IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] NO. 101/2020.

Tata Capital Housing Finance Limited,
through its Branch-in-charge,
Mr.Rahul Indane, Age 36 Years,
Occupation Service, resident of flat No.T-14,
Yashwant Apartment, C-Wing,
Borkute Layout, Narendra Nagar,
Nagpur. ... **APPLICANT.**

VERSUS

1.State of Maharashtra,
through its Police Station Officer,
Police Station Jaripatka, Nagur,
District Nagpur.

2.Manoj s/o Beniprasad Bhale,
Aged 46 years, Occupation Private,
resident of c/o. Mr.Singh,
Plot No.302, Dixit Nagar,
Nagpur. ... **NON-APPLICANTS**

Mr. R.R. Vyas, Advocate for the Applicant.
Ms. M. Deshmukh, A.P.P. for Non-applicant No.1/State.
Non-applicant No.2 – Served.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATE : MARCH 02, 2023.

ORAL JUDGMENT (PER , VINAY JOSHI, J.) :

Considering the controversy involved in the matter, and with consent of the learned Counsel present for the parties, Criminal Application is taken up for final disposal at the stage of admission.

Admit.

2. This is an application seeking to quash the first information report bearing Crime No.1354/2019 registered with Jaripatka Police Station, Nagpur for the offence punishable under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code.

3. The applicant is a Housing Finance Company Limited, engaged in the business of Banking. Unfortunately in the tussle of two brothers, they have been arrayed as accused in the case. The

learned Counsel appearing for the applicant took us through all the papers to contend that the applicant Finance Company has no role, despite that they have been arrayed as an accused with malafide intention.

4. The facts in brief are that one Beniprasad Bhale was the owner of certain immovable property, which he had purchased on 02.09.1983 from Laghu Vetan Cooperative Society, under a registered document. Beniprasad was having two sons namely Rajesh and Manoj. Police report has been lodged by Manoj against his brother Rajesh, as well as the present applicant Finance Company. It is informants case that he was the owner of subject immovable property. However, his brother Rajesh in connivance with the officers of the Finance Company mortgaged the subject house and took loan of Rs.47 lakhs. It is the principal contention that though the informant Major is owner, his brother prepared a false document of title. The Finance Company was aware about the forged document, still they have accepted the same towards security and disbursed the loan. Further it is the grievance of the informant

that the Finance Company had forcibly taken possession of the subject property, and therefore, the report.

5. The learned Counsel for the applicant has produced bunch of documents, which he states that the same has been brought by the Law Officer of the applicant Finance Company. These bunch of original documents are perused and the same are returned to the said officer, by retaining xerox copy of the same on record. Perusal of the said documents clearly falsifies the contents of the first information report. It emerges that the house was owned by Beniprasad [father] and it was his exclusive property. The original owner Beniprasad along with his one son namely Rajesh and wife of Rajesh had jointly applied to the applicant Finance Company for grant of loan. Search report was taken and thereafter, loan to the tune of Rs.46.20 lakhs has been sanctioned. The owner Beniprasad had mortgaged the subject property by way of deposit of title deeds. Instrument of mortgage was registered with the office of the Sub-Registrar. Since the loan turned into NPA, the Finance Company has invoked the provisions of Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as **"the SARFESI Act"** for short], by issuing demand notice under Section 13[2] of the SARFESI Act. The Finance Company had applied to the District Magistrate for taking possession, who in turn has passed an order on 17.12.2018, in terms of Section 14[2] of the SARFESI Act. Public notice for taking possession was issued and thereafter, the Finance Company took possession of the subject property.

6. It is also brought to our notice that informant Manoj, who was another son of the owner Beniprasad, was well aware of the entire transaction. He has already applied to the Debt Recovery Tribunal seeking to quash the entire action taken by the Finance Company under the provisions of SARFESI Act. However, the said application was dismissed for want of prosecution on 26.11.2019. In the wake of such position, Manoj has lodged the existing first information report on 17.12.2019 with malafide motive.

7. In support of said contention, the applicant has tendered

across the bar original title documents in the name of Beniprasad. Besides that the applicant has produced several documents to show that the house was owned by the borrower Beniprasad. We have gone through the photocopies of the documents i.e. Property card, Tax receipts, Building permission, Sanctioned plan etc. It is crystal clear from all these documents that Beniprasad was the exclusive owner of the subject property. Not only that, the learned Counsel for the applicant took us through the pleadings made by the informant Manoj in his application moved to the Debt Recovery Tribunal. Our attention has been drawn to paragraph no.5[iii] and [v] of the said pleadings, which indicates that the informant Manoj himself has pleaded that the subject property was owned by his father Beniprasad.

8. We find that there is more than enough material to falsify the contents of the first information report that Manoj was the owner of the subject property. Moreover, the Finance Company is in possession of the original title documents. By any stretch of imagination the culpability would not travel upto the Finance

Company. The applicant Finance Company has adopted due process of law and by invoking the provisions of SARFESI Act, has obtained possession of the property. Though the informant had challenged the said action, however, on his failure belatedly filed the existing first information report, therefore, it is evident that the criminal proceedings is manifestly attended with malafide intention.

9. Though the State in its reply affidavit has stated that the subject property was mortgaged by the informant to Orange City Finance Company, however, there is no supporting material. Pertinent to note that the informant himself has admitted that his father is owner of the subject property. Though informant took a plea in his pleading that there was partition, however, despite notice he has chosen to remain absent in this proceeding. In the circumstances, the documents tendered on record persuade us to invoke our inherent powers. On examination of entire material we find that the first information report is lodged with an ulterior motive to settle the score. Such untenable prosecution shall be nipped into bud. Hence, we proceed to pass the following order.

ORDER

[i] Criminal Application is allowed and disposed of.

[ii] The first information report bearing Crime No.1354/2019 registered with the Jaripatka Police Station, Nagpur for the offence punishable under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code is hereby quashed and set aside, to the extent it relates to applicant Finance Company.

JUDGE **JUDGE**

Rgd.