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We, therefore, make the rule absolute and grant leave to the petitioner to appeal to the Supreme Court under s. 110 of the Civil Procedure Code. Costs to be costs in the appeal to the Supreme Court.

Rule made absolute.

K. B. S.

APPELLATE CRIMINAL

Before Mr. M. C. Chagla, Chief Justice.

PARASHURAM LALJISHET GUJAR *v.* THE STATE OF BOMBAY.*

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Bombay Money-lenders Act (Bom. XXXI of 1947), ss. 5, 10, 25, 34—Bombay Money-lenders (Amendment) Act (Bom. LVII of 1949), s. 4—Accused carrying on money-lending business in year 1948—Business done without license and by charging excess interest—Accused whether commits offences under s. 34.

Section 5 of the Bombay Money-lenders Act, 1946, is a bar against doing any money-lending business without a license, and if that provision is contravened, s. 34 of the Act becomes applicable, and the person doing money-lending business without a license commits an offence for which he can be punished under the latter section.

Before sub-s. (3) was added to s. 25 of the Act by the Bombay Money-lenders (Amendment) Act, 1949, it was open to a money-lender to charge a rate of interest exceeding the maximum rate of interest fixed by the Provincial Government, and in doing so he would not have committed any offence. He would only have run the risk of his not being able to recover such interest because no Court could have given him relief on the basis of an agreement which provided for a rate of interest exceeding the maximum rate.

CRIMINAL REVISION APPLICATION from the order of conviction and sentence passed by T. S. Bhole, Resident Magistrate, First Class, Mahad, confirmed on appeal by N. D. Karkhanis, Sessions Judge, Kolaba, at Alibag.

Parashuram Jaljishet Gujar (accused) who was a trader at Mahad advanced loans to several persons between January 6, 1948, and October 24, 1948. Earlier on November 17, 1947, the Bombay Money-lenders Act, 1946, had come into force and thereupon on May 5, 1948, the accused applied for a license under the Act but he had not obtained it during the relevant period. The accused also charged interest at

* Criminal Revision Application No. 770 of 1951.

a rate higher than the maximum prescribed by the Provincial Government under the Act in respect of those money-lending transactions.

On July 25, 1950, the accused was prosecuted for having contravened the provisions of ss. 5 and 25 (3) and thus having committed offences punishable under s. 34 of the Act. On December 30, 1950, the trying Magistrate convicted the accused of both the offences and sentenced him to pay a fine of Rs. 50 for the offence under s. 5 and to pay fine of Rs. 25 for the offence under s. 25 of the Act.

The convictions and sentences were confirmed by the Sessions Judge on appeal who observed in his judgment as follows:—

"The question is whether the provisions of cl. (2) of s. 25 which say that the contract of charging interest at a rate higher than the fixed rate will not be enforceable in any Court of law, will amount to a penalty within the meaning of the terms used in s. 34 of the said Act. In my opinion, it will not. The important word is specific penalty. What has got to be seen is whether sub-cl. (2) of s. 25 imposes specific penalty. All that it says is that 'no Court will allow the rate of interest higher than the one fixed by the Government,' that in my opinion, will not be a penalty at all. It will invalidate the contract with respect to the excess amount of interest. Therefore, even without the amendment of s. 25 the act of the appellant would have amounted to a breach of the provisions of s. 25 and, therefore, an offence under s. 34 of the said Act. The amending Act No. LVII of 1949 makes the position quite clear. The amending Act came into operation on December 22, 1949, while the appellant was convicted on December 30, 1950. Therefore, the appellant cannot agitate this point and urge that his conviction is erroneous on the point of law."

The accused applied in revision to the High Court.

M. B. Chitre, with *V. H. Kamat*, for the accused.

H. M. Choksi, Government Pleader, for the State.

Chagla C. J. By this revision application the accused challenges his conviction under ss. 5 and 25 (3) of the Bombay Money-Lending Act. The facts are not in dispute. Between January 6, 1948 and October 24, 1948 the accused had several money-lending transactions in respect of which he charged interest at a rate exceeding the maximum prescribed by the Provincial Government under the Act. This Act came into force in the Mahad Taluka on November 17, 1947, and the accused carried on his business in that Taluka. The penal section under which the accused has been convicted is s. 34 which provides that whoever fails to comply

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with or acts in contravention of any provision of this Act, shall, if no specific penalty has been provided for in this Act, is punishable in the manner laid down in that section. Turning to s. 5 it provides that no money-lender shall carry on the business of money-lending except in the area for which he has been granted a license and according to the terms and conditions of such license. It is not disputed that the accused has contravened the provisions of s. 5 because he has carried on business of money-lending without a license. Therefore reading ss. 5 and 34 it seems to me clear that he having failed to comply with and having acted in contravention of the provisions of s. 5, the penal provisions of s. 34 would apply as no specific penalty is provided in s. 5 itself.

Now, what has been very ingeniously argued by Mr. Chitre before me is that s. 10 of the Act makes it clear that no penalty was to be imposed upon a person carrying on money-lending business without a license. S. 10 deals with suits filed by money-lenders and it lays down that no Civil Court shall pass a decree in favour of a money-lender who does not possess a valid license in respect of the loan on which the suit is based, and the section provides for suits being adjourned in order to enable the money-lender to obtain the necessary license, and the section finally provides that if the money-lender fails to produce the license then the Court shall dismiss the suit. According to Mr. Chitre the only effect of not obtaining a license is that no decree can be passed in favour of such a person under s. 10. Mr. Chitre further points out that s. 10 itself contemplates that a license may be obtained after a money-lender has done money-lending business, and Mr. Chitre says that in fact in this case the accused has applied for a license on May 5, 1948. Therefore Mr. Chitre says that if the Legislature contemplated the issuing of a license to money-lenders who did money-lending business without a license, surely it would not be that his doing money-lending business without a license would constitute an offence, within the meaning of s. 34. If this argument were to be accepted, it would lead to the startling result that a money-lender may do money-lending business without a license and he would come to no grief at all unless he files a suit for recovery of his loan under s. 10. So long as he finds obliging customers who will return the loans to him, he could flagrantly defy the provisions of the Bombay Money-lenders Act and carry on

his business and no ill can happen to him. It is obvious that the Bombay Money-lenders Act is an Act which was intended to put down a very serious evil in our society. It was intended to keep control over money-lending transactions and to see that excessive rate of interest was not charged by money-lenders, and the only way that such control can be maintained is by providing penalties for doing money-lending business without a proper license from the State. Therefore, in my opinion, s. 10 has nothing whatever to do with s. 5. Section 10 refers only to those cases where the money-lender comes to Court for obtaining a decree and the Court, instead of summarily dismissing his suit if he has no license, gives him an opportunity to obtain a license. S. 5 is a bar against doing any money-lending business at all without a license and if that provision is contravened s. 34 becomes applicable and the person doing money-lending business without a license commits an offence for which he can be punished.

Turning to s. 25, that section deals with fixing of the maximum rates of interest by the Provincial Government and sub-s. (2) of s. 25 provides that any agreement for payment of interest at a rate exceeding the maximum fixed by the Provincial Government shall be void and no Court shall in any suit to which the Act applies award interest exceeding the rate fixed by Government. Sub-s. (*3*) was added to this section by Act LVII of 1949 and that sub-section is that if any money-lender charges or receives from a debtor interest at a rate exceeding the maximum rate fixed by the Provincial Government under sub-s. (*1*), he shall, for the purpose of s. 34, be deemed to have contravened the provisions of the Money-lenders Act. Mr. Chitre argues that in s. 25 the Legislature specifically refers to s. 34 when it intended that a contravention of the provisions of s. 25 should be made penal and to which s. 34 should apply, and inasmuch as there is no similar provision in s. 5, s. 34 is not applicable. Now, the difference in the language between s. 5 and s. 25 is obvious. S. 5 contains a mandatory provision prohibitting any money-lender from carrying on business without a license. S. 25 does not contain any such provision. It merely provides for fixing the maximum rate of interest by the Provincial Government and also for the Court declaring any agreement to charge higher rate of interest void. But there is nothing in s. 25 to impose an obligation upon the money-lender not to charge a rate of interest exceeding the maximum rate. Therefore, before

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sub-s. (3) of s. 25 was enacted it would have been open to a money-lender to charge a rate of interest exceeding the maximum rate of interest fixed by the Provincial Government and in doing so he would not be committing any offence. He would only have run the risk of his not being able to recover such interest because no Court could have given him relief on the basis of an agreement which provided for a rate of interest exceeding the maximum rate. Therefore, in order to make s. 34 applicable to s. 25 the Legislature had expressly to provide by sub-s. 3 that when a money-lender charges or receives from a debtor interest at a rate exceeding the maximum rate he commits an offence and contravenes the provisions of the Act for the purposes of s. 34.

In my opinion, therefore, the conviction of the accused under s. 5 is proper. With regard to his conviction under s. 25 (3), on the same parity of reason his conviction cannot be justified because s. 25 (3) was enacted in 1949 and the offence committed was during the period January 6, 1948 to October 24, 1948. Therefore, while upholding the conviction of the accused under s. 5 of the Bombay Money-lenders Act, I must set aside his conviction under s. 25 (3). The sentence under s. 25 (3) will also be set aside and the fine paid in respect of the offence under s. 25 (3) will be refunded to the accused. The accused is acquitted of the offence under s. 25 (3) and his conviction under s. 5 is confirmed.

Order accordingly.

M. W. P.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar and Mr. Justice Vyas.

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THE BOROUGH MUNICIPALITY OF AMALNER (ORIGINAL DEFENDANT No. 1), APPELLANT *v.* THE PRATAP SPINNING WEAVING AND MANUFACTURING CO., LTD. AMALNER (ORIGINAL PLAINTIFF), RESPONDENT.*

Bombay Municipal Boroughs Act (XVIII of 1925), ss. 78, 80 and 81—Omission to mention material particulars in the assessment list and failure to call for objections to the valuation in the assessment list, whether renders whole assessment list invalid—Jurisdiction of Civil Court to decide the amount of assessment—Amalner Municipal

* First Appeal No. 654 of 1950.