(2015) 04 BOM CK 0091

In the Bombay High Court

Case No : Criminal Application Nos. 1078 of 2014 and 1998 of 2015

Vasant and Others APPELLANT

Vs

The State of Maharashtra and Others RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Bombay Money Lenders Act, 1946 — Section 13(A), 13(B), 13A, 14, 18
Penal Code, 1860 (IPC) — Section 34, 420

Citation : (2015) 4 BomCR(Cri) 677

Hon'ble Judges : T.V. Nalawade, J;I.K. Jain, J

Bench : Division Bench

Advocate : V.J. Dixit, Senior Counsel i/b. M.D. Narwadkar, for the Appellant; V.D. Godbharle, APP, Advocates for the Respondent

Judgement

1. The first application is filed for relief of quashing of F.I.R. No. 10/2014 which is registered at Loha Police Station, Nanded for the offences punishable under sections 5, 32(B) and 33 of Bombay Money-Lenders Act, 1946 (hereinafter referred to as ''the Act'' for short) and also for the offence punishable under section 420 r/w. 34 of Indian Penal Code (hereinafter referred to as ''I.P.C.'' for short). The second application is filed by the applicants for permission to produce some documents. Both the sides are heard.

2. Copies of police papers were made available. The other side has filed reply affidavit to oppose the application. In the second application, the applicants have produced copies of some sale deeds executed in favour of applicants by the original complainants, debtors.

3. The crime is registered on the basis of report given by one Assistant Registrar, Officer appointed by the State Government, for implementation of provisions of the Act. The debtors had approached Police Station Loha, but the police station referred all these complainants to the aforesaid officer. In all 14 persons had given complaints and then more came forward. There are allegations against the applicants that they were doing money-lending business when they had no

licence to do such business under the Act.

4. There are allegations that applicant - Vasant Pipinwar and other applicants, who are family members of Vasant, are doing the money lending business without obtaining licence and for security of the loan, they have obtained registered sale deeds in respect of agricultural lands of many farmers. There is allegation that though such documents are prepared, the lands are still in possession of debtors and they have been paying interest and many of them have returned the amount. Many farmers have grievance that they have not only paid the principal amount, but also interest as per the agreement, but the applicants are not ready to execute the re-conveyance documents in their favour and on the contrary, they are trying to take possession by using force.

5. The record shows that the aforesaid officer recorded statements of 29 such debtors. During inquiry, it transpired that the applicants were charging interest at the rate of 3% to 5% per month. It also transpired that no separate record of the amount actually received from the debtors was prepared by the applicants, but the transactions in question were actually loan transactions and the applicants got executed those documents for money lending business.

6. It is the case of original complainants that they are still in possession of their lands and the revenue record is also to that effect. As the properties are shown to be transferred in the names of all the applicants, F.I.R. is given against all of them. As per the record, agricultural land admeasuring more than 135 Acres is shown to be transferred in favour of applicants under those documents, when initially they had no agricultural land. There is one document, though on ordinary paper, shown to be executed like person like Sudam in which there is mention of interest and it was also a loan transaction. Though it was submitted by the learned Senior Counsel that this Sudam did not come forward during inquiry, such documents cannot be ignored as it is used for registration of crime and the investigation is going on. Already statements of around 29 debtors are recorded by police and they have come forward to say that they have been paying interest at the rate of 5% per annum to the applicants and they are the loan transactions.

7. The learned Senior Counsel submitted that when documents of aforesaid nature are executed in favour of applicants, it is up to the Civil Court to decide as to what was the nature of transactions. He also submitted that under the provisions of Maharashtra Land Revenue Code, the dispute with regard to the possession is also required to be decided by the revenue authority and so, no criminal action is possible against the present applicants. He placed reliance on two reported cases. In view of contentions made by the learned Senior Counsel, the scheme of the Act needs to be seen which is as under :-

8. The Act is made to regulate and control the transactions of money-lending. In section 2 (2) of the Act, the definition of "business of money-lending" is given which is as under :-

"(2) "business of money-lending" means the business of advancing loans whether in cash or kind and whether or not in connection with or in addition to any other business;"

In section 2 (10), definition of "money-lender" is given which is as under :-

"(10) "money-lender" means

(i) an individual, or

(ii) an undivided Hindu family; or

(iiia) a company, or

(iv) an unincorporated body of individuals, who or which-

(a) carries on the business of money- lending in the State; and includes a pawn-broker but does not include -

(i) Government,

(ii) a local authority,

(iii) a bank,

(iv) the Agricultural Refinance Corporation constituted under the Agricultural Refinance Corporation Act, 1963; or

(v) any other banking financial or any institution which the State Government may, by notification in the Official Gazette, specify in this behalf;"

In section 2 (17) there is one more definition with regard to the nature of litigation and which is as under :-

"(17) "suit to which this Act applies" means any suit or proceeding-

(a) for the recovery of a loan made after the date on which this Act comes into force;

(b) for the enforcement of any security taken or any agreement, made after the date on which this Act comes into force in respect of any loan made either before or after the said date; or

(c) for the redemption of any security given after the date on which this Act comes into force in respect of any loan made either before or after the said date;"

9. Under the provisions of sections 3 and 4 of the Act, the State Government has appointed Assistant Registrar for the implementation of the provisions of the Act. The other relevant provisions also need to be kept in mind. The provision of section 5 is as under :-

"5. No money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence."

10. In section 13(A), the power of authorized officer like Assistant Registrar is given and it shows that he can call persons like the present applicants and he can direct them to produce the record with regard to the money-lending business when there is such complaint against them. He has power of even search of the premises without obtaining warrant if he has reason to believe that such persons are carrying on money- lending business without licence and record can be found during search. He has power of inquiry and he can verify the record to ascertain as to whether the persons are indulging in illegal money-lending business or their money-lending business is done in breach of the provisions of the Act.

11. The provision of section 14 of the Act shows that the Criminal Court can on conviction cancel or suspend the licence. The Criminal Court can also declare that the Members of Hindu Joint Family who were illegally indulging in money-lending business are disqualified for holding licence. When such declaration is given, there can be endorsement on the licence of that nature. These provisions and definitions given in the Act, which are already quoted show that case can be filed against all the members of Hindu Joint Family who are found indulging in such activity.

12. The provisions of sections 18 and 19 of the Act are also relevant. They show that it is mandatory on the part of the money-lenders to maintain record of money-lending business as provided in these two sections and the money-lender is also expected to supply the statements of accounts of the loan given to a particular person, to the debtor. Section 21 shows that if suit is filed for recovery of such amount by the money-lenders, the Court is expected to frame issue with regard to compliance of provision of sections 18 and 19 of the Act and if, there is no compliance, the suit is liable to be dismissed. The provisions of sections 23 and 25 of the Act show that there is power with the State Government to fix the limit on the rate of interest and money-lender is not entitled to recover the total amount of interest which is more than the principal amount.

13. In section 32, the punishment is provided for not maintaining the record properly and the imprisonment can extend up to two years. Section 32(A) shows that for willfully making false statement with regard to the aforesaid provisions, imprisonment up to the period of two years can be given. Section 32(B) shows that to a person who is doing money- lending business without licence for first offence, the imprisonment of one year can be given and on repetition, the minimum imprisonment of two years needs to be given. Section 34 is in respect of the contravention of other provisions for which no separate punishment is provided.

14. The provision of section 35(A) shows that for the offence mentioned in section 34, when there is contravention of provision of section 5, it is cognizable offence and the offence punishable under section 33 (molestation of debtor) is also cognizable. In the case like present one, when there is material of aforesaid nature, the provision of section 34 read with section 5 of the Act can be used. Thus, the offence alleged against the present applicants is cognizable in nature.

15. Section 35 (B) of the Act puts some restrictions with regard to taking cognizance of the offence by the Court and it shows that for the offence punishable under section 34 read with sections 18 and 19 of the Act, first, sanction of the Registrar needs to be obtained. In the present case, the authority itself, the Assistant Registrar has come forward to give report and further, the alleged offence is cognizable one. There is contravention of other provisions also which are already quoted.

16. The aforesaid provisions and material quoted already against the applicants show that there is sufficient material to make out prima facie case, not only for the offences punishable under the provisions of the Act, but also for the offence punishable under section 420 r/w. 34 of I.P.C. Thus, it is not possible to quash and set aside the F.I.R.

17. The learned Senior Counsel made one submission on the basis of cases reported as 2007 (1) Bom.C.R. 751 [Ramesh Dhulatrao Gawhale Vs. State of Maharashtra and Ors.] and Hari Shankar Patil and Others Vs. State of Maharashtra and Others, (2013) 3 ABR 1079 : (2013) 2 BomCR(Cri) 651 that as the property given by way of security is immovable property only Civil Court can decide the nature of transactions and the crime cannot be registered against the applicants. This Court has gone through the facts of the two reported cases. In the first case of Ramesh cited supra, the provision of section 13(B) of the Act is discussed. The relevant provision of section 13(B) runs as under :-

"13B. (1) If upon the inspection of records and documents made under section 13A, the inspecting officer is satisfied that the money- lender is in possession of property pledged to him by a debtor as security for the loan advanced by the money-lender in the course of his business of money-lending without a valid licence, the inspecting officer shall require the money-lender to deliver forthwith the posses sion of such property to him.

(2) Upon the property being delivered to him, the inspecting officer, if he is not the Registrar, shall entrust it to the Registrar (when he is also the inspecting officer) shall keep it in his custody for being disposed of as hereinafter provided."

The aforesaid provisions show that power is given to authority, the Assistant Registrar to take possession of the property pledged when he is satisfied that money-lending business was done without having valid licence. In that case, he can hand over the property so taken in possession to the debtor. In the first case of Ramesh cited supra, an attempt was made to hand over the possession of immovable property and so, this Court (learned Single Judge) held that there is no such power given to Assistant Registrar. Thus, the point involved was altogether different.

18. In the second case of Hari cited supra, three complaints were received by inspecting officer and on that basis, the inspecting officer formed opinion that applicant of the case was doing money-lending business without holding valid licence. He then gave report, F.I.R. and the crime came to be registered. His

superior officer intervened and departmental inquiry was started against the inspecting officer. The inspecting officer had made order of cancelling the registered document of conveyance of immovable property. In view of these circumstances, the learned Single Judge of this Court quashed the F.I.R. This Court has no hesitation to observe that quashing of the F.I.R. in the case of Hari cited supra was unwarranted. Passing of any order by inspecting officer under section 13(B) of the Act is different from giving of the F.I.R. by the officer in respect of the contravention of the provisions of the Act. It can be said that the inspecting officer has no power to cancel the transactions made in respect of immovable property under section 13(B) and he has no power to hand over the possession, if at all the possession is with the money-lender. But like in the present case, it was possible to file F.I.R. Only due to the order made under section 13(B) by the inspecting officer, which was not correct and legal, the F.I.R. itself could not have been quashed and set aside. This Court is not at all endorsing the view taken by the learned Single Judge of this Court in the case of Hari cited supra due to which the F.I.R. came to be quashed.

19. In view of the discussion made above, this Court holds that there are no merits in the proceeding filed for quashing of the F.I.R. So, Criminal Application No. 1078/2014 is dismissed. Criminal Application No. 1998/2015 is allowed as it was only for permission to produce the documents.

