with respect to second sale transaction, it cannot be said that the applicants have indulged in money lending business without licence.

10. As against this, the learned APP and learned counsel for respondent No.3 contend that the applicants have indulged in illegal

money lending business, in as much as, it cannot be a matter of coincidence that immovable properties are purchased and thereafter reconveyed to the vendors/borrowers or their family members within short period of time. They contend that material on record is sufficient to sustain the charge and as such, this is not a fit case for quashing of prosecution in exercise of powers under Section 482 of the Cr.P.C.

11. Having heard the rival submissions, we are of the view that the prosecution cannot be continued against the applicants and is liable to be quashed. It is obvious that no penal provision can have retrospective operation. Section 39 of the Act of 2014 cannot be invoked in order to punish any person for indulging in money lending business without licence for transactions prior to 16.01.2014 i.e. the date of commencement of the Act of 2014. Likewise under the old Act i.e. the Bombay Money Lenders Act, 1946 also prosecution cannot be initiated by lodging the F.I.R. since the offence was then a non-cognizable offence, as is laid down by a Division Bench of this Court in the matter of ***Baliram Ashroba Kadape and others Vs. State of Maharashtra and others*** reported in ***2018 All MR (Cri) 2701***, which we have recently followed in the matter of ***Bhanudas Baburao Dalve Vs. The State of Maharashtra and another in Criminal Application No.3426/2022 decided on 25.11.2024***.

12. As regards the sale transaction dated 16.05.2015 whereunder the property is stated to be reconveyed after payment of loan amount vide registered sale deed dated 30.05.2016, we find that from the date of commencement of Act of 2014 on 16.01.2014 till filing of the charge-sheet in March, 2021, there is only one sale transaction coupled with reconveyence. Assuming a transaction to be a money lending transaction, it cannot be said merely on the basis of the said transaction that the applicants are indulging in illegal money lending business. The term business would imply the continuous and systematic activity. We are of the opinion that a solitary transaction of money lending will not attract the rigours of section 39 of the Act of 2014 since the same would not amount to carrying out money lending business. In this regard, we may refer to a judgment of this Court in the matter of ***Mandubai Vitthoba Pawar Vs. State of Maharashtra, reported in 2015 (3) AIRBomR (Cri) 751***.

13. In the light of aforesaid, we are of the opinion that continuation of criminal prosecution against the applicants is not permissible. The criminal prosecution cannot be allowed to be continued. We, therefore, pass the following order :-

ORDER

(i) The applications are allowed.

(ii) F.I.R. No.436/2019 dated 28.12.2019 registered against applicant No.1-Sanjivini W/o Dinesh Deshmane and applicant No.2- Dinesh S/o Bhagwan Deshmane with Police Station, Tuljapur, Dist.Osmanabad, for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014, Charge-sheet No.94/2020 dated 30.11.2020 and Regular Criminal Case No.100/2021 pending on the file of the learned Judicial Magistrate, First Class, Tuljapur, Dist. Osmanabad, are hereby quashed.

(iii) F.I.R. No.437/2019 dated 28.12.2019 registered against applicant No.1-Sanjivini W/o Dinesh Deshmane and applicant No.2- Dinesh S/o Bhagwan Deshmane with Police Station, Tuljapur, Dist.Osmanabad, for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014, Charge-sheet No.95/2020 dated 30.11.2020 and Regular Criminal Case No.101/2021 pending on the file of the learned Judicial Magistrate, First Class, Tuljapur, Dist. Osmanabad, are hereby quashed.

(iv) The proceedings in Regular Criminal Case Nos.100/2021 and 101/2021 pending on the file of the learned Judicial Magistrate, First Class, Tuljapur, Dist. Osmanabad, stood abated against applicant No.2- Dinesh S/o Bhagwan Deshmane on the date of his demise i.e. on 22.09.2020.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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