2024:BHC-AUG:27997-DB

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

CRIMINAL APPLICATION NO.3426 OF 2022

Bhanudas S/o Baburao Dalve
Age : 60 years, Occ : Agril & Pensioner,
R/o Hipparga (Tad), Tq. Tuljapur,
Dist. Osmanabad.

..APPLICANT

-VERSUS-

1. The State of Maharashtra
Through Police Station Naldurg,
Tq. Tuljapur, Dist. Osmanabad.

2. Prasad S/o Ravindra Kulkarni
Age : 48 years, Occ : Co-operative Officer,
C/o. Assistant Registrar, Co-Operative Society,
Tuljapur, Tq. Tuljapur,
Dist. Osmanabad.

..RESPONDENTS

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Advocate for Applicant : Mr. S.B. Choudhari
APP for Respondent- State : Mr.N.R. Dayama
Advocate for assist to P.P. : Mr.V.C. Solshe

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CORAM : SMT. VIBHA KANKANWADI AND R.W.JOSHI, JJ.

DATED : 25 NOVEMBER, 2024.

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

. Present criminal application is filed under section 482 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as "Cr.P.C." for brevity) seeking quashing of F.I.R. No. 0262/2022 registered with Naldurg Police Station, Tq. Tuljapur, Dist. Osmanabad, 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).

2. After filing of the present Criminal Application, the charge-sheet bearing No.96/2023 came to be filed under Section 173 of the Code of Criminal Procedure and Criminal Case, being Regular Criminal Case No. 418/2023 came to be registered against the applicant in the Court of learned Judicial Magistrate, First Class, Tuljapur, Dist. Osmanabad. The application came to be amended to incorporate prayers for quashing of the charge-sheet and Regular Criminal Case.

3. One Eknath Vasant Takne has lodged a complaint with the authorities under the Act of 2014 alleging that the applicant is engaged in the business of money lending, although he does not possess licence for the same. The allegation in the complaint is that the applicant indulges in money lending transaction and obtains sale deeds of immovable properties towards the security of the loan amount. These sale deeds are shame/fictitious documents executed with an understanding that they are prepared for securing the loan amount and once the loan is repaid along with interest, the properties

would be reconveyed either to the borrowers or to their family members. The complaint by Eknath Vasantrao Takne resulted in initiation of an enquiry against the applicant. The Assistant Registrar of Co-operative Societies, Tuljapur submitted a report dated 03.08.2017 to the District Deputy Registrar of Co-operative Societies, Osmanabad with respect to money lending transactions allegedly entered into by the applicant. Based on the enquiry report, the District Deputy Registrar directed the Assistant Registrar to lodge F.I.R. against the applicant for the offence punishable under section 39 of the Act of 2014. The Assistant Registrar in turn authorized respondent No.2 Shri. Prasad Ravindra Kulkarni, Officer of Co-operative Societies Class-I to lodge complaint against the applicant, in order to initiate the criminal prosecution against him. Accordingly, respondent No.2 has lodged FIR against the applicant on 18.08.2022. The FIR refers to investigation conducted by the Officers under the Money Lending Act on the complaint made by Shri. Eknath Takne and sale transactions which were found, wherein initial properties were purchased by the applicant and thereafter the same were reconveyed to person from whom the same were purchased or his family members.

4. As stated above, respondent No.1 has conducted investigation in the matter and has filed charge-sheet No.96/2023 dated 25.11.2023 under Section 173 of the Code of Criminal

Procedure. The report dated 03.08.2017 submitted by the Assistant Registrar to the District Deputy Registrar is a part of the charge-sheet. The statements of various persons, who had transferred their respective properties in favour of the applicant and thereafter repurchased the same either in their own names or in the names of their family members, are recorded. Copies of the sale deeds are also included in the charge-sheet.

5. The applicant is aggrieved by the FIR registered against him, so also initiation of criminal prosecution and has, therefore, approached this Court, praying for quashing of FIR, charge-sheet and the criminal case registered against him.

6. We have heard Mr. S.B. Choudhari, learned Advocate appearing for the applicant, Mr. N.R. Dayama, learned APP for respondent No.1 and Mr. V.C. Solshe, learned Advocate for assist to P.P.. We have perused the FIR, report under Section 173 of the Code of Criminal Procedure and documents forming part of the charge-sheet.

7. Learned Advocate for the applicant contends that all the transactions, that have been referred in the report dated 03.08.2017, are prior to 16.01.2014 i.e. the date on which the Act of 2014 has come

into force. He contends that Section 39 of the Act of 2014, being a penal provision, can not have retrospective operation. He, therefore, contends that even if the allegation that the applicant was engaged in business of illegal money lending without licence is accepted to be true and correct, he can not be prosecuted under Section 39 of the Act of 2014. He further contends that offence of money lending without licence was non-cognizable offence under the Bombay Money Lenders Act, 1946, which has now been repealed by the Act of 2014. Since all the transactions are pertaining to the period prior to commencement of the Act of 2014, registration of FIR for the alleged offence would be completely without jurisdiction and authority of law. He has also disputed that the sale transactions referred to in the report are only in order to cover illegal money lending transactions. He further contends that even if the entire story of the prosecution is taken on its face value, it can not be said that the applicant was engaged in continuous and systematic activities of money lending, so as to make out a case of his engaging in business of money lending.

8. Per-contra, learned APP and learned Advocate for assist the P.P. contend that the investigation report prepared by the Assistant Registrar, Co-operative Societies has referred to several transactions of illegal money lending by the applicant. The total transactions regarding initial purchase of the property and subsequent sale of the

same are 24 in numbers. The respondents contend that these number of transactions would definitely indicate that the applicant has engaged in business of money lending without licence, and therefore, is liable for prosecution and punishment under Section 39 of the Act of 2014. They contend that such number of transactions of purchase and subsequent sell of property would conclusively establish that the applicant has indulged in illegal money lending business. They further contend that having regard to the material on record, the applicant has failed to make out any case for quashing of FIR and/or Regular Criminal Case registered against him.

9. We have heard learned respective Advocates and taken into consideration the rival submissions.

10. At the outset, we wish to record that the Act of 2014 has come into force on 16.01.2014. There are in all 24 transactions, which have been recorded in the report of Assistant Registrar, wherein the properties are purchased and thereafter reconveyed by the applicant. Out of 24 transactions, there is only one transaction which is subsequent to 16.01.2014 i.e. the date of commencement of the Act of 2014. This sale transaction is dated 01.04.2017. The applicant has sold immovable property to one Datta Bapurao Takne vide sale deed dated 01.04.2017. The allegation with respect to this sale transaction

is that the same property was purchased by the applicant from one Bhimashankar Takne under sale deed dated 11.01.1999. This sale deed dated 11.01.1999 is stated to be a shame sale deed executed for creating security in favour of the applicant for the loan advanced by him to Bhimashankar Takne. It is alleged that after the loan amount was repaid by Bhimashankar Takne, the applicant has executed the sale deed with respect to the property in favour of Datta Takne, who is real brother of Bhimashankar Takne, the borrower. Even if we accept the statement with respect to the sale deeds dated 11.01.1999 and 01.04.2017 to be true and correct, no offence is made out against the applicant under Section 39 of the Act of 2014, in as much as, the loan transaction is clearly prior to commencement of the Act of 2014.

11. It will be relevant to refer to the statement of the alleged borrower Bhimashankar Takne, wherein he has stated that he had sold the property to the applicant as security for loan amount of Rs.25,000/- advanced by the applicant, and that, he had repaid the loan amount with interest in the year 2002. He states that although, the loan amount with interest total amounting to Rs.50,000/- was repaid in the year 2002 itself, the applicant has reconveyed property in the year 2017. The statement clearly records the year of loan transaction as 1999. It is thus clear that the alleged transaction is prior to commencement of the Act of 2014.

12. All other transactions referred in the report pertaining to sale of property in favour of the applicant and recoveyance thereof in favour of the borrowers or their family members are also prior to 16.01.2014 i.e. the date of commencement of Act of 2014. We have inquired from learned APP and learned Advocate for respondent No.2 as to whether there is any other evidence apart from the aforesaid sale transactions in order to demonstrate that the applicant was engaged in the business of illegal money lending, both learned Advocates fairly replied that the only evidence available against the applicant is in the form of the said sale transactions recorded in the report of the Assistant Registrar.

13. It is settled legal principle that any penal provision can not have retrospective operation. Section 39 of the Act of 2014 is brought on the Statute Book on 16.01.2014. Consequently, a person can not be prosecuted or punished for the offence under Section 39 of the Act of 2014, if the business of money lending was conducted prior to 16.01.2014. The position is no longer *res integra* and is squarely covered by a Division Bench judgment 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.*** This Court has held that the provision of Section 39 of the Act of 2014 does not have

retrospective operation. It is further held that under the Bombay Money Lenders Act, 1946, the offence of money lending without licence was an offence under Section 32B. The said offence under Section 32B was not a cognizable offence in view of Section 35A of the said Act. It is thus held in the judgment that FIR could not have been registered for offence under Section 32B and accordingly, the FIR in the said case was quashed by this Court. We are in fully agreement with the law laid down in the matter of **Baliram Ashroba Kadape (supra)** and are also bound by the same. We are of the opinion that the controversy involved in the present matter is squarely covered by the said judgment. In the present case, all the alleged transactions of money lending are prior to commencement of the Act of 2014. Even if the applicant was to be prosecuted under the erstwhile Bombay Money Lenders Act, 1946, which has now been repealed, the FIR can not be registered for the said offence, in as much as, the offence was non-cognizable under erstwhile Act and was time barred in view of punishment prescribed under old Act.

14. For the reasons aforesaid, we are of the opinion that registration of the FIR and criminal prosecution against the applicant are clearly barred by law and as such, the FIR and criminal prosecution are liable to be quashed. We therefore pass the following order :-

ORDER

(i) The application is allowed.

(ii) F.I.R. No. 0262/2022 dated 18.08.2022 registered against the applicant – Bhanudas Baburao Dalve with Naldurg Police Station, Tq.Tuljapur, Dist. Osmanabad, for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014, Charge-sheet No.96/2023 dated 25.11.2023 and Regular Criminal Case No. 418/2023 pending on the file of the learned Judicial Magistrate, First Class, Tuljapur, Dist. Osmanabad are hereby quashed.

[R.W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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