

Order below Exh. 24 and 29 in**R.C.C. No.57/2021****CNR-MHSN12-00042021-**

(State of Maharashtra V/s Chandrakant Bhausaheb Jadhav)

These applications filed by accused No. 1 Chandrakant @ Bhausaheb Kashinath Jadhav and accused No. 2 Jagdish @ Jagdip Subhash Bhagat U/s 239 of Cr.P.C for the offence Us 420, 504, 506, R/w. 34 of IPC and Section 39 of Maharashtra Money Lending Act.

CONTENTS OF APPLICATIONS.

2. The Charge-sheet filed against them is false and having without cogent evidence. The incidence is of year 2017 to 2020. There is delay of 4 years in filing first information Report against them. The reason for delay is not explained. As per first information the allegation is of borrowing money from accused on the condition of executing conditional to repurchase deed but the accused get executed registered sale deed. Therefore, present case is of civil nature. The case is based upon document which also not prove the fraudulent and Money Lending case against accused. As per allegation the informant received Rs.06 Lack from accused and paid interest in installment. As per FIR, she paid 09 lacks interest amount within period of 11 months to accused. The present Criminal case filed view to harass the accused. The present case is not within limitation. The Civil Suits are pending before this court in respect of same cause of action.

3. Investigation is not in respect of offence. There is no document in respect of receiving amount by informant. Moreover, there is no evidence that the informant repaid the amount along with interest. The Civil Suit bearing RCS No.136/2020 is filed on 12.11.2020 concerning cancellation of registered sale-deed while

present RCC bearing No. 57/2021 is filed on 09/12/2020. Therefore, present criminal case is filed though and no criminal liability arises against accused. The criminal case is ground less. Hence accused prayed to discharge them from the charges.

CONTENTS OF FIR

4. The informant Sangita Sanjay Gaikwad alleged in FIR that in between the year 2017. Her daughter Shubhangi was having disease – to pain in food pipe. The Doctor advised for operation of abandonment. She received hand-loan from his Brother Anil Salunkhe. But for incurring expanses for operation, she was in need of money. One Tanaji Dnyanu Ghabak said to informant that, the accused No.1 Chandrakant Jadhav and his brother-in-law Jagadish Subhash Bhagat gives money on interest. After 5-6 days said Tanaji Ghabak call upon to accused in the house of informant. The accused said to her that they are ready to given money of Rs.06 lacks for the 15% rate of interest. In addition to it, they demanded to execute conditional sale deed of the area to the extent of out of 13.25 R, 2 to 3 R land. But they get executed the registered sale-deed of 13.25 R in each month the accused were receiving 90 thousand as interest amount. The accused received total Rs 09 Lack interest for the 11 months. The informant requested to re-convey the agricultural land. The informant further requested to re-convey at least some portion of land by which the informant will sale the said portion and repaid the amount of Rs. 06 Lacks. But the accused demanded Rs. 25 Lack from informant. When the informant said to them that in case failure to re-convey the some portion of land she will file complaint at the Police Station, the accused said they will re-convey the land out of 13.25 to the extent of 4.5R land. But requested that this 4.5 land they will sale

to other customer and he will adjusted towards hand-loan amount. The accused No. 1 Chandrakant Jadhav get executed to agreement to sale in his name. One Asma Mulla get executed agreement to sale of the area to the extent of 1.5 R and get executed agreement to sale to the extent of 3R in the name of Sandip Kadam and remaining 5 R get executed agreement to sale in favour of informant. After Two days the accused given false assurance to informant that after canceling agreement to sale they will executed sale-deed. Therefore, informant ready to cancel the agreement to sale accordingly the agreement to sale cancelled. The accused out of 13.25 R land executed sale-deed of land to the extent of 9 R. The accused No. 2 Jagdish Bhagat has filed Civil Suit bearing RCS No. 1106/2020 but said suit was dismissed by the court.

5. The informant further alleged that on 29/11/2020, 11.00 a.m. she and her daughter Shubhangi were in their house. Accused No. 2 Jagdish Bhagat and 2 unknown persons came and said to her that, the land to the extent of 13.25 R belonging to accused their threatened and given abuse to them. Till today for the hand-loan amount of Rs. 06 lacks the accused have received Rs.15 lacks. Therefore, she alleged this First Information Report on 09.12.2020.

Documents relied upon by prosecution -

- i. The prosecution relied upon sale-deed of the dated 18.12.2017 the husband of informant Sanjay Shivaji Gaikwad executed sale-deed in favour of accused No. 2 of land Gat No. 2433 ad- measuring 1 Hecter 0.6 R. to the extent of his 2 Aana share 70,000/- for the consideration amount of Rs. 2 Lack 17 thousand.
- ii. The prosecution relied upon agreement to sale executed by Sanjay Shivaji Gaikwad in favour of One Sandip Kadam of the Land Gat No. 2433 to the extent of 3R.

iii. The prosecution further relied upon agreement to sale-deed dated 05.07.2019. On the perusal of agreement to sale it appears that the accused No. 1 executed agreement to sale in favour of accused no. 1 Bhausaheb Jadhav and sold the land to the extent of 4R in land Gat No. 2433.

iv. The prosecution further relied upon on the extract 8A, Village-Palus. The name of accused no. 2 Jagdish Bhagat can be seen and he is the cultivate of the land to the exted 13.25 R dated 19.06.2019.

v. The prosecution further relied upon agreement to sale dated 24.06.2019 wherein accused no. 2 Jagdish Bhagat executed agreement to sale in favour of Sandip Kadam of the above mentioned land to the extent of 3R.

vi. The prosecution further relied upon agreement to sale dated 05.07.2019 wherein accused no. 2 Jagdish Bhagat executed agreement to sale in favour of informant of the above mentioned land to the extent of 4.75 R.

vii. The prosecution further relied upon agreement to sale dated 05.07.2019 wherein accused no. 2 Jagdish Bhagat executed agreement to sale in favour one Asma Mulla of the above mentioned land to the extent of 1.5 R land for the consideration amount of Rs. 04 lack 30 thousand.

viii. The prosecution further relied upon agreement to sale. This deed is of dated 14.10.2019 cancelled by Sandip Vilas Kadam in favour of accused no. 2. In this deed it is mentioned that due to non clear record and technical reason the agreement to sale get canceling.

ix. The prosecution further relied upon canceling agreement to sale deed dated 14.10.2019 this deed canceling by Asma Mulla in favour of accused no. 2 Jagdish Bhagat. This deed also canceling on the ground of non clear record and technical reason. The earnest

amount paid by Asma Mulla received the said amount on the dated cancellation of agreement to sale.

x. The prosecution further relied upon canceling agreement to sale deed dated 14.10.2019. This deed cancelled by informant Sangita Gaikwad in favour of accused no. 2 Jagdish Bhagat. Informant on the execution of cancellation agreement to sale deed get received the earnest amount paid by her to accused no. 2. This deed also cancelled on the above mentioned reason.

xi. The prosecution further relied upon registered sale-deed executed by accused no. 2 in favour of husband of informant Sanjay Gaikwad on 14.10.2019. On perusal of this registered deed it appears that the husband of informant Sanjay Gaikwad purchased the above mentioned land to the extent of 9.25 R for the consideration amount of Rs. 26 lack 40 thousand.

xii. The prosecution further relied upon agreement to sale deed dated 19.10.2019. This agreement to sale executed by the husband of informant Sanjay Gaikwad in favour of Asma Mulla of the area ad-measuring 1.5 R land for the consideration amount of Rs.04 lack 30 thousand.

xiii. The prosecution further relied upon agreement to sale deed dated 19.10.2019. This deed executed by the husband of informant Sanjay Gaikwad in favour of Sandip Kadam of the area to the extent of 3 R land of the above mentioned land Gat No. 2433 for the consideration amount of Rs. 08 lack 55 thousand.

xiv. The prosecution further relied upon agreement to sale deed dated 29.01.2020 executed by husband of informant Sanjay Gaikwad in favour of Sandip Kadam of the area above mentioned land to the extent of 3 R for the consideration of Rs. 08 lack 55 thousand.

xv. The prosecution further relied upon agreement to sale deed

dated 29.01.2020 executed by husband of informant Sanjay Gaikwad in favour of Asma Mulla of the area above mentioned land to the extent of 1.5 R for the consideration of Rs. 04 lack 30 thousand.

xvi. The prosecution further relied upon registered sale deed executed by husband of informant Sanjay Gaikwad in favour of Tilottama Bamane on 28.05.2022 to the area above mentioned Gat no. to the extent of 1.63 R for the consideration of Rs. 01 lack 80 thousand.

xvii. The prosecution further relied upon agreement to sale deed having notarized deed executed in below husband of informant Sanjay Gaikwad and Accused no. 2. This deed is of 04.06.2019 on perusal of deed, it appears that accused no. 2 agreed to sale the Land Gat no. 2433 ad-measuring 1 H. 06 R to the extent of 2 Anna for the consideration amount of Rs. 21 Lack. He received is 01 lack as earnest amount . The after payment of Rs. 2 lack within 1 month the registered deed will be executed.

**STATEMENTS U/s.164 OF INFORMANT AND HER HUSBAND
DATED 15-12-2020.**

6. Informant stated under section 164 of Crpc the that she was in need of money for want of conducting operation expanses for her daughter Shubhangi. She reiterated the contents of FIR. She lastly stated that, Accused No.2 release the 0.9 R land out of 13.25 R and kept with him 4 R land on 29.11.2020. The accused came abused and threatened to her.

7. Under section 164 cr.p.c of statement husband of informant Sanjay Gayakwad, he just simply stated that accused have

not release their 4R out of 0.9 R land till up to now.

8. The prosecution placed reliance upon copy of plaint of RCS No. 34/2019 in which it appears that the daughter of informant, Sheetal and Shubhangi filed suit for partition of separate possession against informant and their father. But this suit is unconditionally withdrawn by them.

9. prosecution placed reliance upon registered sale-deed executed by Accused no. 2 in favour of accused no. 1 of the said land Gat no. 2433 ad-measuring 1.06R to the extent of 0.4 R dated 14.10.2019. The consideration amount is of 11 lack 44 thousand. This deed executed in pursuance of agreement to sale-deed taken by accused no. 2 in favour of accused no. 1 on 05.07.2019.

10. The prosecution further placed reliance upon discharge card of daughter of informant Shubhangi Gaikwad. On perusal of this card, it appears that, she was admitted on 14.07.2017 and discharged on 24.07.2017. Operation conducted by Dr. Ashutosh Chopade operation namely Gastrojejunostomy.

Section 420 in The Indian Penal Code

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to

fine.

Section 39 in Maharashtra Money-lending Regulation Act

Section 39 – Penalty for doing money-lending without valid licence - 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 extent to five years or with fine which may extent to fifty thousand rupees or with both.

ARGUMENT ADVANCED BY ADVOCATE FOR ACCUSED.

11. In the FIR dated 09.12.2020, the informant Sangita Gaikwad alleged that, she is running a mess. Her husband is illiterate. In the year 2017 she was in need of money for operation of her daughter Shubhangi. She received 06 lack amount from accused. But it is not come on record that, between two accused who has paid the amount. They get executed the sale-deed from her husband Sanjay Gaikwad in place of mortgage condition deed. Her husband had executed sale-deed of land Gat No. 2433 ad-measuring 1.6R to the extent of 2 Anna share belonging to him. It means he was aware that he cannot sale the entire land ad-measuring 1.06 R. On perusal of record there appears that there are several deeds executed by Sanjay Gaikwad at the office of Sub Registrar, Palus. Further more, the informant alleged that, the accused given Rs.06 lack as hand-loan to the informant for the 15% interest. The informant is running a mess and her husband illiterate but she alleged that in all 11 month she paid Rs. 90 thousand as interest. If the money is lend on 15% Rate of interest then how and why the informant paid Rs.90 thousand within 11 month. All the documents are executed by the husband of informant and informant herself also singed on the documents. There

is no document showing that, informant received 06 lacks and paid in installment within 11 month Rs.90 thousand towards interest. The husband of informant Sanjay Gaikwad executed sale-deed of land to the extent of 13.25 R on 17.12.2017 while the discharge card of daughter of informant Shubhangi showing that, operation conducted and she was admitted on 14.07.2017 and discharged on 24.07.2017. Therefore, there appears miss match in allegations in FIR and documents.

12. The sale-deed of the year 18/12/2017 showing that, it is executed by husband of informant Sanjay Gaikwad in favour of accused no. 2 Jagdish Bhagat is of 18/12/2017. The contents their in is purely of registered deed for sale of 2 Anna share belonging to Sanjay Gaikwad. If the informant and her husband aggrieved then they should file complaint in the Police Station forthwith but they filed the Civil Suit bearing RCS No. 90/2020 on 11.11.2020. Later on, present FIR is lodged on 09/12/2020. Thus, there appears delay of 3 years. In the FIR there is no explanation in delay is mentioned. Moreover, the daughters of informant Shital and Shubhangi had filed suit for partition and separate possession but withdrawn by them. He is appearing prima-facie bona-fide owner without notice. From the inception there appears no fraudulent intention on the part of accused. On the contrary It is to be noted that, in the statement U/s.164 of informant and her husband Sanjay Gaikwad it appears that, they have no more remain the grievance regarding 13.25 R land. They have only grievance to the land extent of 0.4 R. Why the informant purchased the 0.9 R on Rs 26,40,000/- and filed civil suit for 0.4 R. Therefore, both accused may kindly be discharge from the charges leveled against them.

ARGUMENT ADVANCED BY Smt.S.V.Patil FOR STATE

13. Learned APP Smt. S. V. Patil filed say below Exh.25 and submitted that charges leveled against accused are serious in nature. The accused committed offences under their collusion. There is medical paper of daughter of informant. The accused given hand-loan to informant and in the name of security get landed properties executed though registered sale-deed. The informant paid the interest amount from time to time in installment. The accused No.1 to 2 given abuse and threatened for life to informant and his family members. The offence is of 2017 which is continuing offence. Therefore, there is no delay in lodging First Information Report. Accused No. 2 has purchase the land in Gat no. 2433 ad-measuring out of 1.06 H R to the extent of 2 Anna for the consideration amount of Rs. 2 lack 70 thousand. He purchase this land on 18/12/2017. However, he sold the in land Gat no. 2433 to the extent of 9.25 R land for the amount of Rs. 26 lack 40 thousand to the husband of informant Sanjay Gaikwad. Question arises the accused no.2 how purchase the entire land i.e. 13.25 R. on the meager amount of Rs. 2 lack 70 thousand. Admittedly the accused no. 2 has not paid the requisite stamp duty of the office of Sub Registrar Palus. Therefore, concerned authority send notice to him for payment of stamp duty along with penalty thereof. In the agreement to sale dated 04/06/2019 the accused no. 2 agreed that, to sale the 13.25 R land for the consideration amount of Rs. 21 lack. But the accused No 2 sold the land in Gat no. 2433 to the extent of 9.25 R land for the amount of Rs. 26 lack 40 thousand. It also appears to the record that accused No.2 Jagdish Bhagat had not affix whole stamp duty while executing sale-deed bearing No. 2964/17 dated 18.12.2017. Therefore, the Sub Registrar, Palus issued notice to

accused No 2. Accused dishonestly committed fraud upon informant. Lastly, she prayed to reject the application.

SAY FILED BY THE INVESTIGATING OFFICER

14. The investigating officer reiterated the contents of FIR and prosecution story. Lastly he prayed to reject the application.

REASONS

15. Having gone through the statement of the witnesses recorded Us 161 of Cr.p.c by the investigating officer as well as the statement of witnesses recorded Us. 164 of Cr pc. I have also gone through the documents on which the prosecution has relied.

16. As per the prosecution story, the daughter of informant suffering from abdomen pain and the doctor advised for surgery on food pipe as she suffering from the disease of Gastro jejunostomy. So, for the purpose of surgery of daughter, informant was in need of money and therefore, she requested to witness Tanaji Ghabak to manage for the loan of Rs. 6 lakh. Accordingly, the witness Tanaji Ghabak approach to both accused. They were agreed to pay the loan. Accordingly, the talk was took place in between the accused persons and informant as well as her husband. On which the accused no.1 agreed to pay loan of Rs. 6 lakh on interest at the rate of 15% per month and also demanded the security for the said loan and it was decided to execute the sale deed of land Gat no.2433 admeasuring 1 H 6R to the extent of 2 Anna share of Sanjay Gaikwad husband of informant with condition with repurchase. Accordingly, the informant received Rs. 6 lakh and sale deed no. 2964/2017 dt.18/12/2017 was executed in favour of accused no. 2. It is also alleged that the informant had paid the interest regularly for 11 months. However,

the accused subsequently denied to reconvey the sale deed on refund of loan amount. The informant subsequently transpire that the accused have not get the sale-deed executed with condition to reconvey the said land. But it was out and out sale. As such both accused committed foul and cheated the informant.

17. Having gone through the entire material on record it appears from the statement of informant as well as witnesses and from the contents of the sale-deed dt. 18/12/2017, that transaction of loan was in between informant and accused no.1. But the sale is recorded in the name of accused No. 2. There is no any prima facie material to show that the accused No.1 and 2 by joining hands are doing the money landing business. There is no such material to show that transaction of loan as alleged was took place with accused No.2. Even no any material to show that, when the loan transaction took place with accused No. 1, then why the sale-deed was executed in the name of accused No. 2. Even the prosecution has not brought any prima facie material when the informant received the loan and when it was agreed to the repaid so in the absence of in the material in this regard, it cannot prima facie believes that the real transaction was of loan. It seems from the sale-deed dt.18/12/2017 that the accused No. 1 signed the said documents as a witness. However, the prosecution has not brought any prima facie evidence to show that the accused persons are doing illegal money lending business. No any instance of loan prior to the alleged transaction of subsequently was took place with the accused persons. As such no prima facie evidence that, accused are involved in money lending business. As per the allegation the transaction of loan took place with accused No. 1 and witness Tanaji Ghabak is the witness of the said transaction. But he never stated that, loan amount was paid by the accused No. 1. It is also no

prima-facie evidence on which particular date the loan amount was paid. Therefore, there is no sufficient prima-facie material that the real transaction was of loan.

18. So far as accused No. 1 is concern from the above discussion and the fact that no any witness has disclosed that the accused no. 1 has paid the loan to the informant and against the said transaction, he get the sale-deed executed in the name of accused No. 2. None of the prosecution witness has stated regarding the relation in between accused No. 1 and 2. Therefore, I found no prima facie sufficient evidence to frame the charge against the accused No. 1 and hence he be deserve to be discharge. In the result I proceed following order;

ORDER

- i. Application Exhibit No. 24 is allowed.
- ii. Application Exhibit No. 29 is rejected.
- iii. Bail bonds of accused are cancelled.
- Vi. The accused shall furnish surety of Rs.15000/- and like amount of surety to comply section 437-A of Code of Criminal Procedure.

sd/-***

Date : 29/01/2024
Place : Palus

(I. A. Y. A. Khan)
Judicial Magistrate, F.C., Palus

CERTIFICATE

I affirm that, the contents of this P.D.F. file are same, word to word, as per the original.

Name of Stenographer : J. A. Salunkhe

Court : Jt. C.J.J.D. & J.M.F.C., Palus

Date : 29/01/2024

Signed by the Presiding Officer on : 29/01/2024

Uploaded on : 29/01/2024