IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.643 OF 2023

AU Small Finance Bank Limited & Ors. … Petitioners
V/s.
State of Maharashtra & Anr. … Respondents

Mr. Sandesh Shukla, Ms. Ana Samah Sayed, Afsar Ansari, Devesh Sawant i/by Vivek Patil & Associates for the Petitioners.
Mr. S. R. Agarkar, APP for the Respondent-State.
Mr. Ameya Pitale for Respondent No.2.

CORAM : N.R. BORKAR, J.
DATE : 13TH JANUARY 2026

P.C. :

1. This Writ Petition takes exception to the order dated 28th November 2022 passed by the Judicial Magistrate First Class, Shahapur below Exhibit 1 in O.M.A. No.235 of 2022, by which the Learned Magistrate has issued process against the present Petitioners for the offences punishable under Sections 418, 420, 464, 465, 468, 471 of the Indian Penal Code.

2. Petitioner No. 1 is a scheduled commercial bank. Petitioner Nos. 2 to 4 are the Managing Director, Chairman and Deputy Manager (Legal) respectively of Petitioner No.1. Respondent No. 1 is the State of Maharashtra and Respondent No.2 is the original complainant.

3. It is the case of the original complainant that he was running a business namely Dhruv Transport since 2018. He was in need of financial assistance for his business and as such he approached Petitioner No.1 to

avail loan for the purpose of refinancing his truck bearing Registration No.MH-04-HD-0216. It is alleged that on 16th January 2020, his signature as the borrower and his wife's signature as the guarantor, were taken on a blank loan application form by Petitioner No.1's employee at their house. Thereafter, the said employee assured him that he will be contacted upon approval of the said loan.

4. It is alleged that on 12th October 2021, the original complainant received notices, thereby notifying him that Petitioner No. 1 had sanctioned and disbursed a loan of Rs. 7,28,000/- in favour of him against his truck bearing Registration No. MH-04-HD-0216. Due to the non-payment of the loan installments, Petitioner no.1 had filed an arbitration proceeding against him. It was further mentioned in the notice that as per Order dated 4th October 2021, passed by the Sole Arbitrator at Jaipur in ARB Case No. AU/720/2021, Petitioner No.1 is entitled to take possession of the said truck as well as to sell the same to adjust the sale proceeds towards the loan amount due. It is alleged by the original complainant that he had never applied for the said loan.

5. I have heard Learned Counsel for the Petitioners and Learned Counsel for contesting Respondent No.2.

6. Learned Counsel for the Petitioners submits that the Learned Magistrate refused to order investigation under Section 156(3) of the Cr. P. C. and directed the investigation under Section 202. It is submitted that pursuant to the said direction, investigation was done and as the dispute between the parties was found to be of civil in nature, the report was

accordingly submitted. It is submitted that the Learned Magistrate, without considering the said fact, has mechanically issued the process. It is submitted that though complainant has made all sorts of allegations, however, he has not disputed that he has received the amount of Rs.6,10,000/- towards loan. It is submitted that the complainant has filed the complaint with ulterior motive. It is submitted that considering the facts and circumstances of the case, the order impugned cannot be allowed to stand.

7. On the other hand, Learned Counsel for Respondent No.2-Complainant submits that the Learned Magistrate after considering the material on record has rightly issued the process. Learned Counsel for Respondent No.2 submits that detail reasons are not required to be recorded at the time of issuance of process. In support of the said submission, Learned Counsel for Respondent No.2 has relied upon the judgement of the Hon'ble Supreme Court in the case of ***U. P. Pollution Control Board vs. M/s. Mohan Meakins Ltd. & Ors.***[1]

8. I have perused the impugned order. It reads thus:

> *"Perused the complaint. Heard, learned Advocate for the complainant. Verification statement of the complainant is recorded. I have gone through documents filed along with the complaint, document filed on record and report filed u/s 156(3) of Cr.p.C. All the record prima-facie shows commission of the offence u/s. 418,420,463,464,465,468,471 r/w 34 of Indian Penal Code by all accused. In the result issue process against accused U/s. 418,420,464,465,468,471 of the Indian Penal Code on P.F. R/on-18/02/2023. This case be registered as regular case."*

1 [2002] 2 S.C.R. 566

9. It appears that Learned Magistrate has mechanically issued process against the present Petitioners for all the offences mentioned in the complaint without examining whether on the basis of allegations, the said offences are *prima facie* made out or not. In the investigation carried out under Section 202 of the Cr. P. C. the dispute between the parties was found to be of civil in nature and accordingly report was submitted. The Learned Counsel for the Complainant has not disputed the fact that the Complainant has received the amount of Rs.6,10,000/- towards loan from Petitioner No.1-Bank. The complaint thus does not appear to be bonafide. The order impugned therefore cannot be allowed to stand. Hence, the following order:

ORDER

i. The Writ Petition is allowed.

ii. The order impugned is set aside.

iii. The complaint filed by Respondent No.2-Complainant is dismissed.

(N.R. BORKAR, J.)