



{1}

2909.22 CRAPLN R..odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2909 OF 2022

Smt. Ratnabai Ratu Bheemashankar Chitte,
Age 55 years, Occ. Homemaker,
R/o. /Sonar Colony, Oerga, Tq. Murum,
District Osmanabad.

.. APPLICANT.

VERSUS

1. The State of Maharashtra
through Murum Police Station,
Tq. Murum, Dist. Osmanabad.
2. Shri Prashant Lakshamrao Shapurkar,
Age 58 years, Occ. Service (Assistant Registrar, Omerga)
R/o. At post Omerga, Tq. Murum
District Osmanabad.
3. Liyakat Abbas Shaikh,
Age 65 years, Occ. Retired,
R/o. Kesar javalga, Tq. Omerga
Dist. Osmanabad

.. RESPONDENTS.

Mr. P.D. Bachate, Advocate h/f. Mr. A.C. Sisodiya, Advocate for applicant,
Mr. V.K. Kotecha, APP for respondent State,
Mr. Z.H. Farooqui for intervenor.

CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.

DATE : 23rd SEPTEMBER, 2024.

JUDGMENT [PER S.G. CHAPALGAONKAR, J.] :-

1. The applicant has filed this application under Section 482 of Cr.P.C. for quashment of the FIR in Crime No. 242 of 2022, dated 23.7.2022, registered with Police Station, Murum, District Osmanabad

for the offence punishable under the Maharashtra Money Lending Act, 2014 as well as consequential proceeding in RCC No. 192 of 2022 pending before the JMFC, Omerga.

2. Respondent No.2, Assistant Registrar, Cooperative Societies, Umerga, lodged report to Police Station, Murum alleging that in pursuance of complaint made by respondent No.3, the District Deputy Registrar issued communication dated 8.7.2022, directing him to take further steps under Maharashtra Money Lending (Regulation) Act, 2014. (hereinafter referred to as "Money Lending Act" for sake of brevity) as per opinion of the District Government Pleader, Osmanabad. Consequently, he filed the FIR.

3. It is alleged that Liyakat Abbas Shaikh (respondent No.3) made a complaint against applicant/accused regarding unauthorised money lending business. Consequently, inquiry was conducted by Assistant Registrar and report dated 13.12.2021 has been submitted, which states that sale deed dated 18.3.2010 depicts out and out sale transaction. However, the transcript of the telephonic talk and some receipts produced by the complainant needs forensic investigation to find out whether subject transaction was an out and out sale or it was in the nature of money lending. However, the District Deputy Registrar closed the file observing that the transaction dated 18.3.2010 is a sale transaction. Again, respondent No.3, made a complaint to District Deputy Registrar dated 8.7.2022 alleging that land Gat No. 505 situated at Kesar Jawalgaon was mortgaged by his mother Sajanbi Abbas Shaikh with late Shankar Sidhrappa Khajje. Nominal sale deed No. 660 of 2010 was executed on agreement that interest @ 3% shall be paid on the

amount received under the transaction. Meanwhile, Shankar Sidrappa Khajje had executed a sale deed in the name of his daughter Ratnabai, who was indulged in money lending business through her father late Shankar Khajje. However, Shankar Sidramappa Khajje as well as mother of respondent No.3 Sajanbi expired. Therefore, amount paid towards interest was transmitted to Ratnabai Chitte. The respondent No.3 made tele-conversation with Ratnabai and shown his willingness to pay entire amount of loan alongwith interest. The conversation is recorded in mobile phone. Consequently, the District Deputy Registrar opined to lodge the FIR against the applicant under Section 39 of the Money Lending Act.

4. On the basis of aforesaid report, Crime No. 242 of 2022 has been registered. The investigation progressed and finally charge sheet has been filed against applicant in RCC No. 192 of 2022 of 2022 before JMFC at Omerga.

5. Mr. P.D. Bachate, learned advocate appearing for the applicant vehemently submits that the alleged sale transaction was between Smt. Sajanbi Abbas Shaikh and Shankar Khajje in respect of land bearing No. 505 situated at Kasar Jalgaon. Sajanbi executed Registered sale deed No. 660 of 2020 in favour of Shankar Khajje on 18.3.2010. Consequently, mutation entry No. 2544 was certified in the name of Shankar in ownership column. On 7.3.2017, Sajanbi passed away. On 22.5.2019, Shankar Khajje transferred said land in the name of applicant Ratnabai under registered sale deed No. 1721 of 2019. Thereafter, on 24.11.2019, Shankar Khajje also expired. In this background, since 2021, respondent No.3 Liyakat Abbas represented

authorities under the Money Lending Act that the original transaction of 2010 between Sajanbi and Shankar Khajje was a money lending transaction. The Asistant Registrar Cooperative Societies, on inquiry, gave a report that transaction of 2010 was out and out sale. Consequently, the complaint filed by Liyakat Abbas was closed by order dated 23.12.2021 passed by District Deputy Registrar. Surprisingly, another representation dated 28.12.2021 has been made by Liyakat Ali to respondent No.3 and same was entertained by him and directions were given to the Assistant Registrar Cooperative Societies to lodge the police report. Consequently, FIR in Crime No. 242 of 2022 has been lodged for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014.

6. Mr. P.D. Bachate, further submits that basic transaction was between Sajanbi and Shankar Khajje. It was out and out sale transaction and same was acted upon. The complaint in this regard was inquired and closed. There is nothing on record to show that the applicant/accused who is daughter of Shankar Khajje was involved in the money lending business. Therefore, he submits that from the contents of the FIR or the material in charge sheet no ingredients of the offence under Section 39 of the Money Lending (Regulation) Act, 2014 would attract. Hence, he urged to quash and set aside the FIR and consequential criminal proceeding.

7. Per contra, Mr. V.K. Kotecha and Mr. Z.H. Farooqui, learned advocate for the intervenor would submit that there is ample material to show that in fact, the transaction under sale deed of 2010 was a money lending transaction and late Shankar Khajje had agreed to re-convey the

land on return of the principal amount alongwith interest. They would, therefore, urge to reject the application.

8. We have considered the submissions advanced by learned advocates appearing for respective parties. We have minutely considered the contents of the FIR and charge sheet. Apparently, applicant is charged fo the offence under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014. It would be apposite to quote wording of Section 39 for ready reference, which reads thus :-

“39. 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 extent to fifty thousand rupees or with both.”

9. The plain reading of aforesaid section would show that the mischief of un-authorized money lending business is sought to be addressed by making such activity as an offence. The term “business of money lending” has been defined under section 2(3) of the Act of 2014, which reads thus :-

“2(3) “Business of money lending” means business of advancing loans, whether in cash or kind and whether or not in connection with or in addition to any other business.”

To constitute any activity as a business, as defined in Black’s Law Dictionary an habitual employment or engagement in a particular

commercial activity to earn the profit or livelihood or gain, would be necessary. It would be difficult to term any activity as business only on the basis of an isolated transaction. Therefore, it would be necessary to find out whether in the facts of the present case, there is material to demonstrate continuous activity of money lending or earning profits at the hands of the accused, so as to attract the penalty under Section 39 of the Act of 2014.

10. As noted in the earlier paragraphs, it can be discerned from the contents of FIR that there is stipulation of only one transaction, that too, between the father of the applicant No.1 and father of respondent No.3. Admittedly, it is a registered sale deed, except bare words of respondent No.3 that it was as money lending transaction, there is nothing on record to establish said fact. Pertinently, the father of applicant No.1 died in the year 2017 and now, allegation is made that applicant was, in fact, indulged in the money lending business through her father. To support such contention, there is no iota of material in the entire charge sheet.

11. It could be observed that during the lifetime of father of applicant No.1, mother of respondent No.3 never objected such transaction to be a money lending transaction. Even assuming that impugned transaction was a money lending transaction as stipulated in the FIR, the prosecution for the offence under Section 39 of the Money Lending Act, would not be permissible unless continuous activity or multiple transactions to pass the test of business, is brought on record. In the case of *Mandubai Vithoba Pavar vs. State of Maharashtra (2016) 1 Bom. C.R. (Cri) 794*, this court observed in para.11 as under :-

“11. The above discussion makes it clear that for it to be a business there has to be a continuous and systematic activity by application of labour or skill with a view of earning income when it could be called "business". In order to do business of money lending, it would be necessary for the State to point out multiple activities of money lending done by the petitioner. Merely referring to one isolated transaction claimed to be a loan transaction or money lending would not be enough to show that the petitioner was involved in "business of money lending" without licence. The FIR in the present matter read as a whole does not spell out that the petitioner was doing "business of money lending". This being so, on the basis of such FIR the prosecution cannot be maintained.

Similarly, the Division Bench of this Court in the case of ***Balasaheb Ramrao Bade vs. State of Maharashtra and others reported in (2019)5 Mh.L.J. (Cri.) 132***, and in case of ***Anup Niranjan Dodiya and another vs. State of Maharashtra and others, reported in 2020 All M.R. (Cri). 2497***, dealt with the definition of “money lending” and held that to make out offence under Section 39 of the Money Lending Act, inference of money lending business can not be drawn on the basis of isolated transaction so also prosecution of accused can not be permitted on that basis.

12. In view of the aforesaid legal position, in facts of the present case, we do not find any reason to permit continuation of criminal prosecution against applicant-accused which would amount to an abuse

of process of law. Hence we pass the following order :-

O R D E R

[I] The application allowed;

[II] The FIR in crime No. 242 of 2022 dated 23.7.2022 registered with Murum Police Station, Dist. Osmanabad, for the offence under Section 39 of the Maharashtra Money Lending Regulation Act, 2014 and consequential proceeding in RCC No. 192 of 2022 pending before J.M.F.C., Omerga, is hereby quashed and set aside.

[III] Application stands disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-