

(2018) 02 BOM CK 0145
In the Bombay High Court
Case No : 3884 of 2017

Baliram S/o Ashroba Kadape

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-02-2018

Acts Referred:

[Bombay Money Lenders Act, 1946](#), [Section 32](#), [Section 155\(2\)](#), [Section 32\(b\)](#) -
Maharashtra Money Lending (Regulation) Act, 2014, Section 39, Section 23, Section 45, Section 48

Citation : (2018) 02 BOM CK 0145

Hon'ble Judges : S. S. Shinde, A. M. Dhavale

Bench : Division Bench

Advocate : S. S. Thombre, V. M. Kagne, S. V. Mundhe

Judgement

1. Rule. Rule made returnable forthwith. With the consent of parties, matter is taken up for final disposal at admission stage.
2. The three applicants seek quashing of FIR registered at C.R. No. 09/2017 at Ashti Police Station, Tq. Partur, against them for offences punishable u/s 23, 39, 45 & 48 of Maharashtra Money Lending (Regulation) Act, 2014.
3. It is the case of the applicant that, applicant no. 1 was a member and leader of Bhartiya Janata Party (BJP) and was President of Zilla parishad, Jalna in 1997-98. In October - 2006, he left the party and contested the election against son of Shri. Lonikar, Guardian Minister of Jalna. Annoyed by the decision taken by

applicant no. 1, the Guardian Minister - Mr. Lonikar tried to implicate him so as to eliminate any opposition to his son and some complaints were filed against him regarding money lending business so that he should not be in position to contest the election. On the basis of such reports, Asst. Registrar lodged the impugned FIR on 15.05.2007 at Ashti Police Station. The allegations made therein are false. Out and out sale transaction with Murlidhar Kekan and Parbata Pote were falsely described as money lending transactions. The complaint against applicant no. 3 - Namdeo is with regard to mortgage transaction of 1998. The Asst. Registrar had inspected his premises on 09.03.2017 and nothing incriminating was found in his house, still the FIR was lodged. The provisions of Maharashtra Money Lending (Regulation) Act, 2014 are not attracted to the alleged transactions. The FIR is abuse of process of law and deserves to be quashed. The applicants have given proper reply and explained all the facts. The applicant no. 2 was a minor at the time of many transactions, still the FIR was lodged.

4. The respondent though served did not file any reply.

Learned APP has filed the papers of investigation and opposed the quashing of FIR.

5. Heard learned advocate Shri. S. S. Thombre for the applicants in Criminal Application No. 3884 of 2017 and Shri. S. P. Mundhe, learned counsel for applicants in Criminal Application No. 4555 of 2017 and learned APP Shri. V. M. Kagne for the State.

6. The learned advocates for the applicants have taken us through the FIR and papers of investigation. They have argued about the political enmity. They argued for quashing of the FIR on three grounds as follows :

- (i) The allegations taken at their face value do not make out offence.
- (ii) The allegations are inherently improbable.

(iii) The criminal proceeding is manifestly attended with mala fide for wreaking vengeance.

7. All the transactions allegedly entered into by the applicants have taken place before 2014 and, therefore, the provisions of Money Lending (Regulation) Act, 2014 would not be applicable. Crime would be governed by old Act i.e. Bombay Money Lenders Act, 1946. The alleged offences as per Act of 2014 are u/s 23, 39, 45 and 48. Section 23 relates to taking of promissory note, acknowledgement or bond by a money lender not disclosing the real nature of transaction or taking blank instrument without mentioning date or amount. Section 39 relates to penalty for money lending without valid license. Section 45 is for molestation or abetting molestation of a debtor for recovery of debt due by him and Section 48 only declares the certain offences shall be cognizable.

8. On going through the papers and hearing arguments, we find that there is absolutely no allegation about molestation of any debtor, so the offence u/s 45 does not arise. Section 48 is not an offence. The only offences worth consideration are u/s 23 and 39. The corresponding provisions under Bombay Money Lenders Act, 1946 are Sections 32 & 32(B), respectively. Both these offences are shown as non-cognizable offences u/s 35(A) under the new Act.

9. The Investigating Officer erred in applying the provisions of Maharashtra Money Lending (Regulation) Act, 2014 to the transaction which took place prior to date when this act came into force (24.02.2014). The Act 2014 can't be retrospective. Section 39 under the Act of 2014 is analogous to Section 32B of the old Act, 1946 but under the old act the maximum punishment for the first offence was upto 1 year imprisonment and now it has been increased to 5 years. Under the new act, it has been made cognizable u/s 48 whereas; under old Act, as per provisions of Section 35A, the offence

was not cognizable.

10. As far as merit of the case is concerned, we find that the papers filed by police disclose several allegations. It is alleged that, 15 sale deeds were seized from the accused and 134 sale deeds were obtained by the accused persons for total land of 161.90 hectares. Many sale deeds were seized from the accused persons. Some blank stamps papers signed by the purported borrowers were also seized. The Id. advocate for the applicants have tried to explain each and every transaction. This Court cannot take the role of trial judge who can consider at the time of framing charge whether there is sufficient material or not. The allegations and the recovery of the documents from the accused persons disclose that, on merits, this is not a fit case for quashing of the FIR.

11. As per Section 35A of the old Act, 1946, the offence u/s 32 and 32B are non-cognizable. In such situation, no FIR could have been registered. The police could have recorded NC case in register maintained u/s 155 and the investigation could have carried out only after obtaining permission u/s 155(2). When the investigation is carried out without obtaining permission from the Magistrate, it is without jurisdiction and the trial based on such investigation is vitiated. In this regard, reliance is placed on Lal Chand Fateh Chand and others v. The State of Punjab, 1964(2) Cri. L. J. 115.

12. In view of above, the whole investigation is carried out illegally, the FIR deserves to be quashed. However, the quashing of this FIR shall not affect the rights of the respondents to seek permission u/s 155(2) Cr.P.C . to seek investigation in the crime provided, it is permissible under the law. The observations made herein above are made only for deciding this application and shall not be considered elsewhere.

ORDER

The FIR at C.R. No. 09/2017 registered at Ashti Police Station, Tq. Partur, for offences punishable u/s 23, 39, 45 & 48 of Maharashtra Money Lending (Regulation) Act, 2014, is hereby quashed.

13. Rule is made absolute in above terms. No order as to costs.