# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# CRIMINAL APPELLATE JURISDICTION
# WRIT PETITION NO. 1948 OF 2022

1. Khush Housing Finance Pvt. Ltd.
2. Amit Kirit Magia … Petitioners

V/s.

1. The State of Maharashtra
2. Kishor Subhash Agre … Respondents

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Mr. Sanjeev Sawant a/w. Mr. B.K. Barve, Mr. Sandeep Barve, Mr.Ajit Salunke i/b B.K. Barve & Co. for the Petitioners.
Ms M.H. Mhatre, APP for the Respondent No.1 – State.
Mr. Kuldeep Patil i/b Ms Saili N. Dhuru for Respondent No.2.

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**CORAM : NITIN JAMDAR &**
**N.R. BORKAR, JJ.**
**DATE : 29 AUGUST 2022.**

**ORDER** *(PER N.R. BORKAR, J.)*

. The present petition under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 is filed to quash the First Information Report No.60 of 2022 (hereinafter referred to as "FIR", for short) dated 26 March 2022 registered at Swargate Police Station, Pune City against the Petitioners pursuant to the order passed by the learned Judicial Magistrate First Class, Pune under Section 156 (3) of Code of Criminal Procedure (CPC) for the offences punishable under Sections 420, 406, 425, 403 and 383 read with 34 of the Indian

Penal Code, 1860 (I.P.C.).

2. Petitioner No.1 is the Non Banking Financial Institution and the Petitioner No.2 is the Managing Director and Chief Executive Officer of Petitioner No.1.

3. The aforesaid crime came to be registered at the instance of Respondent No.2, who has alleged that in the year 2010, he had borrowed the home loan/availed the cash credit facility of Rs.1,54,00,000/- from State Bank of India and for availing the said loan/ cash credit facility, he had mortgaged with the bank residential house owned by him and two shops owned by his wife. He then requested the State Bank of India to convert his cash credit facility into term loan, however, the bank refused to do so and declared his account as Non-Performing Asset (NPA).

4. According to Respondent No.2 in May 2016, he was introduced to Petitioner No.2, who at that time was looking for the premises at Pune on leave and license basis for opening branch office of Petitioner No.1 According to him, during interaction, he apprised Petitioner No.2 about his NPA account with State Bank of India, who agreed to take over the said loan account, however, he was told that for that purpose he will have to mortgage with them the properties owned by him.

5. It is alleged that on 30 June 2017, one Ashok Thakar, who according to Respondent No.2, was the Power of Attorney Holder of Petitioner No.2, came to his house and took his signatures and signatures of his wife on blank loan agreement and blank cheques. According to Respondent No.2, when he questioned him as to why he is taking their signatures on blank papers, he told them that they would fill-in the said loan agreement and its one copy would be sent to him within one week.

6. According to Respondent No.2, on the very same day, i.e. on 30 June 2017, he was asked to come to Sub-Registrar Office at about 12.00 p.m. to execute mortgage deed. It is alleged that when he reached to Sub-Registrar Office, he and his wife were made to sign on few documents and were not allowed to go through the said documents. According to Respondent No.2, later on he came to know that instead of mortgage deed, the Petitioners got executed sale deed from him and his wife.

7. Respondent No.2 has further alleged that one of the blank cheques which was obtained from him was presented for encashment by entering an amount of Rs. 1,81,000/- and at that time, he came to know that instead of agreed interest at the rate of 8% he was being charged interest at the rate of 22%. According to Respondent No.2, the Petitioners by playing fraud upon him got prepared the false documents with a view to grab his properties.

8. On these allegations, an application under Section 156(3) of Cr.P.C. was filed. The trial court by order dated 25 February 2022 directed the concerned police station to investigate into the allegations. Pursuant to the said order, the impugned FIR came to be registered.

9. We have heard the learned counsel for the Petitioners, learned APP for the Respondent No.1/State and learned counsel for Respondent No.2.

10. The learned counsel for the Petitioners submits:

(i) In June 2017, Respondent No.2 approached the Petitioner No.1 for financial assistance in the form of balance transfer of loan from State Bank of India, Pune. After considering the proposal of Respondent No.2 and his wife, the Petitioner No.1 had sanctioned cash credit facility of Rs.1,30,60,180/- to them. The Respondent No.2 and his wife executed various loan and security documents and after execution of the said documents on 7 July 2017 and 18 July 2017, the loan amount of Rs.1,07,80,000/- was disbursed to them and an amount of Rs.17,37,006/- was retained as per sanction condition of advance 10 equal monthly installments and the amount of Rs.5,43,174/- was adjusted against the processing fees. In view of aforesaid disbursement of loan amount, State Bank of India vide it's letter dated 7 July 2017 had issued No Due Certificate in favour of Respondent No.2. Respondent No.2 and his wife thereafter on 19 July 2017 created equitable mortgage of the property owned by them. The Respondent No.2 and his wife after utilising the said disbursed loan amount paid only 4 EMIs and thereafter failed to make regular payments and hence their loan account along with cash credit facility was classified as NPA on 31 March 2019. The demand notice dated 18 August 2021 under Section 13 (2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") was thus issued to them and they were called to make payment of Rs.2,29,69,291/-. Despite receipt of said notice, neither payment was made nor any objection was raised and thus the Petitioners took symbolic possession of the secured asset on 24 November 2021 in terms of Section 13(4) of the SARFAESI Act.

(ii) The Respondent No.2 and his wife sold their two shops to the Petitioners viz. Shop No.5, situated at Amar Saket, CTS No.1008, Shukrawar Peth, Pune and Shop No.13 situated at Tirupati Complex, Survey No.25, Dhankawadi Pune by separate registered sale deed dated 30 June 2017 as they were in need of financial assistance. The sale consideration was transferred through RTGS to their accounts. The Respondent No.2 by suppressing all these facts, with *mala fide* intention filed the complaint case and got the FIR registered.

(iii) Even if the allegations are taken at their face value and accepted in their entirety do not constitute any cognizable offence and the allegations made in the FIR are absurd and inherently improbable. The impugned FIR may thus be quashed.

11. On the other hand, the learned APP and the learned counsel for Respondent No.2 submits that the Respondent No.2 and his wife were made to sign on blank loan agreement. It is submitted that on the pretext of execution of mortgage deed, the Petitioners got the sale deeds executed from the Respondent No.2 and his wife and thus it cannot be said that the allegations do not constitute any cognizable offence. It is thus submitted that petition be dismissed.

12. We have perused the impugned FIR. Respondent No.2 has alleged that on 30 June 2017, one Ashok Thakar came to his house and took his signatures and signatures of his wife on blank loan agreement. Respondent No.2 has then alleged that after his signatures were taken on blank papers, he was asked to come to Sub-Registrar office on the very same day, i.e., on 30 June 2017 at about 12.00 p.m. to execute mortgage deed. According to him, when he reached to the Sub-Registrar Office, he and his wife were compelled to sign few documents and he was not allowed to go through the

said documents. Respondent No.2 has thereafter vaguely stated that lateron he came to know that instead of mortgage deed, the Petitioners got executed the sale deeds from him.

13. The Respondent No.2 in the FIR itself has stated that he is in the business of Sales and Marketing. It is thus unlikely that Respondent No.2, who is businessman would sign on blank loan agreement. Even if the same is to be believed for the sake of argument, that Respondent No.2 was made to sign on blank loan agreement, then it was necessary for the Respondent No.2 to spell out the circumstances under which he was made to sign on blank loan agreement. However, the same is not done.

14. The allegations of Respondent No.2 that when he reached to Sub-Registrar office on 30 June 2017, he and his wife were compelled to sign on certain documents and they were not allowed to go through the said documents cannot be believed for the simple reasons that Respondent No.2 is not a rustic villager, who can be compelled and if at all he was compelled he would not take any action till filing of the complaint in the year 2020. The Respondent No.2 has not alleged in the FIR that no sale consideration was paid to him.

15. The loan account of Respondent No.2 was classified as NPA on 31 March 2019. It is not the case of Respondent No.2 that he had

repaid the loan amount. We are thus convinced that the FIR lodged by the Respondent No.2 is nothing but an abuse of process of law and filed with intention to block the recovery of the loan amount. If such prosecution is permitted, it would encourage borrowers to use the criminal process to stall the recovery of their loan. Resultantly, a case is made out for exercise of inherent and extraordinary jurisdiction of this court Accordingly, Writ Petition is allowed in terms of prayer clause (B).

16. Writ Petition is disposed of.

**(N.R. BORKAR, J.)** **(NITIN JAMDAR, J.)**