IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO.294 OF 2022

(Vinod Dnyaneshwarrao Kharbade .**Vs**. Vaishali Raju Patil (Nee Sau. Vaishali Nitin Burange))

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Shri P. A. Kadu, Advocate for Applicant.
Shri K. Rao h/f Shri P. S. Patil, Advocate for the Respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 28th JUNE, 2022.

. Heard Shri Kadu, learned Counsel for Applicant and Shri Rao h/f Shri Patil, learned Counsel for the Respondent.

2. The contention is that in spite of the admission regarding issuance of the cheque by the accused, though a plea was raised in defence, that it was on account of security, and therefore, the presumption under Section 138 of the Negotiable Instruments Act, 1881, was attracted, the complaint has been dismissed on the ground, that the complainant was unable to demonstrate the availability of sufficient fund so as to lend the money (Para 29 Page 45). It is submitted relying upon ***Kalamani Tex and Another ..Vrs.. P. Balasubramanian, 2021 (5) SCC 283, (Para 14),*** that once the signature on the cheque is admitted, the presumption stands attracted, and therefore, the burden shifted upon the accused as a result of which, unless it was discharged the onus would not shift back upon the

complainant, considering which, case for grant of leave is made out. Accordingly, leave is granted.

3. Office to register the Appeal.

4. Issue notice for final disposal at the stage of admission.

5. Shri K. Rao, learned Advocate for the Respondent waives notice on merits.

6. Shri P. Kadu, learned Advocate for Applicant to place on record the complaint, the evidence and all exhibited documents with an advance copy to the Respondent as the only issue involved is, whether it was permissible in the aforesaid circumstances for the learned Magistrate to shift the burden.

7. List the matter on **13.07.2022** at the end of the admission board.

JUDGE

TAMBE.

Digitally signed byASHISH ASHOKRAO TAMBE
Signing Date:28.06.2022 17:14