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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No.2256 of 2018**

- Nikhil Chaudhary, S/o Late Narendra Nath Chaudhary, Aged About 58 Years, Deputy General Manager, Punjab National Bank, Head Office, Plot No.4, Sector 10, Dwarika New Delhi 110075

---- Petitioner

Versus

1. State Of Chhattisgarh Through Police Station Civil Lines, Raipur, District Raipur, Chhattisgarh Pin Code 492001
2. Shri Harbansh Lal, S/o Late Ratanchand, Aged About 64 Years, R/o Gurumukh Singh Villa VIP Road Tahsil Purena, Raipur District Raipur Chhattisgarh

---- Respondents

For Petitioner

Mr. Sharad Mishra, Advocate

For Respondent-State

Mr. Sangharsh Pandey, GA

For Respondent No.2

Mr. Y. C. Sharma, Senior Advocate with
Mr. Hariom Rai, Advocate**Hon'ble Mr. Ramesh Sinha, Chief Justice****Hon'ble Smt. Justice Rajani Dubey****Judgment on Board****Per Ramesh Sinha, Chief Justice****29.04.2024**

1. Heard Mr. Sharad Mishra, learned counsel for the petitioner, Mr. Sangharsh Pandey, learned Government Advocate and Mr. Y. C. Sharma, learned Senior counsel with Mr. Hariom Rai, learned counsel for the respondent No.2.
2. The petitioner has preferred the instant petition under Section 482 of Cr.P.C. for quashing the FIR No.507/2018 dated



22.07.2018 registered against him at Police Station Civil Lines, Raipur, District Raipur (C.G.) for the offence punishable under Sections 420, 467, 468, 471 & 120 (B) of IPC.

3. Brief facts of the case are that the petitioner is presently working as Deputy General Manager in Punjab National Bank (PNB). In the year 2014, one M/s Sharma Vin Trade Services Private Limited approached the PNB for credit facility for its business purposes. The PNB acceded to request of the Borrower and issued a sanction letter dated 05.05.2014 providing credit facility of Rs.1,000 Lakhs as Cash Credit (Hypothecation) facility. Accordingly after due formality and execution of security and other related documents an account bearing No.0399008700137373 was opened with the petitioner in the name of M/s Sharma Vin Trade Services Private Limited. The company namely M/s Subhash Vin Trade Private Limited stood as guarantors of the above credit facility granted by the petitioner, who was posted as Assistant General Manager with the Motibagh Branch of PNB. INDIA at the relevant point of time. M/s Subhash Vin Trade Private Limited also submitted collateral security of the credit facility provided to the Borrower by creating equitable mortgage of property bearing Khasra Nos.439/3 area 0.115 hectare and Khasra No 439/6 area 0.202 hectare, total area 0.317 hectare, situated at Patwari Halka No.113 proposed P.H. No.44, Village Purena, R.I.C. Raipur-2, Tahsil and District Raipur within limit of Municipal Corporation Raipur Ward No.46,



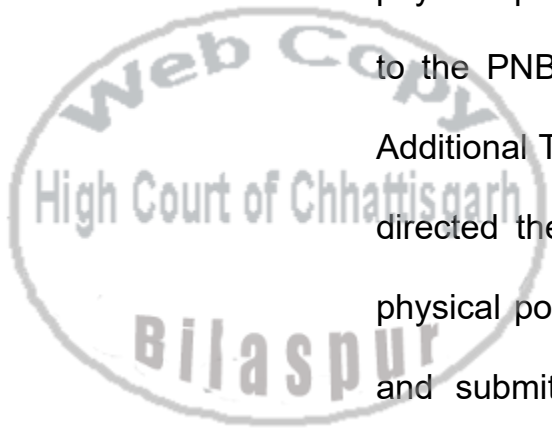


Dr. Rajendra Prasad Shukla Ward, Raipur (CG.) (for short mortgaged property). From perusal of this document it is evident that the M/s Subhash Vin Trade Private Limited voluntarily created mortgage as collateral security of the credit facility granted/provided to Borrower. The sale deed of the mortgaged property was executed on 25.09.2013 and the stamp was purchased by the respondent no.2/complainant. The Borrower also executed security documents with regard to the credit facility provided to it. The Borrower failed to adhere to the repayment of the credit facility granted/provided hence its account became Non Performing Assets as per the prevailing law and guidelines of Reserve Bank India on 31.12.2014. Therefore the PNB took the legal recourse available to it under the provisions of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short Act of 2002). In this connection the petitioner issued a demand notice dated 06.02.2015 under section 13 (2) of the Act of 2002 to M/s Sharma Vin Trade Services Private Limited (Borrower), its directors, guarantor M/s Subhash Vin Trade Private Limited and demanded the outstanding dues within 60 days. The Borrower failed to comply with the demand notice, hence the PNB took measures under section 13 (4) of the Act of 2002. In continuation of the recourse to legal remedy available to the PNB, the PNB sent possession notice dated 07.04.2015 and asked the Borrower to deliver possession else possession of the secured assets will be taken on or after 17.04.2015. The copy of the





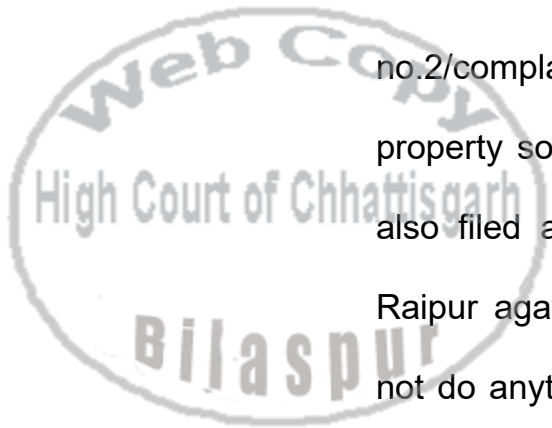
notice was also sent to the directors, guarantor M/s Subhash Vin Trade Private Limited. The PNB made an application under Section 14 of the Act of 2002 before the District Magistrate, Raipur for delivery of physical possession of the secured assets (mortgaged property). The District Magistrate allowed the application of the PNB under Section 14 of the Act of 2002 on 12.06.2017 and directed to deliver the physical possession of the secured assets (mortgaged property). The PNB vide its letter dated 30.08.2017 requested the Tahsildar, Raipur to deliver the physical possession of the secured assets (mortgaged property) to the PNB. In compliance of the order dated 12.06.2017, the Additional Tahsildar, Raipur vide its order/letter dated 10.11.2017 directed the Maal jamadar, Tahsil Office, Raipur to deliver the physical possession of the secured assets (mortgaged property) and submit the report. However, physical possession of the secured assets (mortgaged property) has not been delivered to PNB till date. The PNB has mortgaged the property as collateral security after due verification of its title and for this purpose obtained a title investigation report. The sale deed executed by the respondent no.2/complainant passes the title in favour of M/s Subhash Vin Trade Private Limited. Being aggrieved by the action of the petitioner taken under section 13 (4) of the Act of 2002, the respondent no.2/complainant had filed a Writ petition (C) No.345/2017 before this Court. The said writ petition was withdrawn by the petitioner with liberty to move an application under section 17 of the Act of 2002 before jurisdictional DRT on





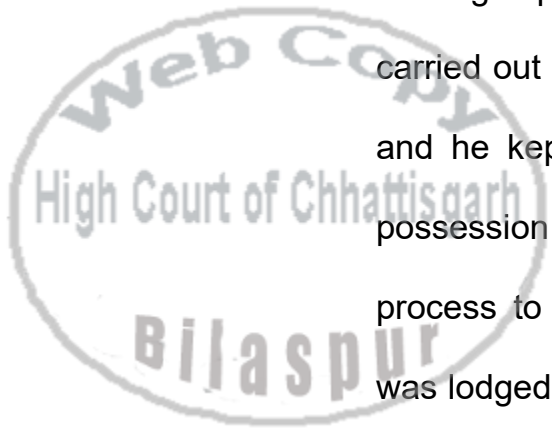
15.02.2017. This goes to show that the respondent No.2/complainant was aware of the fact that the PNB is taking legal recourse with regard to the secured assets (mortgaged property), which was sold by him to M/s Subhash Vin Trade Private Limited and which is mortgaged with the PNB. The respondent no.2/complainant filed a Civil Suit with prayer that the execution and registration of the sale deed dated 25.09.2013 is illegal and void and the respondent no.2/complainant is the title and possession holder of the suit property. The said civil suit was filed in the year 2016 and since then or prior to it respondent no.2/complainant was aware with regard to the fact that the property sold by him is mortgaged with the PNB. The PNB has also filed a complaint before the Police Station Gole Bazaar, Raipur against the borrower and its directors. When police did not do anything, the petitioner filed an application under section 156 (3) of Cr.P.C., 1973 before the JMFC, Raipur. In order to avoid legal proceeding to save the mortgaged property from repayment of credit facility, the respondent no.2/complainant has filed the impugned FIR against the petitioner, against which the present petition has been filed by the petitioner.

4. Learned counsel for the petitioner submits that the by virtue of Section 32 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (for short 'SARFAESI Act, 2002'), no legal proceeding could be initiated against the petitioner, as he was performing his duty as Assistant





General Manager in Punjab National Bank at the relevant point of time when the property in question contained in registered deed of sale dated 25.09.2013 was mortgaged with the Bank. He further submits that entire allegation made against him is even otherwise pertaining to that of a civil nature. The allegation levelled against the petitioner does not constitute a prima facie offence and no criminality can be attributed to the petitioner on the basis of the allegation levelled against him. He further submits that the respondent no.2/complainant was well aware of the legal proceedings for recovery of the credit facility being carried out by the petitioner against the Borrower and guarantors and he kept quiet for a considerable long time and when the possession of the secured assets (mortgaged property) is in process to be taken, with an ulterior motive the FIR/Complaint was lodged to preclude the entire recovery proceedings including handing over of the physical possession. The respondent No.2/complainant filed a writ petition which was dismissed as withdrawn with liberty to approach DRT. However instead of approaching DRT, the respondent No.2/complainant lodged the FIR, which goes to show that the respondent No.2/complainant is giving a criminal colour to the civil dispute which cannot be permitted in the eyes of law. It is an *inter se* civil dispute between the respondent No.2/complainant and M/s Subhash Vin Trade Private Limited with regard to validity of sale deed of the mortgage property. The petitioner has been roped in the alleged crime in order to settle their personal score. The petitioner has

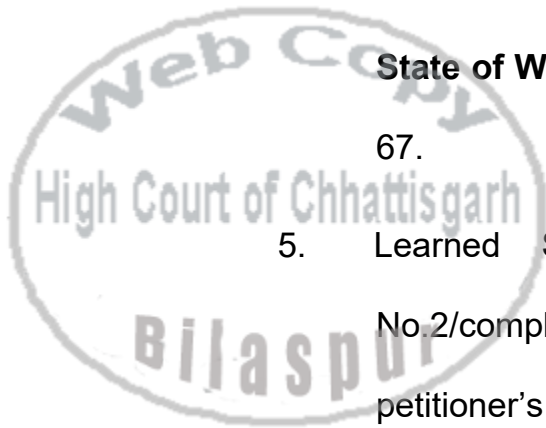




also been granted protection under Section 32 of the SARFAESI Act by this Court vide order dated 27.11.2018. Therefore the FIR lodged against the petitioner deserves to be quashed. Reliance has been placed on the judgments rendered by the Hon'ble Supreme Court in the matters of **K. Virupaksha and another vs State of Karnataka and another**, reported in (2020) 4 SCC 440, **Chundururu Siva Ram Krishna and another vs Peddi Ravindra Babu and another**, reported in (2009) 11 SCC 203, **Indian Oil Corpn. vs NEPC India Ltd and others**, reported in (2006) 6 SCC 736 and in the matter of **Usha Chakraborty and Anr. vs State of West Bengal and Anr.**, reported in 2023 Live Law (SC)

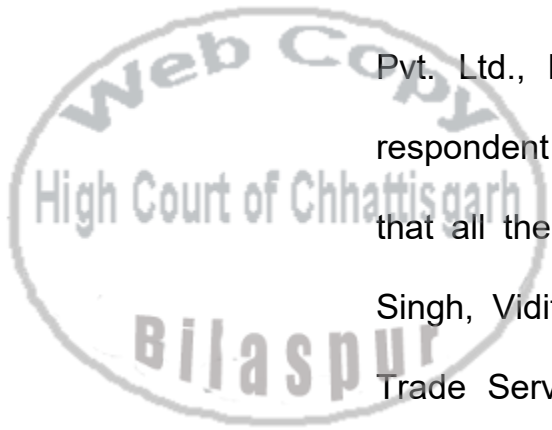
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5. Learned Senior counsel appearing for the respondent No.2/complainant opposes the submission made by the petitioner's counsel and submits that respondent No.2 is the owner of the land bearing Khasra No.439/3, admeasuring area 0.115 hectare and Khasra No.439/6, admeasuring area 0.202 hectare, situated at Village Puraina, [P.H.No.113](#) Proposed Halka No. 44, Ward No.46, Dr. Rajendra Prasad Shukla Ward, Raipur, Tahsil & District Raipur (C.G.). The respondent No.2 was having good relationship with Subhash Sharma, who is the owner of the M/s Subhash Vin Trade Pvt. Ltd., as such sale deed was executed between Subhash Sharma and respondent No.2 on 25.09.2013 for a sale consideration of Rs.4,97,16,000/- and for the payment of the aforesaid amount, 5 Post Dated Cheques





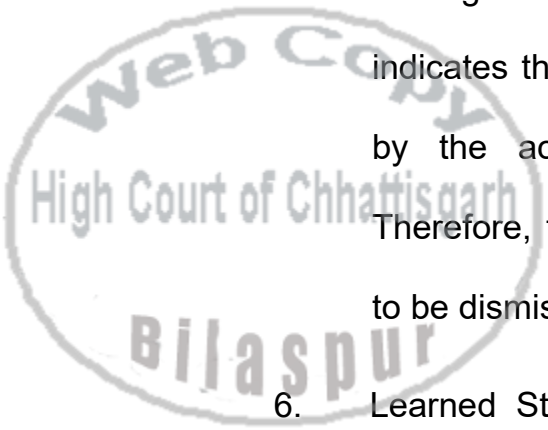
were given by Subhash Sharma. Thereafter all the cheques were presented at Punjab National Bank, Branch Raipur, but because of the insufficient amount, all the cheques were bounced and the information of cheque bounce was also given to Subhash Sharma through legal notice, but he neither contacted to the respondent no. 2 nor given any reply of the legal notice. Thereafter the respondent No.2 lodged a complaint U/s 200 of Cr.P.C. before Judicial Magistrate First Class Raipur (C.G.), which is pending till date. The respondent No.2 tried to contact with Subhash Sharma and other members of M/s Subhash Vin Pvt. Ltd., but all the accused stopped receiving call of the respondent No.2. Subsequently, respondent No.2. came to know that all the accused persons namely Subhash Sharma, Umed Singh, Vidit Sharma and other members of M/s Subhash Vin Trade Services Pvt. Ltd. were previously involved in various embezzlement and forgery. He further submits that the respondent No.2 applied for the original copy of registered sale deed which he obtained on 18/07/2016, but the sale deed was forged, particularly the 5th point of registered sale deed, because that part was not mentioned earlier in the copy of sale deed and it was added after the registration of sale deed by doing forgery. The Fifth Point was mentioned in the sale deed as "In case if the cheque given to the owner would bounce, inspite of that buyer would become the owner of the land and no criminal complaint would be lodged against the buyer." Subsequently, in Navbharat Newspaper on 7/10/2017, a notice of the auction of aforesaid





property was published, as such it is unambiguous that the officers of PNB including the petitioner are also involved in the forgery, because cheques given to the respondent No.2 belongs to PNB and mortgaged loan was also taken from PNB. He further submits that the aforesaid land is the agricultural land and the agricultural land can never be used for mortgaged loan without diversion for the purpose of non-agricultural work. The name of respondent No.2 is there in all the revenue records of suit land, inspite of that the PNB has issued a mortgaged loan on the basis of forged document submitted by the accused, which clearly indicates the involvement of officers of Bank in the forgery done by the accused persons including the present petitioner. Therefore, the petition being devoid of any substance deserves to be dismissed.

6. Learned State counsel extends his support to the arguments raised by the learned counsel for the respondent No.2 and submits that based on the investigation and the evidence collected during the course of investigation, a case has been registered against the petitioner, as such there is no illegality or infirmity on the part of the respondent State. Thus, the petition deserves to be dismissed.
7. We have heard learned counsel for the parties and perused the material available on record including the impugned FIR.
8. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a





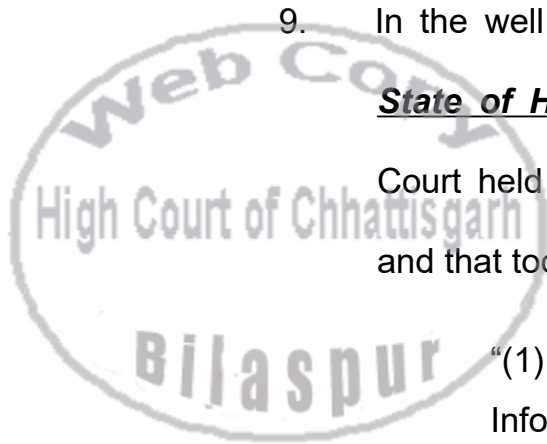
complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases and Courts should not ordinarily interfere with the investigations of cognizable offences. However, where the allegations made in the FIR or the complaint even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the FIR or the charge-sheet may be quashed in exercise of powers under Article 226 or inherent powers under Section 482 of the Cr.P.C.

9. In the well celebrated judgment reported in **AIR 1992 SC 605** **State of Haryana and others Vs. Ch. Bhajan Lal**, the Apex Court held that those guidelines should be exercised sparingly and that too in the rarest of rare cases. Guidelines are as follows:

“(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety to do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 156(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission





of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. In case of **Rupan Deol Bajaj v. K.P.S. Gill**; reported in (1995) SCC (Cri) 1059, **Rajesh Bajaj v. State of NCT of Delhi**; reported in (1999) 3 SCC 259 and **Medchl Chemicals & Pharma (P) Ltd. v. Biological E Ltd. & Ors**; reported in 2000 SCC (Cri) 615, the Apex Court clearly held that if a prima facie case is made out disclosing the ingredients of the offence, Court should not quash





the complaint. However, it was held that if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, Court should not hesitate to quash the complaint. The note of caution was reiterated that while considering such petitions the Courts should be very circumspect, conscious and careful. Thus, there is no controversy about the legal proposition that in case a prima facie case is made out, the FIR or the proceedings in consequence thereof cannot be quashed.

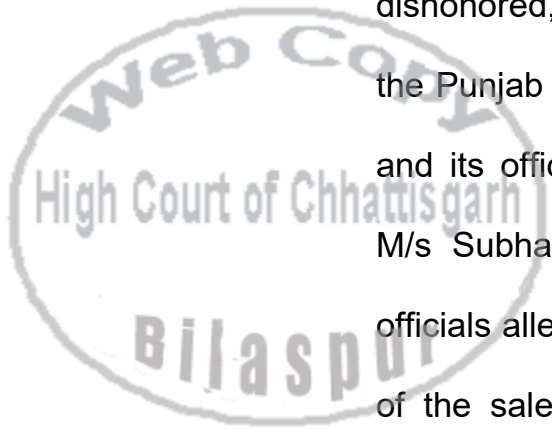
11. Very recently in **Neharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others** : 2021 SCC OnLine SC 315, the Apex Court has observed that the power of quashing should be exercised sparingly with circumspection in the rarest of rare cases. While examining an F.I.R./complaint, quashing of which is sought, the Court cannot inquire about the reliability, genuineness, or otherwise of the allegations made in the F.I.R./complaint. The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the Court to be cautious. The Apex Court has emphasized that though the Court has the power to quash the F.I.R. in suitable cases, the Court, when it exercises power under Section 482 Cr.P.C., only has to consider whether or not the allegations of F.I.R. disclose the commission of a cognizable offence and is not required to consider the case on merit.

12. Therefore, it is very well settled that criminal proceedings



maliciously instituted with ulterior motives can be quashed by this Court while exercising the power under Section 482 Cr.P.C.

13. In the present case, the main dispute appears to be between the respondent No.2 and M/s Subhash Vin Trade Private Limited. The sale deed dated 25.09.2013, which was mortgaged by M/s Sharma Vin Trade Pvt Ltd in the Punjab National Bank for the loan of Rs.1000 Lakh, was executed between the respondent No.2 and M/s Subhash Vin Trade Private Limited. The cheques which were given by M/s Sharma Vin Trade Pvt Ltd got dishonored, upon which the legal proceedings were initiated by the Punjab National Bank against M/s Sharma Vin Trade Pvt Ltd and its officials. The respondent No.2 also lodged FIR against M/s Subhash Vin Trade and M/s Sharma Vin Trade and its officials alleging that he has not been paid the sale consideration of the sale deed, which was executed between him and M/s Subhash Vin Trade and based on the said sale deed, loan has been got sanctioned from the PNB and the repayment amount has also not been paid by the borrower i.e. M/s Sharma Vin Trade, as the cheques submitted by it to the bank got dishonored. The respondent No.2 has also filed a civil suit before the Civil Court praying for the aforesaid sale deed as illegal and void, which is pending consideration. Apart from it, a writ petition was also filed challenging the auction of mortgaged property, which was dismissed as withdrawn with liberty to approach the DRT, however the respondent No.2 has not approached the





DRT. The FIR has also been got lodged against the bank officials including the present petitioner on the ground that the mortgaged property has been auctioned by the bank officials of the PNB in connivance with M/s Subhash Vin Trade and M/s Sharma Vin Trade and its directors. However, the petitioner has already been protected by this Court vide order dated 27.11.2018 under Section 32 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.

14. From the given facts and circumstances of the case, it would be lucid that the main dispute is between the respondent No.2 and M/s Subhash Vin Trade Pvt Ltd and M/s Sharma Vin Trade Pvt Ltd. The petitioner being in the capacity of Assistant General Manager at the relevant point of time disbursed the loan to M/s Sharma Vin Trade Pvt Ltd based on the mortgaged property and infact was unaware of the dispute with regard to the sale deed mortgaged by the borrower for sanction of the loan and the petitioner is still working and has not been prosecuted by the Bank or no FIR has been got lodged by the bank against him. Therefore, on the ground of malicious prosecution, present petition in view of category No.7 of **Bhajan Lal** (supra) can succeed. Even otherwise, the petitioner has been protected by this Court under Section 32 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.

15. In the result, the present petition [u/s 482 Cr.P.C.](#) is allowed and



FIR No.507/2018 dated 22.07.2018 registered against the petitioner at Police Station Civil Lines, Raipur, District Raipur (C.G.) for the offence punishable under Sections 420, 467, 468, 471 & 120 (B) of IPC is hereby quashed along with the consequential proceedings arising therefrom, however the proceedings in respect of the other accused persons in connection with the said FIR may go on.

Sd/-

(Rajani Dubey)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Nirala



**HEAD NOTE**

If a mortgaged property is sold by the Bank for repayment of the loan and later if it is revealed that the said property is disputed one, the authority sanctioning the loan cannot be held guilty as he is protected under Section 32 of the SARFAESI Act.

यदि ऋण चुकाने के लिए बैंक द्वारा बंधक रखी गई संपत्ति का विक्रय कर दिया जाता है और बाद में यदि यह ज्ञात होता है कि उक्त संपत्ति विवादग्रस्त है, तो ऋण स्वीकृत करने वाले प्राधिकारी को दोषी नहीं ठहराया जा सकता है क्योंकि वह सरफेसी अधिनियम की धारा 32 के तहत संरक्षित है।

