



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1147 OF 2022

1) Ushabai Babasaheb Nannaware,
Age : 45 years, Occ.: Agriculture,
R/o : Dev Pimpalgaon,
Taluka : Badnapur, District : Jalna.

2) Shankar Dashrath Dhanwate,
Age : 49 years, Occ.: Agriculture,
R/o : Vitthal Nagar,
Chandanzira, Jalna, Taluka and
District : Jalna.

...APPLICANTS
(Orig. Accused
Nos. 2 & 3 as
shown in FIR)

V E R S U S

1) The State of Maharashtra,
Through Police Station Officer,
Police Station Taluka Jalna,
District: Jalna.

2) Dilip Tukaram Kawle,
Age : 43 years, Occ.: Agriculture,
R/o : Ganeshnagar, Golapangri,
Taluka and District Jalna.

...RESPONDENTS
(Respdt. No. 2 is
Orig. informant)

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Advocate for the Applicants : Mr. S.J.Salunke
Additional Government Pleader for Respondent No. 1/State : Mr.
A.D.Wange
Advocate for Respondent No. 2 : Mr.D.G.Kamble
.....

**CORAM : SMT. VIBHA V. KANKANWADI &
ROHIT W. JOSHI, JJ**

DATE : 04.12.2024

JUDGMENT : [PER : ROHIT W. JOSHI, J.]

1. The present application is filed under Section 482 of the Code of Criminal Procedure, 1973, (for short "Cr.P.C."), inter-alia praying to quash and set aside the First Information Report No.628 of 2021, (for short "FIR"), dated 24.12.2021, registered with Police Station Taluka Jalna, District Jalna, for the offence punishable under Sections 420, 447, 341, 504 and 506 read with Section 34 of the Indian Penal Code, and under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014, (for short "The Money Lending Act"), along with Regular Criminal Case bearing RCC No. 234 of 2022, registered pursuant to the said FIR, which is pending on the file of learned Judicial Magistrate, First Class, Jalna. The applicants in the present matter are original accused Nos. 2 & 3. Respondent No. 2 is the informant.

2. Respondent No. 2 has lodged FIR against the present

applicants and two other persons namely Narayan Khandekar and Shivaji Sawant, inter-alia alleging that they have purchased his property against the loan advanced by them to him and those sale transactions are got executed in breach of the provisions of Money Lending Act, 2014 in as much as the accused persons do not have money lending license and further that he has also been cheated during the course of the said transaction. He further alleges that applicant No. 2 has tried to commit trespass over the property purchased by him under illegal money lending transaction and has also wrongfully restrained him entering his own property resulting in an offence for criminal trespass and wrongful restraint punishable under Sections 447 and 341 of the Indian Penal Code. Apart from this, Sections 504 and 506 of the Indian Penal Code are also invoked by him, alleging that he was threatened with life when he resisted illegal activities of the applicant No. 2/ accused No. 3.

3. Respondent No. 2 has stated in the FIR that his father was suffering from pneumonia in the year 2014 and ultimately, he left heavenly abode due to the said ailment. He further states that he was seriously ill in the year 2017. He states that due to aforesaid ailment of his father, followed by his own illness he had

run into debts. He states that thereafter he had approached one Shivaji Savant in January, 2018 seeking financial assistance. The said Shivaji Sawant took him to one Narayan Khandekar, who according to Shivaji Sawant was a money Lender. Respondent No. 2 further alleges that he took loan of Rs. 1,00,000/- at the interest at the rate of 5 percent per month from said Narayan Khandekar and towards security he handed over a blank cheque and the blank stamp paper signed by him. He further alleges that since he could not make repayment of money, Narayan Khandekar exerted pressure on him and got a sale deed of 1.5 acres i.e. 0.60 H.R. of land being part of Gut No. 29 of village Ganesh Nagar, executed from him. He alleges that the sale consideration as mentioned in the sale deed dated 30.06.2018 was not paid to him although it is mentioned in the documents and that the expenses of the registration of the sale deed were borne by him. The said Narayan Khandekar, who has purchased the subject property is accused No. 1 and Shivaji Sawant, who referred respondent No. 2 to Narayan Khandekar is accused No. 4.

4. The allegations against applicant No. 1, who is arrayed as accused No. 2 is that she is cousin of respondent No. 2 and in

order to augment funds to refund loan amount to Narayan Khandekar/accused No. 1, he took loan of Rs.2,75,000/- from her, which was to be repaid with interest at the rate of 5 percent per month and towards security of loan amount, he had executed a sale deed dated 02/11/2018 with respect to 0.78 H.R. land, in the aforesaid Gut No. 29 of village Ganesh Nagar, in favour of applicant No. 1/accused No. 2. He states that he has paid interest to the tune of Rs. 60,000/- to applicant No. 1. He further stated that applicant No. 1 misled him and executed a sale deed with respect to 0.78 H.R. land purchased by her in favour of applicant No. 2/accused No. 3. This sale transaction is dated 08.05.2020. Based on the sale deed dated 08.05.2020, applicant No. 2/ accused No. 3 has recorded his name in the 7/12 extract. This act on the part of the applicant Nos. 1 & 2 amounts to cheating according to respondent No.2. Respondent No. 2 has further stated that simultaneously accused No. 1 has also sold 0.60 H.R. land to applicant No. 2/accused No. 3 under the same sale deed dated 08.05.2020. The allegation of respondent No. 2 is that the sale deeds executed in favour of accused Nos. 1 & 2 were only nominal sale deeds executed towards security for the loan amount. They have sold the property purchased by them further to applicant No.

2/accused No. 3. He, therefore, alleges that the present applicants and accused No. 1 have committed offence of cheating under Section 420 of the Indian Penal Code, as also offence for illegal money lending under Section 39 of the Money Lending Act, 2014.

5. Learned Advocate Mr. Salunke, for the applicants contends that admittedly applicant no. 1 is cousin of respondent No. 2. Respondent No. 2 admits in the FIR that he has executed a sale deed with respect to 0.78 H.R. land in the subject property in her favour. As regards the sale deed being camouflage for illegal money lending transaction and merely a document of security for loan amount, he submits that even if, the said allegation is accepted to be completely true and correct, the ingredients of Section 39 of the Money Lending Act, 2014, will not be attracted. He further elaborated the submissions by pointing out that going by the allegations in the FIR and the material in the charge-sheet, this is a solitary transaction of money lending, in which the applicant No. 1 has indulged. There is no allegation regarding any other similar transactions being entered into by applicant No. 1. He would submit that offence under Section 39 of the Money Lending Act, deals with the business of money lending and not solitary or

isolated transaction of money lending. He would invite our attention to Section 2 (3), which defines term business of money lending to mean, the business of advancing loans. He would submit that the term business implies the routine systematic activity in which, the person indulges and therefore, a single transaction of money lending cannot be termed as business of money lending, in order to attract the rigor of Section 39 read with Section 2 (3) of the Money Lending Act. As regards the allegation with respect to the offence of cheating, he submits that admittedly respondent No. 2 has voluntarily sold the property in favour of applicant No. 2. Respondent No. 2 does not allege that he was deceived into selling the property to applicant No. 1. He submits that the ingredients of Section 415 and 420 of the Indian Penal Code also are not made out. The above submissions are made with respect to the allegations against applicant No. 2/Accused No. 3.

6. As regards the applicant No.2, Mr. Salunke, further submits that he has not purchased the property from respondent No. 2. He submits that respondent No. 2 had sold the property to accused No. 1 - Narayan and accused No. 2 - Ushabai (applicant No. 1), from whom he has purchased the property. As such,

respondent No. 2 cannot allege that applicant No. 2 has indulged in any illegal money lending transaction and/or that he has cheated him in selling the property. It will be pertinent to mention here that the allegation in the FIR against applicant No. 2 is also that he has not paid the sale consideration of Rs.20,73,450/- to respondent No. 2. Learned Advocate Mr. Salunke would submit that before execution of the sale deed, an agreement of sale dated 20.02.2020 was executed in between applicant No. 2 as purchaser and respondent No. 2 and accused Narayan as vendors. As on 20.02.2020 respondent No. 2 had sold 0.60 H.R. land to Narayan accused No. 1 and he was owner of remaining 0.78 H.R. land, which he subsequently sold to applicant No. 1/accused No. 2, vide sale deed dated 08.05.2020. Learned Advocate Mr. Salunke has also drawn our attention to the receipts dated 28.02.2020 and 10.06.2020, titled as 'Bharna Pavati', executed by respondent No. 2, informant in lieu of having received a part of the total sale consideration, in terms of the agreement dated 20.02.2020. He would further submit that admittedly the entire 1.38 H.R. land has purchased by applicant No. 2, vide sale deed dated 08.05.2020. He points out that the respondent No. 2 has also signed the said sale deed as a consenting party. He therefore, submits that Section 420

of the Indian Penal Code and Section 39 of the Money Lending Act, are not attracted. As regards offence of criminal trespass and wrongful restraint punishable under Section 447 and 341 of the Indian Penal Code, he would submit that since he is a true and lawful owner of the said property, he is entitled to possess and occupy the same and therefore, the question of any trespass, much less, criminal trespass over the suit property does not arise. Likewise, being the owner of the said property, he is also entitled to restrain any third person including respondent No. 2, who is erstwhile owner from entering the said property.

7. Apart from the aforesaid, Mr. Salunke learned Advocate for the applicants drawn our attention to another sale deed dated 06.05.2020, under which respondent No. 2 has sold 1/4th share in the well, situated in adjoining field bearing No. 32 in favour of applicant No. 2. Mr. Salunke, would submit that the sale transaction with respect to the said land forming Gut No. 29 is genuine sale transaction and therefore, the ancillary sale transaction is also made with respect to the right to draw water from the adjoining field owned by respondent No. 2. He also drawn our attention to the fact that a civil suit being RCS No. 33 of 2022,

filed by applicant No. 2 with respect to said property against respondent No. 2 and his family members is pending.

8. As against this, Mr. Wange, learned APP representing respondent No. 1/State and Mr. Kamble, learned Advocate representing for respondent No. 2 submit that respondent No. 2 was under financial distress and was in desperate need of money. Applicant No. 1 being his cousin was aware about the situation and exploited same by indulging in illegal money lending transaction. They further state that having entered into illegal money transaction, applicant No. 1 has also cheated respondent No. 2 by selling said property to applicant No. 2, acting in breach of the understanding that the sale deed was only obtained as security for the loan amount advanced to respondent No. 2. With respect to applicant No. 2, they submit that he was aware about the fact that applicant No.1 as also Narayan/ accused No.1 had advanced loan amount to respondent No. 2 and the sale deeds were obtained by them, merely as security for the loan amount respectively advanced by them. Although applicant No. 2 was aware that the sale transactions are not genuine and he has exploited the situation by obtaining sale deeds with respect to the said property from

aforesaid purchasers. They submit that he is therefore, equally responsible for committing of the offence of cheating. They would further submit that having purchased the property applicant No. 2 has also indulged in illegal act of criminal trespass and wrongful restraint rendering himself liable for punishment under Section 447 and 341 of the Indian Penal Code. They would submit that at the present when the applicants intend to get the criminal prosecution quashed at the inception, this Court should not look into correctness and otherwise all the allegations made in the FIR and that for the purpose of the present application, the same should be believed to be true and correct. They sum up of the submission stating that respondent No.2 has been cheated into parting his property and further that applicant No. 1 has indulged in money lending business without license.

9. We have perused the FIR and final report under Section 173 and the documents forming part of the charge-sheet with the able assistance of the learned counsels representing the rival parties.

10. At the outset, we may clarify that offence punishable

under Section 420 of the Indian Penal Code and Section 39 of the Money Lending Act are qualitatively different offences. The offence punishable under Section 39 of the Money Lending Act is committed, when a person indulges in money lending business without obtaining valid license under the provisions of Money Lending Act, 2014. In such cases, the vendor executes the sale deed on his own accord, although due to financial distress. The vendor does not execute the sale deed due to any misrepresentation or deception. Such transaction which is willfully entered into will not attract the essential ingredients for offence of cheating. The offence of cheating is attracted only when a person is deceived and thereby dishonestly induced to deliver his property to another person. The intention to cheat must be present at the very initiation of the transaction. As noticed above, in sale transaction of money lending, there is no deception or dishonest inducement to part with the property.

11. Reverting to the facts of the case, respondent No. 2 has clearly stated in the FIR that he was in need of money to make repayment of loan obtained from accused No. 1 and therefore, he approached accused No. 2/applicant No. 1 and obtained loan of Rs.

2,75,000/- . He claims that the sale deed dated 02.11.2018 was executed by him in favour of applicant No. 1 as security for loan amount. He has stated that he has refunded the sum of Rs.60,000/- only towards interest. This implies that he has not refunded the entire loan amount of Rs. 2,75,000/-. In this backdrop, we need to examine the sale deed dated 08.05.2020. The sale deed dated 08.05.2020 is executed by applicant No. 1/accused No.2 and Narayan/ accused No. 1, as vendors, in favour of applicant No. 2/ accused No. 3 who is the purchaser. Respondent No. 2 is party to the said document and has signed the same as consenting party. The execution of the sale deed dated 08.05.2020 is not disputed, although it is alleged that the same is got executed by the applicants by misleading him. Respondent No. 2 is absolutely silent about the circumstances in which he has signed the sale deed dated 08.05.2020, in favour of applicant No. 2. He also does not explain the circumstances in which he appeared before the Sub Registrar for registration of the sale deed. He has merely stated that applicant No. 1 executed the sale deed by misleading him. Apart from this, there are no particulars as regards the manner in which he was allegedly misled. There is absolutely no whisper in the FIR in this regard.

12. As regards the allegations of respondent No. 2 that he has not received amount of Rs. 20,73,450/-, which was agreed as sale consideration, as per the agreement of sale dated 20.02.2020 executed by him and accused No. 1 Narayan in favour of applicant No. 2, we may state that the agreement dated 20.02.2020 with respect to 1.38 H.R. land in Gut No. 29. Out of this 1.38 H.R. land, the respondent No. 2 had sold 0.60 H.R. land to accused No. 2, vide sale deed dated 30.06.2018. Remaining 0.78 H.R. portion of land was sold by him to applicant No. 1/accused No. 2, vide sale deed 02.11.2018. Thus, as on 20.02.2020, respondent No. 2 had sold entire 1.38 H.R. land in favour of accused No. 1 and accused No. 2 (applicant No. 2). The applicant No. 2 has filed a receipt dated 28.02.2020, executed in 'Marathi' titled as 'Bharna Pavati' executed by respondent No. 2, in favour of applicant No. 2, in which it is stated that against the sale consideration of 0.78 H.R. land in Gut No. 29, respondent No. 2 had received a sum of Rs.4,00,000/- in cash on 20.02.2020 i.e. the date of agreement and further amount of Rs. 2,00,000/- on 28.02.2020 i.e. the date of execution of the said receipt. Another similar document dated 10.06.2020 is filed on record by the applicants, as per which respondent No. 2 has

received a sum of Rs.1,00,000/- through a cheque dated 10.06.2020 bearing No. 84416 amounting to Rs. 50,000/- in cash. The bank statements of respondent No. 2 and his wife are filed along with the charge-sheet. A perusal of bank account statement of respondent No. 2 would demonstrate that the cheque No. 84416 is credited in his account on 12.06.2020, likewise, a sum of Rs.4,00,000/- is deposited by him in his bank account between 26.02.2020 and 29.02.2020, Rs.1,00,000/- on 26.02.2020, Rs.2,00,000/- on 27.02.2020, Rs.1,00,000/- on 29.02.2020. The said entries of cash deposits are in close proximity with 20.02.2020 i.e. the date of agreement and 28.02.2020 i.e. the date of execution of the receipts. The respondent no.2 is completely silent with respect to the said entries. It will be important to note that immediately after the aforesaid amount was credited in the bank account of the respondent no.2 the same are debited from the account which implies that he has utilized the said amounts.

13. Respondent No. 2 was under financial distress and according to him he had obtained loan of Rs. 1,00,000/- from accused No. 1 and loan of Rs.2,75,000/- from accused No. 2/applicant No. 1, which he could not repay. In this back drop it

appears that these amounts have been received by respondent No.2 in terms of agreement dated 20.02.2020, executed in favour of applicant No. 2. We may also note that since before 20.02.2020 respondent No. 2 had already sold entire 1.38 H.R. land. It is obvious that he will not receive entire sale consideration of Rs. 20,73,450/- as mentioned in the agreement to sale dated 20.02.2020. In this back drop we may also notice that undisputedly respondent No. 2 has joined in execution of sale deed dated 08.05.2020 in favour of applicant No. 2 as a consenting party and has also appeared before the sub-registrar for the purpose of registration of the said document.

14. Thus, it appears from the record that the agreement to sale dated 20.02.2020 and the subsequent sale dated 08.05.2020 have been executed voluntarily by respondent No. 2. The allegations of cheating are not supported by any material on record. Rather there are many aspects which indicate genuineness of the transaction and respondent No. 2 has miserably failed to explain those circumstances, particularly receipts of amount, which is reflected in the bank account statements.

15. The learned counsels for the respondents argue with vehemence that had the earlier sale transactions between the respondent no.2 as seller and the accused nos. 1 and accused no.1 (applicant no.1) as purchasers, been genuine transactions of sale, the respondent no.2 would not be asked to join the sale deed dated 08.05.2020 executed in favour of the applicant no.2 as a consenting party. This may be a valid argument in civil dispute between the parties. However, in the present proceeding where breach of section 39 of the Money Lending Act is alleged, the issue is as to whether the accused persons are engaged in illegal money lending business and not as to whether a particular sale transaction is legal or illegal.

16. As regards Section 39 of the Money Lending Act, we agree with the submission of Mr. Salunke, learned Advocate for the applicants that solitary money lending transaction will not attract under Section 39 of the Money Lending Act. Section 39 prohibits a person from doing money lending business, without proper and valid license under the Act. The term business does not mean to indulge in isolated or stray transaction of money lending. Such stray or isolated transaction/s are not covered under Section 39 of

the Money Lending Act. The term business means continuous systematic activity performed by a person routinely. Unless a person does business of money lending, he cannot be prosecuted or punished under Section 39 of the Money Lending Act, merely because he has entered into one or more stray transaction/s of money lending. On the basis of such stray transaction/s it cannot be said that a person is engaged in business of money lending. We are supported with aforesaid observations with the judgment of Division Bench of this Court in the matter of **Mandubai Vitthoba Pawar -versus- State of Maharashtra, reported in 2015 (3) AIR Bom. R (Cri.) 751**. The allegations in the FIR and material are gathered during the course of investigation are forming part of the charge-sheet which grossly inadequate to remotely suggest that the applicants indulged in illegal money lending business. The offence under Section 39 of the Money Lending Act therefore, is not made out.

17. As regards Section 341 and 447 of the Indian Penal Code, such allegations are against applicant No. 2 only. In this regard, we may notice that applicant No. 2 holds title document with respect to the said property. The sale deed in favour of

applicant No. 2 is not declared to be illegal by any competent Court. Since offences of cheating and illegal money lending are not made out the dispute relating to possession of the property is predominantly a civil dispute. The parties must seek appropriate redress with respect to the same before competent Civil Court. We are of the opinion that the applicant no.2 cannot be prosecuted for the offence having committed criminal trespass over the property, which is actually purchased by him under the registered sale deed. Likewise, he is also entitled to restrain anybody from entering the said property. The continuation of the prosecution against him for the offences of criminal trespass or wrongful restraint, with respect to the said property will be travesty of the justice and abuse of the legal process.

18. The dispute with respect to legality of the sale deed and the possession of the property is predominantly a civil dispute. Respondent No. 2 may avail his remedies under the civil law with respect to his rights over the subject property, however, it will be unjust to allow him to prosecute applicant No. 2 for the offences of criminal trespass or wrongful restraint in the facts of the present case.

19. Upshot of the above discussion is that apart from failure to make out any offence, the dispute between the parties is predominantly a civil dispute. Respondent No. 2 has attempted to give criminal colour to a civil dispute. We are, therefore, of the opinion that the continuation of prosecution against applicants would be abuse of process of law. It is now well settled that the dispute of predominantly civil nature should not be allowed to give criminal colour and that the parties to the litigation should not be allowed to take the recourse of penal law as a short cut to civil remedies. We are relying upon the judgments of the Hon'ble Supreme Court in the matter of **G. Sagar Suri and another vs State Of U.P. and others**, reported in (2000) 2 SCC 636 and **Jaswant Singh v. State of Punjab and another**, reported in *2021 SCC OnLine SC 1007*.

20. In the light of the aforesaid observations, we are of the view that offences punishable under Section 420, 447, 341 of the Indian Penal Code and Section 39 of the Money Lending Act are not made out. Sections 504 and 506 of the Indian Penal Code are non-cognizable offences. We are, therefore, of the opinion that the First

information Report No. 628 of 2021, dated 24.12.2021, and the proceedings bearing RCC No. 234 of 2022, are liable to be quashed against present applicants.

21. We may clarify that the observations made above are only for the purpose of determining as to whether the applicants have committed any offence under the relevant provisions under which the FIR is registered. We have not expressed any opinion on the respective civil rights of the parties. We may further clarify that we have not decided the issue as to whether the sale deeds in question are genuine sale transactions or camouflage to cover money lending transactions. That will be a question to be decided by the competent Civil Court, if the occasion so arises. We have discussed about the sale deeds only in order to determine as to whether the sale transactions may amount to drawing inference that the applicants have engaged in money lending business or not and to further determine as to whether there is any element of cheating involved in the said transaction.

22. We, therefore, pass the following order :

ORDER

- (i) The Criminal Application stands allowed.
- (ii) The First Information Report bearing Crime No 628 of 2021, dated 24.12.2021, registered with Police Station Taluka Jalna, District Jalna, for the offence punishable under sections 420, 447, 341, 504 and 506 read with Section 34 of the Indian Penal Code, and under Section 39 of the Maharashtra Money Lending Act, 2014 and Regular Criminal Case No. 234 of 2022, pending on the file of the learned Judicial Magistrate, First Class, Jalna District Jalna are hereby quashed against the present applicants Ushabai Babasaheb Nannaware (accused no.2) and Shankar Dashrath Dhanwate (accused no.3).

(ROHIT W.JOSHI)
JUDGE

(SMT. VIBHA V. KANKANWADI)
JUDGE

mahajansb/