

(2023) 11 OHC CK 0123
In the Orissa High Court
Case No : CRLMP No.2270 Of 2022?????????

Kandarpa Dansana

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 29-11-2023

Acts Referred:

Reserve Bank of India Act, 1934 — Section 45L

Citation : (2023) 11 OHC CK 0123

Hon'ble Judges : V. Narasingh, J

Bench : Single Bench

Advocate : A.K. Mishra, A. Pradhan, P.K. Ray, G. Mukherji, D.N. Mishra?

Final Decision : Disposed Of

Judgement

V. Narasingh, J.

1. Being aggrieved by non-registration of the complaint at Annexure-1 as FIR, which according to the learned counsel for the Petitioner, discloses a cognizable offence, the present CRLMP has been filed invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

2. The Petitioner availed loan of Rs.6 lakhs from Verita Finance Private Limited, Opposite Party No.4 (hereinafter referred to as "VFPL"). The sum and substance of the complaint at Annexure-1 is that the Petitioner was duped in signing documents providing for higher rate of interest of 24%, than the assured rate of 12%, taking mean advantage of that the Petitioner does not know English. And, the Opposite Party No.4- VFPL got the documents signed by the Petitioner through its agent one Sanu Sahu.

3. Considering the nature of grievance, this Court by order dated 23.12.2022 directed for impletion of Reserve Bank of India as Opposite Party No.5.

4. Learned counsel for the Petitioner, Mr. Mishra relying on the judgment of the Apex Court in the case of Lalita Kumari Vrs. Government of U.P. & others, AIR

2014 SC 187 submitted that in the facts of the present case since a cognizable offence is made out, FIR ought to be registered and consequential steps in terms of the said FIR have to be taken.

5. Learned counsel for the Petitioner further relied on the order of the Apex Court in the case of XYZ vrs. State of Madhya Pradesh & others, 2022 (II) OLR (SC) 570 and the order of this Court in the case of Nillufar Hamid vrs. State of Odisha and others, 2022 (I) OLR 543.

6. Per contra, learned counsel for the Opposite Party No.4- VFPL whose agent supposed to have duped the Petitioner in signing the documents for obtaining the loan at the interest rate of 24% than the promised 12% submitted that the Opposite Party No.4 is a non-banking financial institution and name of the Company finds place at serial no.195 of the non-banking financial institution.

7. It is further stated that the Company is engaged in the business of finance focusing on providing inclusive finance to the self-employed borrowers, who have no access to funding from banks and providing loans under various categories to the interested persons. The registration certificates and list of the NBFCs containing the name of Opposite Party No.4 was placed on record.

7-A. And, it is submitted by the learned counsel for the said Opposite Party No.4 that the loan availed by the Petitioner comes under the MSME Rural Business Loans and is categorized as "prime plus" and since the loan amount is Rs.6 lakhs, rate of interest @ 21% to 24% chargeable and accordingly, there is no illegality in charging interest at 24%. He strongly refutes the allegation that the Petitioner was ever promised loan @ 12% and controverts Petitioner's assertion on this count. It is his assertion that the Petitioner and his wife signed the loan documents being fully aware of its terms since the same were explained to them in vernacular (Odia language).

8. It is the further contention of the learned counsel for the Opposite Party No.4 that the loan of Rs.6 lakhs was disbursed within three days and thereafter the Petitioner has not paid a single instalment. It has also been stated that Opposite Party No.4 has not charged high rate of interest as alleged and it is at par with the MSME Rural Business Loans and in this context, the Opposite Party No.4 has relied on the comparative table.

9. It has also been asserted by Opposite Party No.4 that the Opposite Party No.5-RBI does not prescribe any particular rate of interest.

10. It is apt to note here that the Petitioner has not controverted the recitals in the counter affidavit filed by the Opposite Party No.4 by filing rejoinder.

11. Learned counsel for the State, Mr. Pradhan, learned ASC referring to the sanction details at Annexure E/4 submitted that the same clearly refers to the rate of interest as 24%. The Petitioner and his wife have signed the same and according to the learned counsel for the State, there is no illegality in not instituting the FIR since prima facie no cognizable offence is made out.

12. Learned Senior Counsel Mr. Mukharji instructed by Mr. Mishra, learned counsel for the Opposite Party No.5-RBI, places reliance on Paragraphs 3,4 and 7 of the affidavit filed on behalf of the Opposite Party No.5-RBI. Recitals of the said Paragraphs 3,4 and 7 of the affidavit are extracted hereunder for convenience of ready reference :

"3. That dispute regarding grant of loan, terms and conditions and its repayment are governed by the contract entered between the parties concerned. Reserve Bank has not prescribed or fixed any interest rate on loans and advances extended by NBFCs to its customers and has allowed themselves to decide the rate of interest. Though the RBI has not prescribed any ceilings on the rates of interest to be charged by NBFCs on the loans and advances granted to borrowers, guidelines have been issued through Circulars based on economic principles so that NBFCs fix reasonable and competitive rates of interest in the interest of public.

4. That in exercise of power conferred under Section 45L of the Reserve Bank of India Act, 1934, RBI has issued guidelines on fair practice Code for NBFCs. The bank has prescribed the broad guidelines on fair practices that are to be framed and approved by the Board of Directors of NBFCs. The guidelines prescribe about application for loans and their processing, loan appraisal and terms/conditions, disbursement of loans including charges in terms and conditions etc., in regard to the practices to be adopted by the NBFCs in advancement of loans and its recovery. Copy of the guidelines on fair practices Code for Non-Banking Financial Companies dated 28.09.2026 is annexed as AnnexureA/5.

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7. That the RBI in exercise of powers U/S 45 L of the RBI Act, 1934 issued directions regarding excessive rate of interest charge by NBFCs on 02.01.2009. As per the notification dated 02.01.2009 the Board of each NBFCs shall adopt an interest rate model taking into account relevant factors such as, Cost of funds, margin and risk premium, etc and determine the rate of interest to be charged for loans and advances. The rate of interest to different categories of borrowers shall be disclosed to the borrower or customer in the application form and communicated explicitly in the sanction letter. The rate of interest and the approach for gradation of risks shall also be made available on the websites of the companies or published in the relevant Newspapers. The rate of interest should be annualised rates so that the borrower is aware of the exact rates that would be charged to the account. Copy of the Notification No.DNBS.204/CGM(ASR)-2009 dated 02.01.2009 is annexed herewith as Annexure D/5."

13. Learned counsel for the RBI also places on record the loan sanction letter which contains the signature of the Petitioner and his wife wherein the rate of interest has been stated as 24% including the photostat copy of the "declaration for signing in vernacular language/thumb impression".

14. On a bare perusal of the list of documents produced, it can be seen that the

Petitioner and his wife have signed each page in vernacular. In the background of the Petitioner's allegation, the declaration for signing in vernacular including thumb impression referred to herein above is extracted hereunder for convenience of ready reference:

"The contents of the loan application and all other documents incidental to availing loan from Veritas have been read out and explained to me in the language of my signature and we have understood the same and do hereby agree to abide by all terms and conditions of the loan".

(Emphasized)

15. Thus, it is manifestly clear that the Petitioner had executed the documents being fully aware of all the contents of the loan application which includes the rate of interest.

16. Hence, the submission of the learned counsel for the Petitioner that the Petitioner has been duped to sign the documents since they were in English ex facie does not stand to reason.

17. There is no cavil about the decision of the Apex Court in the case of Lalita Kumari (supra) and the judgment of the Apex Court in the case of XYZ (supra) and the order of this Court

18. It is trite that a judgment has to be understood in the context in which the same has been passed.

19. In this context, it is apt to refer to the following judgments of the Apex Court :

A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal. (Ref : Executive Engineer, Dhenkanal Minor Irrigation Division vrs. N.C. Budharaj, (2001) 2 SCC 721.

(Emphasised)

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* (Sub nom *British Railways Board v. Herrington*). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. (Ref : *Haryana Financial Corporation vrs. Jagdamba Oil Mills*, (2002) 3 SCC 496)

19-A. While giving direction in the case of Lalita Kumari (supra), the Apex Court disapproved the approach to scrutinize the complaint for registration if prima facie a cognizable offence is made out. Hon'ble Supreme Court categorically

directed that if a cognizable offence is made out the FIR has to be registered and non-registration would be contumacious.

20. It is apposite to state that in the case of Sudhir Bhaskarrao Thambe Vrs. Hemant Yashwant Dhage and others, (2016) 6 SCC 277, the Apex Court sounded a caution that unless the fact situation so warrants plenary discretion of this Court ought not to be exercised to direct registration of the FIR, otherwise, "they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions".

20-A. The same was reiterated by the Larger Bench of the Apex Court in the case of M. Subramaniam and another Vrs. S. Janaki and another, (2020) 16 SCC 728.

21. Prima facie this Court is not persuaded to agree with the submission of the learned counsel for the Petitioner that a cognizable case is made out. Hence, this Court does not find any merit in the CRLMP and the same is accordingly disposed of.

22. It shall be open to the Petitioner to move the Opposite Party No.5-RBI relating to his grievance of higher rate of interest being charged and more so since for the particular category of loan the rate of interest varies from 21% to 24%.

22-A. If such a representation is made to the Opposite Party No.5-RBI within a period of four weeks from the date of receipt of representation, they are called upon to look into the matter in accordance with the guidelines and take up the matter with the O.P. No.4-VFPL and decision taken be communicated to the Petitioner within four weeks from the date of such representation.

23. It shall be open to the Petitioner to take recourse to the provisions of the Cr.P.C for redressal, if so advised. If so moved, learned Court shall consider the same independently on merits without being prejudiced by any of the observations made herein.

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