(2022) 01 TEL CK 0035

In the Telangana High Court

Case No : Criminal Petition Nos. 439, 443 Of 2020

Srinivas Bodke APPELLANT

Vs

State Of Telangana RESPONDENT

Date of Decision : 17-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 420
Telangana Micro Finance Institutions (Regulation of Money Lending) Act, 2011 — Section 2(b), 2(c), 2(d), 2(k), 3, 3(2), 7, 8, 9, 9(1), 9(2), 10, 10(1), 17
Code Of Criminal Procedure, 1973 — Section 239, 319, 319(1), 482

Citation : (2022) 01 TEL CK 0035

Hon'ble Judges : K.Lakshman, J

Bench : Single Bench

Advocate : Rubaina S Khatoon

Final Decision : Dismissed

Judgement

1. Criminal Petition No.439 of 2020 is filed by the petitioner - accused No.1 to quash the proceedings in C.C. No.168 of 2019 on the file of Judicial

Magistrate of First Class, Bichkunda, whereas Criminal Petition No.443 of 2020 is filed by accused Nos.2 to 4 to quash the proceedings in the very

same C.C. against them.

2. The petitioners in both the Criminal Petitions are accused Nos.1 to 5. The offences alleged against them are under Section - 420 of IPC and Section

- 17 of Telangana Micro Finance Institutions (Regulation of Money Lending) Act, 2011 (for short â??Act, 2011â??).

3. Heard Mr. S. Niranjan Reddy, learned Senior Counsel representing Ms. Rubaina S Khatoon, learned counsel for the petitioners in both the Criminal

Petitions and learned Public Prosecutor appearing on behalf of respondent No.1 - State. Despite service of notice, none appears for respondent No.2.

4. FACTS:

i) Respondent No.2 is resident of Madnoor Village and Mandal, Kamareddy District, and she is Member of Shanthoshi Maata Mahila Sangam.

ii) She along with LWs.2 to 8 and some other Villagers formed the said Sangam with an intention to take loans on low interest.

iii) The petitioners herein have been working in M/s. Bharath Finance, and they have made propaganda in the surrounding villages including the village

of respondent No.2 that their Company i.e., M/s. Bharath Finance, has been providing loans at low interest.

iv) In the said process, about seven (07) months back, the petitioners - accused Nos.1 to 4 have done the propaganda that some persons in Madnoor

Village, which is beside Degloor Taluka, gave an amount of Rs.25,000/- to each person including respondent No.2 and some other persons as loans,

like IKP Loans.

v) The petitioners took an amount of Rs.500/- each from the above said persons / borrowers including respondent No.2 towards paper expenses. They

have instructed the borrowers to repay the said loan amount to the said Finance Company by depositing an amount of Rs.550/- in a week for 52

weeks. Thus, they are collecting an amount of Rs.29,100/- from each borrower.

vi) The petitioners herein - accused Nos.1 to 4 have not obtained any registration from the Telangana State as required under the provisions of the

Act, 2011 and they are collecting excess interest from the borrowers other than the interest decided by the Government.

vii) After collecting the excess interest from the borrowers, they gave the same to his Branch Manager - Rajendra Gaikwad, accused No.2, the then

Branch Manager and gave the said amount to Unit Manager and his colleagues, namely accused No.4. They have also collected excess interest from

the borrowers.

viii) Thus, the said acts of the petitioners constitute the aforesaid offences.

5. On the complaint lodged by respondent No.2, Madnoor Police Station, Kamareddy District, have registered a case in CrimeNo.14 of 2019 for the

aforesaid offences against the aforesaid Finance Company. During the course of investigation, the Investigating Officer had recorded the statements

of respondent No.2 as LW.1 and other beneficiaries as LWs.2 to 8. On considering the evidence, both oral and documentary, the Investigating Officer has laid the charge sheet against the petitioners herein.

6. CONTENTIONS ON BEHALF OF THE PETITIONERS:

i) Mr. S. Niranjan Reddy, learned senior counsel appearing on behalf of the petitioners, would submit that the petitioners herein are innocent of the

offences alleged and they are nothing to do with the offences alleged against them. There is no inducement or cheating by the petitioners. The

contents of the charge sheet lack the ingredients of the offences alleged against the petitioners, more particularly, Section - 17 of the Act, 2011. There

is no misrepresentation by the petitioners herein.

In the entire Act, 2011, there is no maximum interest specified. The said Company has been conducting its business strictly in accordance with the

guidelines issued by the Reserve Bank of India (RBI) from time to time. Without considering the said facts, the Investigating Officer had laid the

charge sheet against the petitioners herein, employees of Bharat Financial Inclusion Limited (BFIL). The Investigating Officer has not made the said

Company as an accused and, therefore, the present proceedings in C.C. No.168 of 2019 are liable to be quashed on the said ground alone.

ii) Referring to the order dated 10.06.2019 passed by the National Company Law Tribunal (NCLT), the learned senior counsel would submit that the

Composite Scheme of Arrangement between erstwhile BFIL and Indus Bank Limited (IBL) and also IndusInd Financial Inclusion Limited (IFIL)

approved by the NCLT which came into force w.e.f. 04.07.2019. As per the said order and scheme, all the employees of erstwhile BFIL became

employees of IFIL on the basis of continuation of service. The Registrar of Companies, Mumbai, has w.e.f. 02.08.2019 approved the change of name

of IFIL to BFIL.

iii) The learned senior counsel would further submit that respondent No.2 approached the erstwhile BFIL for loan and treating the said application, the

said Company had extended the loan to respondent No.2 on specific terms and conditions mentioned in the said loan agreement. Respondent No.2 had

paid only 24 installments from August, 2018 to February, 2018 amounting to Rs.11,415.90ps., and thereafter failed and neglected to repay the loan

installments and the said default continues. An amount of Rs.13,594.10ps., remains payable by respondent No.2 as per the Loan Ledger. To evade the

said payment, respondent No.2 has implicated the petitioners herein in the present crime.

iv) With the aforesaid submissions, the learned senior counsel sought to quash the proceedings in the afore C.C. against the petitioners herein.

7. CONTENTIONS ON BEHALF OF RESPONDENT No.1

i) On the other hand, the learned Public Prosecutor, on instructions, would submit that as per Section - 3 of the Act, 2011 the Company has to submit

an application for registration within 30 days from its formalities and that there are specific allegations against the petitioners herein. They have been

conducting business in violation of the provisions of the Act, 2011. They are triable issues. The petitioners are having alternative remedy of filing an

application under Section - 239 of Cr.P.C. seeking their discharge from the said C.C. Instead of doing so, they have filed the present petition. There is

serious allegation of cheating the innocent people, more particularly people belong to lower income group.

ii) With the above said submissions, the learned Public Prosecutor sought to dismiss the present petitions.

8. ANALYSIS AND FINDING OF THE COURT:

i) In view of the above said rival submissions, it is relevant to extract the objects of the Act, 2011.

â??3. (1) All Micro Finance Institutions operating in the State of Telangana as on the date of the commencement of this Act, shall within thirty days

from the date of commencement of this Act, apply for registration before the Registering Authority of the district specifying therein the villages or

towns in which they have been operating or propose to operate, the rate of interest being charged or proposed to be charged, system of conducting

due diligence and system of effecting recovery and list of persons authorized for conducting the activity of lending or recovery of money which has

been lent.

(2) No MFIs, operating at the commencement of this Act or intending to start the business of lending money to SHGs, after the commencement of this

Act, shall grant any loans or recover any loans without obtaining registration under this Act from the Registering Authority.

(3) The Registering Authority shall conduct verification of the details furnished by the MFI and accord registration in such manner as may be

prescribed for operation of MFIs for a period of one year, after obtaining a written undertaking from the MFI that it shall always act in conformity with

the provisions of this Act.

(4) Where the MFI applies for renewal of registration, an application for that purpose shall be filed by the MFI within sixty days before the expiry of

the period of one year referred to in sub-section (3) and the Registering Authority shall decide either to grant renewal or refuse renewal of registration

within fifteen days before the date of expiry of registration, after due verification of the performance of the MFIs in the field level and after hearing

objections, if any, from the general public regarding extension of Registration.â??

â??8. (1) All MFIs shall display the rates of interest charged by them in a conspicuous place in their premises in bold letters visible to the members of

the public.

(2) No MFI shall charge any other amount from the borrower except any charge prescribed in the rules for submission of an application for grant of a

loanâ??.

â??9. (1) No MFI shall recover from the borrower towards interest in respect of any loans advanced by it, whether before or after commencement

of this Act, an amount in excess of the principal amount.

(2) All loans in respect of which an MFI has realized from the borrower, whether before or after commencement of this Act, an amount equal to

twice the amount of the principal, shall stand discharged and the borrower shall be entitled to obtain refund and the MFI shall be bound to refund the

excess amount paid by the borrower.â??

â??10. (1) No MFI shall extend a further loan to a SHG or its members where the SHG has an outstanding loan from a Bank unless the MFI obtains

the prior approval in writing in such manner as may be prescribed from the Registering Authority after making an application seeking such approval.

(2) The Registering Authority while considering such application from an MFI seeking approval as aforesaid shall secure the following information in

writing from the MFI in regard to every member of SHG, namely:-

(i) name of the Borrower;

(ii) name of the SHG;

(iii) bank from which loan has been obtained by the SHG;

(iv) date of the loan granted by the bank;

(v) amount paid to the SHG by the bank;

(vi) amount due from the SHG;

(vii) fresh amount of loan sought by the SHG from the MFI;

(viii) terms of repayment proposed by the MFI;

(ix) details of due diligence including the capacity of the SHG for repayment; and

(x) such other details as may be prescribed.

(3) The Registering Authority shall, not later than fifteen days from the date of filing of such application for approval under sub-section (2), cause an

enquiry into the contents of] the application and shall grant approval for further loan unless the Registering Authority is satisfied that the SHG and its

members have passed a resolution that they have understood the conditions of the loan and terms of repayment and unless the Registering Authority is

also satisfied that such further loan would generate additional income to the SHG and its members, needed for servicing the debt.

(4) No MFI shall grant loan to a member of SHG during the subsistence of two previous loans irrespective of the source of the previous two loans.â??

ii) Section - 2 (b) of the Act, 2011 deals with â??interestâ??, and it says that the interest for the purposes of the terms defined under the provisions of

the said Act would mean a return on the amount lent by the MFI to a SHG. Section - 2 (c) of the Act deals with â??loanâ??, which means an

advance whether of money or in kind given to the borrowing SHG at interest, whether given before the commencement of the said Act or after such

commencement and includes advance, discount, money paid for or on account of or paid on behalf of or at the request of any person, or any account

whatsoever, and every agreement (whatever its terms or form may be) which is in substance or effect a loan of money of in kind given to an SHG

and further includes, an agreement relating to the repayment of any such loan. Section - 2 (d) deals with â??Micro Finance Institution (MFI)â?? and

it means any person, partnership firm, group of persons, including a Company registered under the provisions of the Companies Act 1956, a Non-

Banking Finance Company as defined under the Reserve Bank of India Act, 1934, a Society registered under the Telangana Co-operative Societies

Act, 1964, or the Telangana Societies Registration Act, 2001 and the like, in whichever manner formed and by whatever name called, whose principal

or incidental activity is to lend money or offer financial support of whatsoever nature to the below poverty line population.

iii) Section - 2 (d) of the Act deals with â??Self Help Group (SHG)â?? and it means a group of women formed on principles of self help and

registered as such with the Society for Elimination of Rural Poverty (SERP) in the rural areas or Mission for Elimination of Urban Poverty in

municipal areas (MEPMA) in urban areas. Section - 2 (k) deals with â??SHG Memberâ?? and it means a registered member of a SHG who intends

to avail a loan through such SHG and thus a borrower under the provisions of the Act.

iv) Section - 3 of the Act, 2011 deals with â??registration of MFIs, and as per sub-Section (1), all the Micro Finance Institutions operating in the State

of Telangana as on the date of the commencement of the said Act shall within thirty (30) days from the date of commencement of the said Act, apply

for registration before the Registering Authority. As per sub-section 2 of Section - 3 of the Act, 2011, no MFIs, operating at the commencement of the

said Act or intending to start the business of lending money to SHGs, after the commencement of the said Act, shall grant any loans or recover any

loans without obtaining registration under this Act from the Registering Authority.

v) Section - 7 of the Act, 2011 deals with â??MFIs not to seek security for loan. Section - 8 of the Act, 2011 deals with â??display of rates of interest

charged by MFIs, and as per sub-section (1), all MFIs shall display the rates of interest charged by them in a conspicuous place in their premises in

bold letters visible to the members of the public, and as per sub-section (2) of Section 8, no MFI shall charge any other amount from the borrower

except any charge prescribed in the rules for submission of an application for grant of a loan. Section - 9 of the Act, 2011 deals with â??maximum

amount of interest recoverable on loans and discharge of loans in certain cases. As per sub-section (1) of Section - 9, no MFI shall recover from the

borrower towards interest in respect of any loans advanced by it, whether before or after commencement of this Act, an amount in excess of the

principal amount.

vi) As per sub-section (2) of Section - 9 of the Act, 2011, all loans in respect of which an MFI has realized from the borrower, whether before or after commencement of this Act, an amount equal to twice the amount of the principal, shall stand discharged and the borrower shall be entitled to obtain

refund and the MFI shall be bound to refund the excess amount paid by the borrower. Section - 10 of the Act deals with â??prior approval for grant of

further loans to SHGs or their membersâ??, and as per sub-section (1) of Section - 10, no MFI shall extend a further loan to a SHG or its members

where the SHG has an outstanding loan from a Bank unless the MFI obtains the prior approval in writing in such manner as may be prescribed from

the Registering Authority after making an application seeking such approval. Thus, a duty is cast upon the MFI to register it as per Section - 3 of the

Act, 2011.

vii) In view of the above, it is clear that section - 8 of the Act mandates display of rates of interest charged by MFIs and Section - 9 of the Act

mandates maximum amount of interest recoverable on loans and discharge of loans in certain cases, and it cannot recover from the borrower towards

interest in respect of any loan advanced by it an amount in excess of the principal amount.

viii) As discussed above, respondent No.2 - de facto complainant claims that she is the Member of Shanthoshi Mahila Sangam, which they have

formed with an intention to avail loans at low interest. Further, prima facie, there are specific allegations against the petitioners herein that they have

induced respondent No.2 and LWs.2 to 8 and that they are extending loans at low interest. They have paid an amount of Rs.500/;-towards paper

expenses. They have instructed respondent No.2 and LWs.2 to 8 to deposit an amount of Rs.550/- in a week for 52 weeks and thus, collected an

amount of Rs.29,100/- from each borrower. They have not obtained necessary registration from the Government of Telangana State in terms of the

Act, 2011 and they are also collecting interest over and above the interest prescribed by the Government. The role played by each of the petitioner is

also specifically mentioned in the charge sheet. Thus, there are several triable issues which are to be considered by the trial Court after conducting

full-fledged trial. The petitioners have to face trial and prove their innocence.

ix) The contention of the petitioners that the Investigating Officer has not arraigned the said BFIL as an accused is again a triable issue. Section - 319

of Cr.P.C. deals with power to proceed against other persons appearing to be guilty of offence, and sub-section (1) of Section 319 says that where, in

the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence

for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have

committed.

x) The contention of the petitioners that the said Company has been conducting its business activities strictly in accordance with law and the guidelines

issued by the RBI from time to time is again a triable issue. Therefore, this Court is of the considered opinion that prima facie there are specific

allegations against the petitioners and the role played by them is also specifically mentioned in the charge sheet.

xi) In M. Hardei v. State of U.P. AIR 2016 SC 1615, the Honâ??ble Supreme Court held that it is well accepted in criminal jurisprudence that F.I.R.

may not contain all the details of the occurrence or even the names of all the accused. It is not expected to be an encyclopedia even of facts already

known. There are varieties of crimes and by their very nature, details of some crimes can be unfolded only by a detailed and expert investigation. This

is more true in crimes involving conspiracy, economic offences or cases not founded on eye witness accounts. The fact that Police chose not to send

up a suspect to face trial does not affect power of the trial court under Section - 319 of the Cr.P.C. to summon such a person on account of evidence

recorded during trial. Thus, the petitioners have to face trial, take the said defences during trial and prove their innocence.

xii) The Apex Court in Kamal Shivaji Pokarnekar v. The State of Maharashtra AIR 2019 SC 847 has categorically held that quashing criminal

proceedings was called for only in a case where complaint did not disclose any offence, or was frivolous, vexatious, or oppressive. If allegations set

out in complaint did not constitute offence of which cognizance had been taken by Magistrate, it was open to the High Court to quash the same. It

was not necessary that, a meticulous analysis of case should be done before trial to find out whether the case would end in conviction or acquittal. If it

appeared on a reading of the complaint and consideration of allegations therein, in light of the statement made on oath that the ingredients of the

offence are disclosed, there would be no justification for the High Court to interfere. The defences that might be available, or facts/aspects which

when established during trial, might lead to acquittal, were not grounds for quashing a complaint at the threshold. At that stage, the only relevant

question was whether averments in the complaint spell out ingredients of a criminal offence or not. The Court has to consider whether complaint

discloses any prima facie offences that were alleged against the respondents. Correctness or otherwise of the said allegations has to be decided only

during trial. At the initial stage of issuance of process, it was not open to Courts to stifle proceedings by entering into merits of the contentions made

on behalf of the accused. Criminal complaints could not be quashed only on the ground that, allegations made therein appear to be of a civil nature. If

ingredients of offence alleged against Accused were prima facie made out in complaint, criminal proceeding shall not be interdicted.

xiii) In Skoda Auto Volkswagen India Private Limited v. The State of Uttar Pradesh AIR 2021 SC 931, the Apex Court referring to the earlier

judgments rendered by it has categorically held that the High Courts in exercise of its inherent powers under Section - 482 of Cr.P.C has to quash the

proceedings in criminal cases in rarest of rare cases with extreme caution.

9. CONCLUSION:

i) In view of the above discussion and the principle laid down by the Apex Court in the aforesaid decisions, the petitioners herein failed to make out

any ground to quash the proceedings and, therefore, the present petitions are liable to be quashed.

ii) Both the Criminal Petitions are accordingly dismissed.

As a sequel, miscellaneous petitions, if any, pending in the criminal petitions shall stand closed.