IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3608 OF 2014

1. Mr. Bipin Onkarmal Parmar,
   Age : 40 Years, Occu.: Business,

2. Mr. Onkarmal Hemchandji Parmar,
   Age : 75 Years, Occu.: Business and Agriculture,
   Both R/at : Flat No.18, Mahavir Nagar,
   E-Ward, District Kolhapur.

3. Mr. Uttam Bhabutmal Parmar,
   Age : 75 Years, Occu.: Business,
   R/at :365/4, Solokhe Mane Colony,
   Samarat Nagar, District Kolhapur. .. Petitioners

Versus

1. The State of Maharashtra,
   (Through Karveer Police Station,
   Karveer, District – Kolhapur).

2. Mr. Maruti Krishna Powar,
   Age : 75 Years, Occu.: Agriculture,
   R/at : Vadgane, Taluka Karveer,
   District Kolhapur. .. Respondents

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Mr. Chaitanya S. Kulkarni, for the Petitioners.

Ms. S. S. Kaushik, A.P.P., for the State-Respondent.

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CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 18th OCTOBER, 2024

JUDGMENT (PER MANJUSHA DESHPANDE, J.) :-

1. The Petitioners herein have filed this Writ Petition invoking Article 226 and 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure ("Cr.P.C."), with a prayer to quash and set aside the R.C.C. No. 964 of 2014 arising out of FIR No. 37 of 2014, registered with Karveer Police Station, District Kolhapur, for the offence punishable under Sections 23, 39 and 45 of the Maharashtra Money Lending (Regulation) Act, 2014, ("the Money Lending Act") read with Section 420, 34 of the Indian Penal Code ("IPC").

When the matter was placed before the Court on 28.11.2014, notice was issued to the Respondent Nos.1 and 2 and interim relief was granted, directing the trial Court not to frame charge till further orders, since the statement was made that charge-sheet is filed. On 21st October, 2016, Rule was granted and interim-relief was continued. Inspite of notice, no one had caused appearance for the Respondent No.2 though served. On 18.12.2023, the matter was dismissed for want of prosecution and it was restored vide order dated 22.02.2024.

Inspite of various chances being granted to the Respondent No.2, nobody has caused appearance, considering the long duration of pendency of the present proceeding, we are constrained to hear and decide the present Writ Petition.

2. The contention of the Petitioner is that, the original complainant i.e. the Respondent No.2 herein, Mr. Maruti Krishna Powar, was in need of money, therefore he has agreed to sell his property bearing land Gat No. 407, ad-measuring 0.40R, sitauted at Vadange, Taluka Karveer, District Kolhapaur, to the Petitioner No.3 for consideration of Rs.4,05,000/-; alongwith property bearing City Survey No. 870, ad-measuring 658.9 Sq.Mtr., situated at Vadange, Taluka Karveer, District Kolhapur, to the Petitioner No.2., for a consideration of Rs.8,00,000/-. Accordingly, the sale deed was executed between the Petitioner No.2 and the Respondent No.2 on 04.07.2005. The Petitioner No.2 has paid the consideration in installments to the Respondent No.2 by issuing cheques on various dates which is mentioned in the sale deed, on the basis of which the registered sale deed dated 04.07.2005 is executed. The Petitioner No.2 became lawful owner and possessor of the said property bearing City Survey No.870, situated at Vadange, Taluka Karveer, District Kolhapur.

Similarly, the Petitioner No.3 has also purchased the agricultural land bearing Gat No. 407 situated at Vadange, Taluka Karveer, District Kohpaur, to the extent of 0.40R, from the complainant vide registered sale deed dated 21.04.2006, for a consideration of Rs.4,05,000/-, by issuing cheques dated 25.07.2005, 26.07.2005, 09.08.2005 and 21.04.2006, which have been received by the Respondent No.2 herein.

3. It is the contention of the Petitioner that, the Petitioner No.3 has in turn sold the property bearing No. 407, ad-measuring 0.40R, which was purchased from the Respondent No.2 to one Sachin Chandramohan Ghatge, vide registered sale deed dated 13.12.2012. A public notice to that effect was issued on 24.07.2012, in a daily newspaper thereby inviting objections to the transfer of ownership in respect of the said property.

4. It is the contention of the Petitioners that, though they had purchased the properties legally as per the established procedure of law, from the Respondent No.2 vide respective registered sale deeds, all of a sudden on 01.07.2014, the Respondent No.2 has registered FIR bearing No.37 of 2014, alleging the commission of offence under Sections 23, 39 and

45 of the Money Lending Act read with Section 420, 34 of IPC. It is alleged by the Respondent No.2 that, he is the owner of the two properties as mentioned above. He had availed a loan of Rs.8,00,000/- at the rate of 3% per month from the Petitioner No.2. On 24.04.2005, he was forced to execute sale deed by the Petitioner No.1 since he could not repay the principal loan amount as well as interest, he had prepared mortgage deed in respect of agricultural property, ad-measuring 0.40R in Gat No. 407, situated at Vadange, in the name of the Petitioner No.3 and paid a consideration of Rs.4,05,000/- to the complainant.

5. It is further alleged that, the son of the complainant and nephew had paid Rs.3,50,000/- to the Petitioner No.1 through Ananda Shelar, but the Petitioner No.1 and 2 started threatening him, to repay the loan of Rs.8,00,000/- with interest or execute sale deed in favour of the Petitioners. It is further alleged that, 10 to 15 days prior to filing of the FIR, certain unknown persons on behalf of the Petitioners entered their properties and threatened the complainant to execute the sale deed in favour of the Petitioner and they have forced him to give in writing that the Petitioners are the owners of the said properties. It is only thereafter it came to their

knowledge that property bearing Gat No. 407, ad-measuring 0.40R, situated at Vadange, is sold by the Petitioners to one Sachin Ghatage. It is alleged that the said purchase of property by the Petitioners from the Respondent No.2-complainant is an illegal transaction.

6. It is the contention of the Petitioner that, in fact they had purchased the property from the complainant by executing registered sale deed. After filing of FIR, they have approached the Sessions Judge, Kolhapur for Anticipatory Bail. The Sessions Judge, Kolhapur has granted anticipatory bail in their favour on 07.07.2014. It is the contention of the Petitioner that, they have been unnecessarily harassed by the complainant. The complainant has failed to make out a prima-faice case against the Petitioner, in support of the allegations that the Petitioners are engaged in money lending business and they have been lending money without holding valid licence. They have been falsely implicated in the present offence. The present FIR is lodged as a result of enmity between the Petitioners and the Respondent. The Respondents are trying to get back at the Petitioners since Petitioner No.1had filed FIR under Sections 323, 504, 506 read with Section 34 of the IPC, against the brother of the complainant.

7. It is the contention of the Petitioner that there is no justification by the complainant for the delay caused in filing the FIR. If there was substance in the allegations that the complainant was forced to execute registered sale deeds dated 04.07.2005 and 21.04.2006, there is no justification as to what prevented to the complainant, to file the FIR immediately after the execution of sale deed. After a long gap of almost nine years, the complainant has filed the present FIR.

8. We have heard Mr. Kulkarni, the learned counsel representing the Petitioner and Ms. Kaushik, the learned A.P.P. for the Respondent-State. We have also perused the papers annexed with the Writ Petition.

The Petitioners have placed on record the documents relevant for deciding the present proceedings and upon going through the sale deeds dated 21.04.2006 and 04.07.2005, it is apparent that both the documents are registered sale deeds executed for valuable consideration, received by the executor/vendor of the said land. There is no substance in the allegations that, the complainant has been forced to execute the document in the favour of the Petitioner herein. Since valid documents executed in the Office of Sub-Registrar have been placed on record, which indicate that the complainant was very much present in the office of Sub-Registrar, his endorsement is there on the document alongwith his photograph. The sale deed has been executed for a valuable consideration which is received by the executor of the document. It does not support the allegations that the sale deed was executed under duress.

9. As regards the offence under the Maharashtra Money-Lending (Regulations) Act, 2014, is concerned, the complainant has filed complaint under Sections 23, 39 and 45 of the said Act. The object of the said Act is to take appropriate, stringent, social and legal measures to effectively prevent harassment to the farmer/debtors, at the hands of Money Lenders and for regulating the transactions of money lending in the State. The said Act has been enacted to curb the cases of harassment at the hands of money lenders. The said Act regulates the money lending business and provides that, unless there is a licence provided to carry on business in a particular area, there is prohibition for conducting the business of money lending.

10. Upon going through the provisions of Section 34,

39 and 45 of the said Act, we do not find that, the provisions of the said Act are attracted in the present case. The said provisions of the Act are reproduced herein below :

> ***"23. Promissory note, Bond, etc., to be factual***
>
> *No money-lender shall take any promissory note, acknowledgment, bond or other writing which does not state the [actual amount of loan and rate of interest], or which state such amount wrongly or execute any instrument in which blanks are left to be filled in after execution, without mentioning the date and amount of loan.*
>
> ***39. Penalty for doing money-lending without valid licence***
>
> *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.*
>
> ***45. Penalty for molestation***
>
> *Whoever molests, or abets the molestation, of a debtor for the recovery of a debt due by him to money-lender shall, on conviction, be punished with imprisonment of either description which may extend to two years or with fine which may extend to five thousand rupees, or with both.*
>
> *[**Provided** that, a person who goes to such house or place in order merely to obtain or communicate information shall not be deemed to have molested for the purposes of this section.]*
>
> *Explanation.-For the purposes of this section, a*

> *person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing,--*
>
> *(a) obstructs or uses violence to or intimidates such other person, or*
>
> *(b) persistently follows such other person from place to place or interferes with any property owned, or used by him or deprives him of, or hinders him in, the use thereof, or*
>
> *(c) loiters near a house or other place where such other person resides or works, or carries on business, or happens to be, or does any act calculated to annoy or intimidate such other person, shall be deemed to molest such other person.*"

11. Upon perusing the provisions of the said Act, we do not find that, the present case involves unregulated money lending. The documents placed on record with regard to the said transaction does not indicate that, there was any kind of money lending transaction involved in the instant case. Both the sale deeds executed are of the year 2005-2006 respectively, which clearly indicate that, it is outright sale and the registered sale deeds have been executed by the respective parties, for the consideration which is received by the complainant. It is not a cost of obtaining signatures on blank papers. The sale deeds are registered and executed before the Sub-Registrar, therefore it holds sanctity of law.

Similarly, even upon going through the Section 420 of the IPC, which reads thus :

> " ***420. Cheating and dishonestly inducing delivery of property.****-Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

We do not find any element of cheating or inducement delivering the property by the Petitioner to the complainant-Respondent No.2 herein. Since the documents itself have been registered in the Office of Sub-Registrar acknowledging the receipt of valuable consideration by the complainant, there is no element of cheating involved in the transaction of which the complaint is filed by the Respondent No.2.

12. Since both the transactions are of outright sale, there is no element of cheating or money lending involved in the transaction between the Petitioners and the Respondent No.2 herein. Since, we are satisfied that the complaint filed by

the Respondent No.2 does not attract the provisions of Money Lending Act or the Indian Penal Code, we do not find any object is likely to be achieved by continuing the proceedings, since the ingredients constituting the offence are not likely to be proved eventually.

13. It would be apposite to refer to the part of judicial pronouncement in case of ***A. M. Mohan V/s. State Represented by SHO And Anr., reported in 2024 SCC OnLine SC 339***, as follows :

> *"11..... in the case of Prof. R.K. Vijayasarathy and Another v. Sudha Seetharam and Another has culled out the ingredients to constitute the offence under Sections 415 and 420 of IPC, as under:*
>
> > *"15. Section 415 of the Penal Code reads thus:*
> >
> > *"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."*
> >
> > *16. The ingredients to constitute an offence of cheating are as follows:*

16.1. There should be fraudulent or dishonest inducement of a person by deceiving him:
16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or
16.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and 16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

17. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

18. Section 420 of the Penal Code reads thus:

"420. Cheating and dishonestly inducing delivery of property.
Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

> *19. The ingredients to constitute an offence under Section 420 are as follows:*
> *19.1. A person must commit the offence of cheating under Section 415; and*
> *19.2. The person cheated must be dishonestly induced to*
> *(a) deliver property to any person; or*
> *(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.*
> *20. Cheating is an essential ingredient for an act to constitute an offence under Section 420.*"

Since there are no ingredients of the offence of cheating in the present case, prima-facie we do not find any substance in the allegations of the Respondent No.2 in respect of the offence registered against the Petitioners. We are aware that the inherent powers under Section 482 of the Cr.P.C., are to be sparingly exercised, however in the present case it is very much apparent that there is no case made out by the complainant, in fact if the said proceedings are allowed to be continued, it would amount only to abuse of process of law and sheer waste of judicial time.

In view of the principles laid down by the Hon'ble Apex Court in the case of ***State of Haryana And Ors. V/s.***

Bhajan Lal And Ors. Reported in 1992 Supp (1) Supreme Court Cases 335, for exercise of powers under Section 482 of the Cr.P.C., we find that the present case would be covered by clause (2) of the principles laid down in the case of Bhajanlal, wherein the allegations of the FIR alongwith material placed do not disclose a cognizable offence justifying an investigation by police officer under Section 156(1). It would also attract clause (3) which stipulates that when the evidence collected do not disclose the commission of any offence and make the case against the accused. Both the clauses are attracted in the present case.

14. Hence, in view of the guidelines as referred above, according to us, it is a fit case for exercising our powers under Section 482 of the Cr.P.C., by quashing the FIR in the instant case.

Accordingly, R.C.C. No. 964 of 2014 arising out of FIR No. 37 of 2014, registered with Karveer Police Station, District Kolhapur, are quashed and set aside and Rule is made absolute in terms of prayer clauses "(b) and (b-1)".

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

Chaitanya