2025:BHC-NAG:2340-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.870/2014

PETITIONERS :	1. Santosh Dulichand Sharma Aged about 45 years, Occ- Business.
	2. Dayalini Santosh Sharma Aged about 40 years, Occ – Nil. Both resident of Ward No.3, Dhamangaon Rly. District Amravati.
...VERSUS...	
RESPONDENTS :	1. State of Maharashtra, Through Police Station Officer, Dattapur Police Station, District Amravati.
	2. Assistant Registrar Co-operative Societies, Dhamangaon, Office at Bhagat Singh Square, Dhamangaon Railway, Amravati.
	3. Advocate General, State of Maharashtra Office at Fort, Mumbai (Amendment carried out as per Court's order)
	Ms Ashwini Bhagwat, Advocate h/f Mr. Alok Daga, Advocate for petitioners
	Mr. D.V. Chauhan, Senior Advocate/Public Prosecutor with Mr. N.H. Joshi, APP for respondent Nos.1 and 2

CORAM : ALOK ARADHE, C.J. AND
AVINASH G. GHAROTE, J.
DATE : 26/02/2025

ORAL JUDGMENT : (PER : AVINASH G. GHAROTE, J.)

1. The petition questions the FIR bearing Nos.07/2014, 08/2014 and 09/2014 registered on 22/01/2014 and 21/10/2013 at Police Station Officer, Dattapur District Amravati for the offence punishable under Section 420 r/w 34 of Indian Penal Code (IPC) and Section 39, 41 and 42 of the Maharashtra Money Lending (Regulation) Act, 2014 (for short hereinafter, "Act of 2014"). It also seeks to declare Section 34 of the aforesaid Act of 2014 as ultra vires to Article 21 of the Constitution. The challenge to the vires of Section 34 of the Act of 2014, is not being pressed on account of which we are not dealing with the same.

2. We have heard Ms Ashwini Bhagwat, learned Counsel for the petitioners and Mr. D.V. Chauhan, learned Senior Counsel/Public Prosecutor along with Mr. N.H. Joshi, learned Additional Public Prosecutor for the respondent Nos.1 and 2.

3. Ms Bhagwat, learned Counsel for the petitioners contends that in light of the factual background, as indicated in the petition, and specifically the fact that the aforesaid offences have been registered against the petitioners in respect of three sale-deeds dated 18/03/2000 by one Sanjay Choudhari in favour of the petitioner No.1; sale-deed dated 09/06/2000 by Dilip Tarone in favour of the petitioner No.2 and sale-deed dated 14/10/2010 by

Suman Jare in favour of the petitioner No.2, the Act of 2014 having come into force on 04/04/2014, cannot be applied to the petitioners for the purpose of registering the offences under Sections 39, 40 and 41 thereof. It is also contended that considering the aforesaid sale-deeds, which are duly registered documents and more than a decade old the offence under Section 420 r/w 34 of IPC also ought not to have been registered as for the entire duration from their execution and registration till the filing of the FIR in 2013 and 2014, no proceedings have been taken out, to take any exception to them or to challenge them. She, therefore, contends that the FIRs indicated above need to be quashed and set aside. In support of her contention, she relies upon ***Bhanudas S/o Baburao Dalve Vs. The State of Maharashtra, Through Police Station Naldurg, Tq. Tuljapur, District Osmanabad and another [Criminal Application No.3426/2022, decided by the learned Division Bench of this Court at Aurangabad on 25/11/2024]*** and so also ***Baliram S/o Ashroba Kadape and others Vs. The State of Maharashtra, Through Principal Secretary, Home Department, Mantralaya, Mumbai and others, 2018 ALL MR (Criminal) 2701***.

4. Mr. Chauhan, learned Senior Counsel/Public Prosecutor appearing for the respondent Nos.1 and 2 very fairly concedes to the

position, that on account of the provisions of Section 39, 40 and 41 of the Act of 2014 being penal in nature, they would not be applicable retrospectively. He, however, submits that insofar as the offences registered under Section 420 r/w 34 of IPC, they ought to be permitted to proceed ahead, as there is no statutory prohibition for continuing the prosecution in that regard.

5. Insofar as the provisions of Section 39 of the Act of 2014 is concerned, the learned Division Bench of this Court in ***Baliram Kadape*** (supra) has categorically held that the provisions of the Act of 2014 would not be applicable to the transactions, which took place prior to its coming into force on 24/02/2014 as the Act cannot be retrospective in nature, as though Section 39 of the Act of 2014 was analogous to Section 32 B of the Bombay Money-Lenders Act, 1946 (for short hereinafter "Act of 1946"), however, under the Act of 1946 the punishment for the first offence was upto one year imprisonment, which has been increased to five years and the offence has been made cognizable under Section 48, which it was not so under the Act of 1946. This has been followed by another Division Bench in ***Bhanudas Baburao Dalve*** (supra) and nothing has been pointed out to us to take a contrary view.

6. Insofar as the offences under Section 40 and 41 of the Act of 2014 are concerned, which are analogous to Section 32 A and 32 B of the Act of 1946, there is a marked difference in the language of both the provisions, which can be discerned from a comparison of the same, which can be apparent from the following table:

Section 32 A and 32 B of the Bombay Money-Lenders Act, 1946:	***Section 40 and 41 of the Maharashtra Money Lending (Regulation) Act, 2014:***
32A. Penalty for making false statement. *Whoever in any document required by, or for the purpose of, any of the provisions of this Act, wilfully makes a statement in any material particulars knowing it to be false, shall, on conviction, be punished with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.*	***40.Penalty for making false statement.*** *Whoever in an application for grant of licence or renewal of licence, or in any document required by, or for the purpose of, any of the provisions of this Act willfully makes a statement in any material particulars knowing it to be false, shall, on conviction, be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to twenty-five thousand rupees or with both.*

32B. Penalty for obtaining licence under fictitious name, carrying on money-lending business without valid licence and entering into agreement in the course of money-lending business carried on under fictitious name.	***41. Obtaining licence under fictitious name, carrying on money-lending at a place not mentioned in licence, etc.***
Whoever, -	*Whoever,-*
(a) obtains a licence in the name which is not his true name or carries on the business of money-lending under the licence so obtained, or	*(a) obtains a licence in the name which is not his true name or carries on the business of money-lending under the licence so obtained ; or*
(b) carries on the business of money-lending at any place without holding a valid licence authorizing him to carry on such business at such place, or	*(b) carries on the business of money-lending at any place not mentioned in the licence authorizing him to carry on such business ; or*
(c) enters into any agreement in the course of business of money-lending without a valid licence, or under a licence obtained in the name which is not his true name, shall, on conviction, be punished, -	*(c) enters into any agreement in the course of business of money-lending without a valid licence, or under a licence obtained in the name which is not his true name, shall, on conviction, be punished,-*
(i) for the first offence, with imprisonment of either description which may extend to one year <u>or with fine which may extend to rupees one thousand and five hundred or</u> with both, and	*(i) for the first offence, with imprisonment of either description which may extend to one year <u>or with fine which may extend to rupees fifteen thousand</u> or with both, and*
(ii) for the <u>second</u> or <u>subsequent offence</u>, in addition to, or in lieu of, the penalty specified in clause (i), <u>with imprisonment which shall not be less than two years</u>, where such person is	*(ii) for the second and subsequent offence, in addition to or in lieu of, the penalty specified in clause (i), <u>with imprisonment of either description which shall not be less than five years</u>, where such person is not a company,*

not a company, <u>and with fine which shall not be less than rupees five thousand</u>, where such person is a company.	*and <u>with fine which shall not be less than rupees fifty thousand</u>, where such person is a company.*

7. The above table would demonstrate the nature of difference in the language of both the provisions and would indicate that the provisions of Section 40 of the Act of 2014 has been expanded by adding the expression "an application for grant of licence or renewal of licence" and the fine has been increased from upto five thousand rupees, to upto twenty five thousand rupees. Insofar as the provisions of Section 41 of the Act of 2014 are concerned, the fine has been increased from Rs.1,500/- to Rs.15,000/- for the first offence and the sentence has been increased from two years to five years and the fine from Rs.5,000/- to Rs.50,000/- in case the offence is by a company. It would therefore apparent that there is a marked difference between the analogous provisions, as contained in the two Statutes. It is a settled position of law that a provision, which prescribes a higher penalty, cannot be made applicable retrospectively, as that adversely affects the right of a citizen which has already accrued in his favour, to be treated in accordance with the law as was then prevailing.

8. Considering the above provisions, insofar as the provision under Section 39, 40 and 41 of the Act of 2014 is concerned, since it relates to the transactions before coming into force the said Act, the same cannot be permitted to continue, as doing so would be to hold that the provisions of the Act of 2014 would apply with retrospective effect, which is not the legal position at all.

9. Insofar as the prosecution under Section 420 r/w 34 of IPC is concerned, it would however be a different situation altogether, as the same would clearly be tenable and would be liable to be continued.

10. In the result, we partly allow the writ petition by setting aside and quashing the FIR bearing Crime Nos.07/2014, 08/2014 and 09/2014, insofar as they relate to offences under Section 39, 40 and 41 of the Act of 2014 are concerned. The prosecution vis-a-vis Section 420 r/w 34 of the IPC, in the above FIRs instituted against the petitioners, however, shall continue and shall be tried in accordance with law. Rule is made absolute in the above terms.

(AVINASH G. GHAROTE, J.) **(CHIEF JUSTICE)**

Wadkar