



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

29 CRIMINAL APPLICATION NO.2982 OF 2021

Balaji Onkar Pawar,
Age 38 yrs., Occ. Agri.,
R/o Jategaon, Tq. Georai,
Dist. Beed.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through the Investigating Officer,
Police Station, Talwada,
Tq. Georai, Dist. Beed.
- 2 Mohanlal Bansilal Bhutada,
Age 54 yrs., Occ. Agri.,
R/o Jategaon, Tq. Georai,
Dist. Beed.

... Respondents

...

Mr. V.P. Savant, Advocate for applicant

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

Mr. N.B. Narwade, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 05th MARCH, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application challenges initially the order below Exh.1 in Miscellaneous Criminal Application No.578/2021 passed by learned Judicial Magistrate First Class, Georai, Dist. Beed under Section 156(3) of the Code of Criminal Procedure and First Information Report vide Crime No.250/2021 which came to be registered on the basis of said order dated 13.11.2021 with Police Station, Talwada, Tq. Georai, Dist. Beed on 18.11.2021 and later on by way of amendment for quashing the proceedings in Regular Criminal Case No.454/2022 pending before learned Judicial Magistrate First Class, Georai, Dist. Beed, for the offence punishable under Section 420, 468, 471 of the Indian Penal Code, 1860.

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

3 Learned Advocate appearing for applicant submits that applicant had entered into a nominal sale deed, which was in fact the transaction of money lending in nature with respondent No.2. Said sale deed came to be executed on 27.01.2012 for Rs.2,30,000/-, however, in fact, he had taken amount of Rs.1,50,000/- as hand loan on 22.01.2012 from respondent No.2.

Respondent No.2 gave that amount and charged 5% per month interest on the same. Said sale deed was hollow and was executed as security. He has repaid the loan, but respondent No.2 had not executed the re-conveyance. Applicant had challenged the entire transaction before Sub-Registrar, Beed by filing application No.6/2017. After hearing respondent No.2 and taking evidence Sub-Registrar passed order on 15.01.2020 declaring that the said transaction is money lending transaction and said document was cancelled under Section 18(2) of the Maharashtra Money Lending (Regulation) Act, 2014. The land was restored by said order in the possession of applicant. Respondent No.2 had filed appeal bearing No.8/2020 before the appellate authority i.e. the Divisional Registrar, Latur. By order dated 25.03.2021 the said appeal came to be dismissed. The order passed by Sub-Registrar, Beed was confirmed and then it appears that private complaint/criminal miscellaneous application came to be filed before learned Judicial Magistrate First Class, Georai by respondent No.2 on 27.10.2021. There is total suppression of fact before learned Judicial Magistrate First Class by respondent No.2. In fact, though the order of restoration of land is formally passed by Sub-Registrar, Beed; yet, the possession was never parted by applicant to respondent No.2. Rather he had filed complaint application on 01.01.2017 before Police Inspector, Police Station, Talwada regarding the money lending transactions. Thereafter, on 19.01.2020, that is, after the

decision of Sub-Registrar, Beed, respondent No.2 had tried to evict applicant and his family members and caused damage to his house and the land. Offence vide Crime No.18/2020 came to be registered with said Police Station on 01.02.2020 under Sections 447, 427 read with Section 34 of the Indian Penal Code against respondent No.2 and other persons. Perusal of impugned order would show that there was no application of mind by learned Judicial Magistrate First Class as it is stated that offences are non cognizable; yet, investigation under Section 156(3) of the Code of Criminal Procedure was directed. No doubt, Sections 420, 468, 471 of the Indian Penal Code are cognizable, but learned Magistrate had not considered as to whether there is compliance of decision in **Priyanka Srivastava and another Vs. State of Uttar Pradesh and others** [(2015) 6 SCC 287] and subsequent decisions. Therefore, the said order deserves to be set aside and First Information Report that has been registered on the basis of said order also deserves to be set aside.

4 Learned APP for respondent No.1 and learned Advocate for respondent No.2 opposed the application and submit that though two orders have gone against respondent No.2; yet, the fact is that present applicant got his 7/12 extract prepared online and then submitted it before Maharashtra State Electricity Distribution Company Limited, which was against the sale

deed on the day when that application was filed. The sale deed was yet to be declared void or cancelled and, therefore, there is fraud, which needs to be investigated.

5 At the outset, it is to be noted that when an order under Section 156(3) of the Code of Criminal Procedure is to be passed by a Magistrate, then he has to see basically whether the offence that has been made out *prima facie* is a cognizable offence. Thereafter, the stages those have been prescribed in the decision in **Priyanka Srivastava** (supra) will have to be followed. It is the duty of the Magistrate to see whether those stages have been fulfilled or not. In the present matter, there is absolutely no mention about those steps being taken and seen by learned Judicial Magistrate First Class. In paragraph No.4 of application, statements are made that complaint applications were given. Now, charge sheet is also filed before learned Magistrate, however, copies of those applications/complaints are not collected. Learned Magistrate while passing the impugned order says that the offences are non cognizable. It might be typing mistake, because offences under Section 420, 468, 471 of the Indian Penal Code are cognizable offences. A cryptic order has been passed and most important point is that there is total suppression of orders passed by Sub-Registrar, Beed and decision in his appeal before Sub Divisional Registrar, Latur in the complaint

application. If those documents would have been also produced, the result might have been different. Learned Magistrate might have had a second thought of giving directions for investigation under Section 156(3) of the Code of Criminal Procedure. A complaint application based on suppression of facts and keeping the concerned Court under dark, then obtains order under Section 156(3) of the Code of Criminal Procedure, such order, the First Information Report and also the charge sheet based upon such First Information Report deserves to be quashed and set aside. Now, in the charge sheet, copies of both orders have been produced. Still the Investigating Officer comes to a conclusion that case is made out for forwarding it to the Magistrate, thereby filing of charge sheet. When the complaint has been made much after the decisions by two competent authorities which was against the informant, the informant cannot go back to the date on which the application was made by present applicant before M.S.E.D.C.L. When the connection appears to have been given by M.S.E.D.C.L., certainly, they had gone to the spot, would have seen who is in possession. In fact, M.S.E.D.C.L. proceeded on the basis of 7/12 extract only. 7/12 extract is not the document of ownership. It was not binding upon M.S.E.D.C.L. to give the connection only on the basis of 7/12 extract. Therefore, there is absolutely no material that has been collected and that was there before the learned Magistrate to come to a conclusion that there is *prima facie* evidence to

proceed against applicant for offences punishable under Sections 420, 468, 471 of the Indian Penal Code. This is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Regular Criminal Case No.454/2022 pending before learned Judicial Magistrate First Class, Georai, Dist. Beed arising out of order dated 13.11.2021 passed below Exh.1 in Miscellaneous Criminal Application No.578/2021 by learned Judicial Magistrate First Class, Georai, Dist. Beed as well as First Information Report vide Crime No.250/2021 dated 18.11.2021, for the offence punishable under Sections 420, 468, 471 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant Balaji Onkar Pawar.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)