IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 639 OF 2016

Amol Jaiprakash Sonkawade
and anr. ....Applicants
V/s.
State of Maharashtra and anr. ....Respondents

* * * * *

Mr. P.G. Sarda, Advocate for the applicants.

Mr. K.V. Saste, Additional Public Prosecutor for the State, respondent no.1.

Mr. J.D. Mane, Advocate for respondent no.2.

CORAM :- R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :- 22ND AUGUST, 2017.

P.C. :-

1. The above Criminal Application has been filed for quashing the FIR being FIR No. 244/2016 registered with Fauzdar Chawadi Police Station for the offences punishable under Sections 420, 406, read with Section 34

of the Indian Penal Code. The First Informant is the respondent no.2, who is the Branch Manager of Laxmi Co-operative Bank Limited. The applicants are the partners of one, Swapnil Associates who are engaged in the business of developing properties. The applicants had taken a loan to the tune of Rs.1,60,00,000/- from the said Laxmi Co-operative Bank Limited, Panjarapol Branch, Solapur for the purposes of developing the land which it purchased bearing Gat No.66/3B admeasuring 23,200 sq.mts. The applicants to secure the said loan had executed a registered mortgage of the said land in favour of the Bank on 28th March, 2011. Accordingly, a mutation entry No. 3559 dated 20th May, 2011 regarding the charge of the said bank came to be recorded in the 7/12 extracts. In terms of the loan agreement, the said, Swapnil Associates were to deposit 30% of the sale proceeds of the plots of land which were to be carved out of the said Gat No.66/3B. However, the said Swapnil Associates did not do so and appropriated the entire sale

proceeds to themselves. This resulted in the FIR in question being lodged with Fouzdar Chawadi Police Station, Solapur under Sections 420, 406 read with Section 34 of the Indian Penal Code. The said FIR is sought to be quashed on the ground that, non-deposit of the 30% of the sale amount would, at the highest, be a breach of contract on the part of the said Swapnil Associates of which the applicants are the partners. In support of the said contention, reliance is sought to be placed on the judgments of the Apex Court reported in **(1973) 2 SCC page 823 in the matter of Hari Prasad Chamaria Versus. Bishun Kumar Surekha and Others**, and **(2004) 4 SCC page 168 in the matter of Hridaya Ranjan Prasad Verma and Others Versus. State of Bihar and Another**. The Apex Court in the aforesaid cases was concerned with the breach of contract between two private parties. It is in the said circumstances, that the Apex Court observed that, the ingredients of Sections 415 and 420 of the Indian Penal Code were not satisfied in

the said case as there was no intention to deceive and decept right from inception. In the instant case, as indicated above, the property in question was a security i.e. mortgaged property and the condition was that, if the said property was to be sold then 30% of the sale proceeds were to be deposited with the bank i.e. respondent no.2 herein. Hence, the facts in the instant case cannot be simplified by stating that, at the highest, it is a breach of contract. In our view, therefore the said judgments of the Apex Court would not aid the applicants in their pursuit of quashing the FIR. We do not wish to make any observations on merits, lest, the same would come in the way of the applicants in the trial. Hence, no relief can be granted to the applicants. The application is accordingly dismissed.

(SANDEEP K. SHINDE, J) **(R.M. SAVANT, J)**