IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

945 CRIMINAL APPLICATION NO.3100 OF 2022

Chetan Subhash Mali,
Age 32 yrs., Occ. Business,
R/o Plot No.26 A, Doodh Dairy Colony,
Shirpur, Tq. Shirpur, Dist. Dhule.

… Applicant

… Versus …

1 The State of Maharashtra
Through Police Inspector,
Shirpur Police Station, Shirpur,
Tq. Shirpur, Dist. Jalgaon.

2 Kunal Harilal Julwani,
Age 27 yrs., Occ. Business,
R/o Khalchegaon, Near Balaji Mandir,
Shirpur, Tq. Shirpur, Dist. Dhule.

… Respondents

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Mr. V.P. Patil, Advocate for applicant

Mrs. Priya R. Bharaswadkar, APP for respondent No.1

Mr. A.M. Taksal and Mr. G.J. Pahilwan, Advocates for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 21st AUGUST, 2024

<u>ORDER</u> : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 initially for quashing First Information Report vide Crime No.327/2022 dated 18.06.2022 registered with Shirpur Police Station, Tq. Shirpur, Dist. Dhule and after amendment proceedings in Regular Criminal Case No.138/2023 pending before learned Judicial Magistrate First Class, Shirpur, for the offence punishable under Sections 392, 452, 384, 504, 506, 507 read with Section 34 of the Indian Penal Code, 1860 and Sections 39 and 45 of the Maharashtra Money Lending (Regulation) Act, 2014.

2 Heard learned Advocate Mr. V.P. Patil for applicant, learned APP Mrs. Priya R. Bharaswadkar for respondent No.1 and learned Advocate for respondent No.2.

3 Learned Advocate for applicant after taking us through the entire charge sheet submitted that present applicant is made as accused No.15. Respondent No.2 has given details in respect of the fact that there are about 23 persons. He and his family members have taken loan amounts and according to respondent No.2, amount has been repaid to much extent, still those persons are demanding more amount and interest amount and they are

giving threats to kill. Hence, the First Information Report.

4 According to respondent No.2 and charge sheet, present applicant had given amount of Rs.50,000/- to respondent No.2 and according to him, he has repaid in all Rs.55,000/-. He says that repayment is from both modes i.e. offline and online and it was in installments. Statements of witnesses are also there to that extent. The important point is that it is not stated that 23 accused persons had given the amount at one time or they were knowing each other and gave that amount in consultation with each other and then demanding it for each other also. No overt act is attributed in specific words and, therefore, none of the sections are attracted against applicant.

5 Per contra, learned APP as well as learned Advocate for respondent No.2 submitted that since the charge sheet is filed, let the applicant face the trial, as there is material to show that he had given the amount to respondent No.2 and respondent No.2 and family members can demonstrate that they have repaid the entire amount, still there is demand by the applicant.

6 At the outset, we would like to say that we are considering only the allegations as against present applicant and not in respect of any other

accused. Neither in the First Information Report nor in statements of witnesses it can be gathered that the act of giving loan/money to the informant and his family members by all 23 accused was a concerted act on their part. In other words, there is nothing on record to show that accused persons were knowing each other and by consulting each other they had extended the amount to informant and his family members. No doubt, there are some transactions which are online with the present applicant, however, even as per contents of First Information Report and statements of witnesses, the act of giving loan/money by present applicant is only one transaction. There is also no record collected to show that the present applicant is doing money lending business. Unless it is shown that applicant is doing the business of money lending, the offence under Sections 39, 45 of the Maharashtra Money Lending (Regulation) Act, 2014 cannot be attracted. Now, as regards Indian Penal Code offences in the present case are concerned, there is absolutely no overt act, details regarding entering the house of informant by the applicant, giving threats to him, abuses to him and then extorting amount from him or committing robbery or dacoity. As regards present applicant is concerned, it appears to be purely one transaction, wherein hand loan was appears to be given. It is not at all covered under the definitions of the Maharashtra Money Lending Act. Hence, it would be unjust to ask the applicant to face the trial. The case squarely falls within the parameters laid down in **State of Haryana and others vs. Ch. Bhajan Lal and others** [AIR 1992 SC 604] and, therefore, powers under Section 482 of the Code of Criminal Procedure deserve to be invoked in this matter.

7 With the above said observations, we allow the application. Hence, following order.

<u>ORDER</u>

1 Criminal Application stands allowed.

2 First Information Report vide Crime No.327/2022 dated 18.06.2022 registered with Shirpur Police Station, Tq. Shirpur, Dist. Dhule and proceedings in Regular Criminal Case No.138/2023 pending before learned Judicial Magistrate First Class, Shirpur, Dist. Dhule, for the offence punishable under Sections 392, 452, 384, 504, 506, 507 read with Section 34 of the Indian Penal Code, 1860 and under Sections 39 and 45 of the Maharashtra Money Lending (Regulation) Act, 2014 stand quashed and set aside as against present applicant viz. Chetan Subhash Mali.

(S.G. CHAPALGAONKAR, J.) **(SMT. VIBHA KANKANWADI, J.)**

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