IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.3763 OF 2022

1. Sandip s/o Uttam Shinde,
Age: 39 years, Occu. Actor,

2. Arti w/o Sandip Shinde
Age: 35 years, Occu. Housewife,

Both R/o Jamkhed, Tq. Jamkhed,
District: Ahmednagar. ..Applicants
(Orig. Accused Nos.1 & 2)

Versus

1. The State of Maharashtra
Through Investigating Officer
Jamkhed Police Station,
Tq. Jamkhed, Dist. Ahmednagar.

2. Devidas s/o Bansi Shinde
Age: 52 years, Occu. Business,
R/o Near State Bank Icon City, Jamkhed,
Tq. Jamkhed, District: Ahmednagar. ..Respondent
(Resp. No.2-Orig. Informant)

…

Mr. S. D. Jayabhar h/f Mr. D. R. Jayabhar, Advocate for the Applicants.
Mr. A. R. Kale, APP for Respondent No.1.
Mr. A. S. More, Advocate for Respondent No.2.

…

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

DATED : 04th SEPTEMBER, 2024.

JUDGMENT (Per S. G. Chapalgaonkar, J.):-

1. The applicants seek to quash and set aside criminal proceeding in S.C.C. No.198/2022 pending before Judicial Magistrate First Class, Jamkhed, which is arising out of Crime No.77/2022 registered with Jamkhed Police Station, Dist. Ahmednagar for offences punishable under Section 39 of the

Maharashtra Money Lending (Regulation) Act, 2014 (for short 'Act of 2014') and Sections 504, 506 of the Indian Penal Code.

2. The respondent no.2 herein lodged report dated 04.02.2022 with Police Station Jamkhed alleging that he runs sugarcane juice business at Bus Stand. In the year 2018, he was in need of money for establishment of hotel business. He had obtained loan of Rs.1,00,000/- at the interest rate of 10% per month from applicant no.1-Sandip Uttamrao Shinde. By way of security of loan a cheque of Rs.1,00,000/- was drawn on account of son of informant in the name of applicant no.1. On 01.01.2019 total amount of Rs.1,50,000/- was deposited with Mrs. Arti Sandip Shinde i.e. applicant no.2 towards repayment of loan alongwith interest. Although entire amount of loan was repaid, applicant no.1 raised dispute and pressurized informant to transfer his plot admeasuring 2887 sq. ft.. Accordingly, a notarized document was executed in his favour. On the basis of aforesaid, Crime No.77/2022 dated 04.03.2022 came to be registered against applicants with Police Station Jamkhed, Dist. Ahmednagar for offence punishable under Section 39 of the Act of 2014 as well as Sections 504, 506 of the Indian Penal Code. The investigation progressed in pursuance of aforesaid crime and finally charge-sheet has been filed in the Court of Judicial Magistrate First Class, Jamkhed. It has been culminated in S.C.C No.198/2022.

3. Mr. S. D. Jayabhar, learned Advocate appearing for the applicants vehemently submits that applicants have been falsely implicated in aforesaid crime. The alleged advancement of amount is of the year 2018. The alleged refund of amount is on 01.01.2019. However, present FIR is lodged on 04.03.2022. There is no plausible explanation for such inordinate delay in reporting

transactions. He would submit that entire case of respondent no.2 is based on false and frivolous allegations. He would submit that applicant no.1 has instituted criminal proceeding in S.C.C. No.97/2019 against son of respondent no.2 under Section 138 of the Negotiable Instrument Act towards dishonor of cheque of Rs.1,00,000/-. Consequently, process has been issued against son of respondent no.2 vide order dated 22.02.2019. Mr. Jayabjhar would also invite attention of this Court to the notarized agreement to sale dated 08.02.2021, by which respondent no.2 has agreed to sale property bearing no.3260/7262 situated in Gut No.1080 at Jamkhed for total consideration of Rs.9,50,000/-, out of which Rs.1,00,000/- was paid by applicant no.1 towards earnest amount and Rs.8,50,000/- was balance that was to be paid at the time of execution of sale deed within a period of one year. Mr. Jayabhar would invite attention of this Court to the legal notice served upon respondent no.2 on behalf of applicant no.1, by which, respondent no.2 was called upon to execute sale deed in pursuance of agreement to sale. The said notice was duly replied by respondent no.2 admitting execution of document and transaction, further, called upon applicant no.1 to complete the transaction on or before 08.02.2022. Mr. Jayabhar would, therefore, submit that entire story in FIR in Crime No.77/2022 leading to criminal proceeding in S.C.C. No.198/2022 is false and improbable. He would, therefore, urge to quash the proceeding by invoking powers under Section 482 of the Criminal Procedure Code.

4. Per contra, Mr. A. R. Kale, learned APP appearing for the State and Mr. A. S. More, learned Advocate for respondent no.2 vehemently opposes the prayers in the application. They would submit that applicant no.1 had advanced loan at the interest rate of 10% per month. The cheque towards security of such loan was

taken which was drawn on account of son of respondent no.2. On the basis of such cheque, false criminal case has been lodged by the applicants. The respondent no.2 was forced to execute agreement to sale in pursuance of money lending business and recovery of amount and interest. They would, therefore, submit that there is sufficient material for trial of applicants for offence punishable under Section 39 of the Act of 2014.

5. We have considered submissions advanced by learned Advocates appearing for respective parties. We have carefully considered contents of FIR and other material placed into service by parties. We observed that respondent no.2 filed report dated 04.03.2022 with Police Station Jamkhed leading to registration of Crime No.77/2022. The gist of allegation can be summarized as under:

The applicant no.1 advanced loan of Rs.1,00,000/- to respondent no.2. The interest rate of 10% per month was charged. A cheque towards security of repayment of loan amount was obtained from respondent no.2. The said cheque was drawn on the account standing in the name of son of respondent no.2. The loan amount alongwith interest i.e. Rs.1,50,000/- was deposited with applicant no.2, who is wife of applicant no.1. The applicants raised demand of additional amount towards principle and interest. The applicant no.1 has further insisted for transfer of plot owned by respondent no.2. Upon such insistence, respondent no.2 has executed notarized agreement to sale in favour of applicant no.1. Accordingly, it is alleged that applicant no.1 is dealing in money lending business and committed offence punishable under Section 39 of the Act of 2014.

6. To test the veracity of aforesaid contents in the FIR, which according to applicants are palpably false and concocted, we have considered uncontroverted documents placed on record before us. It appears that, son of respondent no.2 namely Sudarshan Devidas Shinde has issued a cheque of Rs.1,00,000/- dated 01.01.2019 in the name of applicant no.1. On presentation, the said cheque was dishonored on 11.01.2019. The applicant no.1 issued legal notice dated 15.01.2019 raising demand of amount under dishonored cheque. On failure to make payment in terms of demand notice, the applicants instituted S.C.C. No.97/2019 in the Court of Judicial Magistrate First Class at Jamkhed against son of respondent no.2. On 22.02.2019 the process has been issued.

7. On 08.02.2021 respondent no.2 has executed agreement to sale in favour of applicant no.1 in respect of land bearing no. 3260/7262 situated within the limits of Municipal Council Jamkhed in favour of applicant no.1. The respondent no.2 agreed to transfer plot admeasuring 55 ft. x 52 ft. in favour of applicant no.1 for consideration of Rs.9,50,000/-. The amount of Rs.1,00,000/- is paid in cash towards earnest money. The balance of Rs.8,50,000/- was to be paid within a period of one year from the date of agreement, then sale deed was to be executed. Before execution of sale deed, measurement of plot was to be carried and after leaving 30 ft. wide road on Eastern side, the actual possession was to be handed over to applicant no.1. Since transaction was not completed within stipulated period, applicant no.1 issued legal notice dated 28.01.2022 calling upon respondent no.2 to execute sale deed. The respondent no.2 replied said notice on 03.02.2022 and accepted transaction and shown his readiness to complete transaction on or before 08.02.2022.

8. The aforesaid sequence of events would clearly reveal civil dispute subsists between parties as regards to the transfer of land. Similarly, applicant no.1 has instituted criminal proceeding for dishonor of cheque against son of respondent no.2. If the contents of reply given by respondent no.2 to the legal notice of applicant no.1 is perused, it is evident that nature of transaction to be of out-and-out sale has been clearly admitted. In this background, it is apparent that FIR in Crime No.77/2022 is apparently improbable and patently false. The story of advancement of loan of Rs.1,00,000/- or repayment of said amount and transfer of land as a part of such loan transaction is inconsistent with the case of respondent no.2 put forth in his reply to the legal notice. Further, pendency of criminal proceeding under the provision of Negotiable Instrument Act against son of respondent no.2 is conveniently suppressed in the FIR.

9. In the aforesaid background, if we look to the language employed in Section 39 of the Act of 2014, it is discernible that business of money lending without obtaining valid license is made punishable with imprisonment for five years with fine of Rs.50,000/-. At this stage, it would be apposite to make reference to Section 39 of the Act of 2014, which reads thus:

> *"39. Whoever carries on the business of money-lending without obtaining a valid licence, shall, on conviction, be punished with imprisonment of either description for a term which may extend to five years or with fine which may extend to fifty thousand rupees or with both."*

10. This Court in case of ***Mandubai Vitthoba Pawar Vs. State of Maharashtra through Superintendent of Police and Others***[1] considered scope of term "business of money lending" as defined in Sub Section (3) of Section (2) of the Act of 2014 and concluded that unless there is continuous and systematic activity

1 **2016 (1) Bom. C.R. (Cri.) 794.**

with a view to earning income, the existence of money lending business cannot be presumed. It is also observed that isolated transaction of money lending would not be enough to meet out requirement of term "business of money lending". In yet another judgment in case of ***Anup Niranjan Dodiya and Another Vs. State of Maharashtra and Another***[2] it is observed that the very foundation of offence of carrying on business of money lending is regular business activity of advancing loan to different persons and gain profit or claim some advantage for earning money.

11. Bearing in mind aforesaid parameters of law and interpretation of term " business of money lending", if contents of FIR in present case are appreciated, the singular transaction of lending amount of Rs.1,00,000/- to respondent no.2 would not constitute business of money lending. From the FIR or other material, there is nothing to gather that applicant no.1 is continuously involved in lending money and earning profit out of such business. In absence of foundation of material to term activity of applicants as money lending business, the prosecution under Section 39 of the Act of 2014 cannot be sustained. So far as offences under Sections 504 and 506 of the Indian Penal Code are concerned, we do not find specific allegations in the FIR that would constitute such offences. In that view of the matter, we are convinced that in light of guidelines laid down by the Supreme Court of India in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***[3] this is a fit case to exercise powers under Section 482 of the Criminal Procedure Code. Hence, we proceed to pass following order:

ORDER

a. Criminal Application is allowed.

---

2 **2020 All.M.R.(Cri) 2497.**
3 **AIR 1992 SC 604.**

b. The FIR in Crime No.77/2022 registered with Jamkhed Police Station, Dist. Ahmednagar for offences punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014 and Sections 504, 506 of the Indian Penal Code and criminal proceeding in S.C.C. No.198/2022 pending before Judicial Magistrate First Class at Jamkhed, are hereby quashed and set aside.

c. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Devendra/September-2024