

Ramesh Babulal Chaudhari vs The State Of Mah And Ors on 28 October, 2014

Author: P.R. Bora

Bench: S.S. Shinde, P.R. Bora

Judgment

cwp55

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

AURANGABAD BENCH, AURANGABAD.

CRIMINAL WRIT PETITION No. 55/2013.

Ramesh Babulal Chaudhari,
Aged 47 years, Occ - Agriculture,
R/o. Bhagwan Galli, Nandurbar.

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PETITIONER.

// VERSUS //

1. The State of Maharashtra
through Secretary, Co-operative

Department, Mantralaya,
Mumbai - 32.

2. The Assistant Registrar,

Co-operative Societies and Registrar
under Bombay Money Lenders Act,

Nandurbar.

3. The Superintendent of Police,
Nandurbar.

4. The Police Station Officer,
Civil Police Station,
Nandurbar.

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RESPONDENTS .

Mr. R.R. Mantri, Advocate for the Petitioner.
Mr. K.S. Patil, A.P.P. for Respondents.

CORAM : S.S. SHINDE AND
P.R. BORA, JJ.

Judgment

Date of reserving the Judgment	:	07.08.2014.
Date of Pronouncement.	:	28.10.2014.

JUDGMENT. (Per P.R. Bora, J)

The petitioner has filed the present petition with a

quash and set aside the F.I.R. No. 3/2013, registered at Nandurbar City Police Station on 05.01.2013 and has also prayed for setting aside the charge sheet filed on the basis of the said F.I.R. in Regular Criminal Case No.23/2014 pending on the file of the Judicial Magistrate First Class, Nandurbar for the offences punishable under Sections 32B and 33 of the Bombay Money Lenders Act, 1946 (hereinafter referred to as "the 1946 Act")

for short) and Sections 420 read with Section 511 of Indian Penal Code.

2. Though the petitioner was initially praying for setting aside the entire charge sheet, during the course of hearing of the present petition, the learned Counsel for the petitioner submitted that the petitioner is restricting his petition only to the extent of prayer clause (D), which reads thus :

"(D) In the alternative the action/F.I.R. to the extent of Section 420/511 I.P.C. may be quashed with all steps investigation taken under it."

Judgment cwp55.13 The learned counsel for the petitioner also submitted that so far as the alleged offences under the 1946 Act are concerned, the petitioner would face the trial. Shri R.R. Mantri, the learned counsel for the petitioner therefore restricted his arguments only to the extent of prayer clause (D), reproduced herein above.

3. The learned counsel for the petitioner submitted that on 05.01.2013, one Manoj Madhukar Chaudhari, the Assistant Registrar, Cooperative Societies, Nandurbar filed the F.I.R. at Nandurbar City Police Station against the petitioner only for the offences under Section 32B (b) and (c) and 33 of the 1946 Act. The learned counsel further submitted that the Assistant Registrar, Cooperative Societies, Nandurbar was directed by the Judicial Magistrate First Class, Nandurbar to lodge such F.I.R. The learned counsel further submitted that the learned J.M.F.C. was directed by the learned Principal District Judge, Nandurbar to record the statements of the persons who had allegedly made a complaint to him against the petitioner alleging illegal money lending business being carried out by the petitioner and to conduct a discrete enquiry and to take all further necessary steps. The learned counsel submitted that accordingly when the learned J.M.F.C., recorded the statements of the persons who were alleged to have made the complaint to the learned Principal District Judge, none of them Judgment cwp55.13 spoke against the petitioner, on the contrary, they plead complete ignorance about any such complaint preferred to the learned Principal District Judge.

The learned counsel further submitted that there were some other persons whose names were not mentioned in the directions so given by the learned Principal District Judge and who have never made such complaint to the Principal District Judge, volunteered before the J.M.F.C., for giving their statements and they had made certain allegations against the petitioner accusing him of illegally carrying the business of money lending and thereby exploiting the persons like them. The learned counsel further submitted that after recording the statements of all such persons, even the learned J.M.F.C., give any direction for registering offence against the petitioner under Section 420

read with 511 of Indian Penal Code. The learned counsel reiterated that neither the Assistant Registrar, Cooperative Societies found it necessary to lodge an F.I.R. for the offence under Sections 420 read with 511 of Indian Penal Code. The learned counsel further submitted that it was the investigating officer who at his own added Sections 420 and 511 of Indian Penal Code though there was no such material on record, with the only intention that he could then arrest the petitioner and also seek his police custody. The learned counsel submitted that the investigating officer succeeded in his said intention and he also could obtain police custody of the petitioner for few days. The learned counsel taking us through the entire Judgment cwp55.13 material filed along with the charge sheet submitted that no evidence has come on record so as to charge sheet the petitioner for offence punishable under Section 420 read with 511 of Indian Penal Code. The learned counsel submitted that even if all the allegations allegedly made out by the persons whose statements have been recorded by the investigating officer are taken as it is and accepted to be gospel truth, even then no offence can be said to have been made against the petitioner under Section 420 read with 511 of Indian Penal Code. The learned counsel further submitted that all allegations allegedly made against the petitioner are only in respect of violation of the provisions of the 1946 Act and the Rules framed thereunder.

The learned Counsel submitted that the 1946 Act is a self contained code and since it is a special statute, the general provisions i.e. containing in the Indian Penal Code cannot be made applicable. To substantiate the point so raised the learned counsel has placed reliance on judgment of Division Bench of this Court in case of State .vrs. Parshottam Kanaiyalal and another (AIR 1060 Bom. 244). The learned Counsel read out paragraph no.9 of the said judgment to buttress his arguments.

4. The learned Counsel also relied upon the judgment of Hon'ble Supreme Court in case of Raj Kapoor .vrs. Laxman (AIR 1980 SC 605).

The learned counsel submitted that in the aforesaid matter, the Hon'ble Judgment cwp55.13 Supreme Court had held that the provisions of Cinematograph Act would prevail over the Indian Penal Code since Cinematograph Act is a special code, whereas Indian Penal Code is a general law. The learned counsel submitted that same principle would apply in the present case also. The learned Counsel also placed his reliance on two more judgments of Hon'ble Supreme Court, first in case of Dalip Kaur and others .vrs. Jagnar Singh and another (AIR 2009 SC 3191) and in case of Ramesh Dutt .vrs. State of Punjab and others (2009 DGLS (soft) 938). The learned counsel also cited two more judgments of Hon'ble Supreme Court first in case of Veer Prakash Sharma .vrs. Anil Kumar Agrawal and another (AIR 2007 SCW 4816) and in case of Inder Mohan Goswami and another .vrs. State of Uttaranchal and others (Air 2008 SC 251). Relying on these judgments the learned Counsel vehemently submitted that when the special statute i.e. the 1946 Act is capable of taking care and cognizance of the acts alleged against the present petitioner, there was no reason for the investigating officer to also prosecute the petitioner for the offence under Section 420 read with 511 of Indian Penal Code. The learned counsel thereafter taking us through the various statements recorded during the course of investigation submitted that from none of these statements an inference can be drawn that the petitioner was having an intention at the very inception to cause any wrongful loss to the said persons or any wrongful gain for himself and in Judgment cwp55.13 such circumstances even on merits, no offence has been made out against the petitioner under Section

420 read with 511 of the Indian Penal Code.

5. The learned Counsel, therefore, prayed that to that extent the petition may be allowed and the charge sheet so far as it pertains to the offence under Section 420 read with 511 of the Indian Penal Code may be quashed and set aside.

6. Shri K.S. Patil, learned Additional Public Prosecutor has strongly opposed the contentions so raised in the petition and the prayer so made by the petitioner. The learned A.P.P. submitted that the Investigating Officer has rightly applied Section 420 read with Section 511 of the Indian Penal Code against the petitioner. The learned A.P.P. invited our attention to the statements recorded of the witnesses during the course of investigation and more particularly the statements of Pratapsingh Bhika Rajput, Vaibhav Narayan Karvandkar and Abbas Khan J. Pathan and submitted that the facts stated by these witnesses clearly make out a case under Section 420 of the Indian Penal Code against the petitioner. The learned A.P.P. further submitted that the argument advanced on behalf of the petitioner that since the Bombay Money Lenders Act, 1946 is a special statute and is a self contained Code, on the same set of facts and on the same set of evidence, Judgment cwp55.13 the petitioner cannot be prosecuted for the offence punishable under Section 420 of the Indian Penal Code is misconceived. He added that if the case of cheating is also made out against the petitioner there is no legal bar to prosecute the petitioner under Section 420 of IPC. along with the offences under 1946 Act. The learned A.P.P., therefore, prayed for dismissal of the petition.

7. We have consciously considered the submissions advanced on behalf of the petitioner as well as the respondents. We have also perused the entire material on record. The learned A.P.P. has made available the investigation papers and the entire material filed along with the chargesheet submitted against the petitioner. We have gone through the said material also. As stated herein above, initially the petitioner was challenging the whole of the first information report and the subsequent chargesheet filed on the basis of the said first information report for the offences punishable under the Act of 1946 as well as under Section 420 read with Section 511 of the Indian Penal Code. However, during the course of hearing the petitioner has ultimately restricted his prayer only to the extent of setting aside the chargesheet under Section 420 r/w 511 of the Indian Penal Code. In such circumstances, we had not indulged in making any discussion insofar as the prosecution of the petitioner for the offence under the Act of 1946 are concerned.

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8. From the record, it is revealed that the Assistant Registrar, Co-

operative Societies viz. Mr. Manoj Madhukar Choudhari lodged report on 05.01.2013 at Nandurbar City Police Station for the offences punishable under Sections 32B(b) and 32B(c) and 33 of the Bombay Money Lenders Act, 1946. On the first information report so lodged, the Assistant Police inspector attached to Nandurbar City Police Station registered an offence against the petitioner. It is true that though the first information report was lodged alleging the offences only under the Bombay Money Lenders Act, 1946, while registering the offence against the petitioner, an offence under Section 420 r/w 511 of the Indian Penal Code was also registered against him. The main

attack of Shri Mantri, the learned counsel for the petitioner, was on this aspect. The learned counsel would vehemently submit that the first information report lodged by Shri Manoj Madhukar Choudhari, read as a whole does not disclose the commission of any offence by the petitioner under Section 420 or 420 r/w 511 of the IPC. The learned counsel alleged that the Investigating Officer at his own, without obtaining any prior permission from the learned Magistrate, added the aforesaid section i.e. Section 420 of the IPC, with the sole intention to obtain police custody of the petitioner which could not have been possible had he only registered the offence under Section 32(B)(b) and 32(B)(c) and 33 of the Bombay Money Lenders Act, 1946. It was also sought to be argued by the learned counsel Judgment cwp55.13 that it could have been understood if the Investigating Officer would have subsequently added the said offence after having recorded statements of the witnesses and after having collected some material from the said statements indicating commission of the offence punishable under Section 420 of the IPC also. The learned counsel further submitted that at the very initial stage merely on the basis of complaint lodged by Manoj Madhukar Choudhari there was no reason for registering the offence under Section 420 of the IPC against the petitioner.

9. After having considered the entire material on record we are, however, not convinced with the submissions so advanced on behalf of the petitioner. It is true that the contents of the first information report lodged by Shri Manoj Madhukar Choudhari, Assistant Registrar, Co-operative Societies and the competent officer to lodge an offence under the provisions of the Act of 1946, apparently do not disclose commission of an offence by the petitioner under Section 420 or 420 r/w 511 of IPC. As such, initially we had also formed an opinion that registering an offence under Section 420 of the IPC against the petitioner was incorrect and may not sustain.

However, when we perused the report of inquiry conducted by complainant Manoj Madhukar Choudhari, Assistant Registrar, Co-operative Societies which was annexed by him along with his complaint lodged at Nandurbar Judgment cwp55.13 City Police Station, it is revealed that in the course of inquiry conducted by him several such facts have come on record which prima-facie disclose the commission of the offence under Section 420 of the IPC by the petitioner.

10. It is to be stated that the Principal District Judge, Nandurbar had received one letter wherein it was complained that the petitioner was carrying on business of money lending and was exploiting the borrowers who had obtained loan from him by charging them exorbitant interest and by obtaining from them signed blank cheques and blank stamp papers to be used according to his wishes. The Principal District Judge, has therefore, directed learned 2nd Judicial Magistrate First Class at Nandurbar to record statements of such witnesses. The learned 2nd J.M.F.C. therefore, recorded the statements of the said witnesses named in the complaint received to the Principal District Judge. Some other persons also volunteered for giving their statements and their statements were also recorded by the learned J.M.F.C.. After recording the statements of the said witnesses the learned J.M.F.C. forwarded the entire papers to the Assistant Registrar, Cooperative Societies who was a competent authority under the Act of 1946 to take further necessary action against the petitioner. Accordingly, he carried out the further enquiry and lodged a complaint against the petitioner at Nandurbar city Police Station for the offence under Sections 420 r/w. 511 of Judgment cwp55.13 IPC. The enquiry report submitted by Shri Manoj Choudhari along with the first information report lodged by him at Nandurbar City Police Station reveals that the petitioner used

to obtain signed cheques from the borrowers stating that the said cheques are being taken by him by way of security but used to tender the said cheques for collection even after the full payment of the borrowed amount by the borrower along with interest and on dishonour of the said cheques used to prosecute the borrowers for the offence punishable under Section 138 of the Negotiable Instruments Act. It is also revealed that the petitioner also used to obtain duly signed blank stamp papers from the borrowers and used to misuse the said stamp papers by getting typed / transcribed thereon false agreement of sale or any other similar deed of conveyance. The report also revealed that the petitioner had coercively recovered the interest from the borrowers some time twice or thrice the loan amount. The petitioner was informed to be recovering interest from the borrowers @ Rs.5/-% per month i.e. Rs.60/-% per annum.

The petitioner was thus informed to be inhumanly exploiting the borrowers by recovering from them a huge amount of interest.

11. After having carefully gone through the aforesaid report of inquiry submitted by complainant Manoj Madhukar Choudhari which is forming part of the complaint lodged by him apparently it does not appear to us that Judgment cwp55.13 the investigating officer has committed any wrong in applying Section 420 of the IPC also against the petitioner. The act of the petitioner to make the borrower to hand him over blank signed cheques towards security for repayment of the amount borrowed by them and subsequently to tender the said cheques for collection in spite of the fact that the entire borrowed amount is repaid by the said borrowers with a huge interest, in our opinion, prima-facie appears to be of cheating. Similar would be the situation in case the money lender obtains the blank stamp papers duly signed by the borrower at the time of advancing him the loan stating that the same has been obtained for the purpose of security towards repayment of loan and subsequently uses the said stamp paper for getting executed in his favour an agreement of sale or for any other similar purpose. Seizure of several blank cheques and blank stamp papers signed by the respective borrowers from the custody of the petitioner also prima-facie disclose the commission of the offence under Section 420 r/w 511 of IPC by the petitioner.

12. It was sought to be contended by Mr. Mantri the learned counsel for the petitioner that there is no material on record to show that the petitioner had made any misrepresentation or used undue force to the borrowers to hand him over the signed blank cheques or blank stamp papers and further that such blank cheques or blank stamp papers were voluntarily Judgment cwp55.13 handed over by the respective borrowers for assuring the petitioner that the amount borrowed by them will be repaid by them. It was thus, the contention of the learned counsel that there is no material to suggest that there was any dishonest intention of the petitioner at the very initial stage i.e. at the time of obtaining blank cheques or blank stamp papers from the respective borrowers and therefore, no offence can be said to have been made out under Section 420 of IPC. However, in the facts and circumstances which have come on record the contention so raised by the learned counsel is liable to be rejected. From the contents of the statements given by the witnesses who have borrowed the loan from the petitioner it is difficult to draw an inference that they had voluntarily handed over blank cheques to the petitioner. From the facts which have come on record there is reason to believe that it was the modus operandi of the petitioner to obtain the signed blank cheques from the borrowers before advancing them the loan and to tender the said cheques for collection even after borrowers

had repaid the entire loan amount with interest accrued thereon. As such, we cannot accept the submission of the learned counsel of the petitioner that the dishonest intention of the petitioner since inception has not been brought on record.

13. After having considered the material collected by the prosecution Judgment cwp55.13 at this stage we are unable to accept the argument advanced on behalf of the petitioner that there is absolutely no material against the petitioner for prosecuting him under Section 420 or under Section 420 r/w 511 of the IPC.

As discussed by us herein-above, the first information lodged by Manoj Madhukar Choudhari cannot be read in isolation and it will have to be read along with report of inquiry annexed therewith.

14. The learned counsel for the petitioner has cited several judgments to substantiate his contention that since the Money Lending Act is self contained code, on the same set of facts and on the same set of evidence a person cannot be prosecuted under the provisions of the Indian Penal Code which is general law and the prosecution would only sustain under the Bombay Money Lenders Act which is a special Act. The learned counsel has placed his reliance on the judgment of the Division Bench of this Court in the case of State Vs. Purushottam Kanhaiyalal & another, reported in AIR 1960 Bom. 244. The learned counsel invited our attention to the observation made by the Division Bench in paragraph 9 of its judgment wherein it is held that :

"Where certain special offences have been created in a special Act, such as the Prevention of Food Adulteration Act, and where that special Act itself makes a further provision as to who should be the prosecutors in regard to the offences specified in that Act, then a prosecution which does not conform to the provisions of that Act would be obviously Judgment cwp55.13 without jurisdiction, and it is not open to the complainant to say that the complaint had been filed in the exercise of his right under the common law."

The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of Raj Kapoor Vs. Laxman, reported at AIR 1980 (SC) 605. In the said case the accused was prosecuted for the offence under the Indian Penal Code along with the offences under the Cinematograph Act, 1952 and the Hon'ble Supreme Court quashed the prosecution for the offence under the IPC. To convince us, as to how the ingredients are lacking in the instant case to prosecute the petitioner for the offence punishable under Section 420 of the IPC, the learned counsel cited the following judgments :

- i) AIR 2009 SC 3191 (Dalip Kaur and Ors Vs. Jagnar Singh and Anr.)
- ii) 2009 DGLS (Soff.) 938 (Ramesh Dutt Vs. State of Punjab & Ors.)
- iii) 2007 AIR SCW 4816 (Veer Prakash Sharma Vs. Anil Kumar Agrawal & anr.)

iv) AIR 2008 SC 251 (Inder Mohan Goswami and Anr. Vs. State of Uttarnchal & Ors.)

15. We have carefully gone through the aforesaid judgments. With utmost respect we submit that the ratio laid down in the said judgments may not apply to the facts and circumstances of the present case. the endeavour of the learned counsel in citing the aforesaid judgments was to submit that Judgment cwp55.13 intention is essential ingredient and it has to be shown that the accused had fraudulent or dishonest intention since beginning for prosecuting a person under Section 420 of the IPC. At this juncture, we would not indulge in making any elaborate discussion since it will have an adverse effect on the trial of the case and may cause prejudice to the accused, suffice to say that the contention raised by the petitioner that there is absolutely no material for prosecuting him under Section 420 of the IPC cannot be accepted for the reasons, hereinabove stated by us.

16. We are also not convinced with the submission made on behalf of the petitioner that since the Act of 1946 is a self contained Code on the basis of the same evidence the person cannot be prosecuted for the offence under the Indian Penal Code, which is a general law. Section 32B(b) and (c) of the Act of 1946 pertain to carrying on money lending business without valid licence and entering into agreement in the course of money lending business carried on under the fictitious name. It thus does not cover and incapable of taking care of the allegations found to have been made against the petitioner that under the guise of security he was obtaining blank cheques from the borrowers and was misusing the same even after repayment of the borrowed amount by tendering such cheques for collection.

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17. After having consciously considered the submissions made on behalf of the parties and the material available on record, we decline to exercise our jurisdiction under Article 226 of the Constitution of India for setting aside the prosecution against the petitioner for the offence punishable under Section 420 of the IPC. We made it clear that the observations made by us in the present judgment are all prima-facie in nature and the trial Court may not get influenced with it either while framing the charge against the accused or at any subsequent stage.

In the result, the writ petition fails and is accordingly dismissed.

Rule stands discharged.

JUDGE

JUDGE

Dhuriya/Raut

