

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 28 OF 2022

Khanderao Shivaji Kharade

...Applicant

vs.

Dashrath Sangappa Chaturbhuj and Anr.

...Respondents

Mr.Pradeep Salgar, Advocate for the Applicant.

Mr.N.B.Patil-APP for the Respondent No.2-State.

CORAM : S. M. MODAK, J.

DATE : 2nd MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicant-Complainant.
2. Notice prior to grant of Special Leave is served on the Respondent-Accused. He has not appeared. Even though, signature on the cheque is admitted and there was a promissory note, learned Magistrate acquitted the Respondent-Accused for the reason that debt or liability is not proved. The trial Court also emphasized on the fact that the Applicant could not show the source from where he has arranged Rs.1,30,000/-. Recently, the Hon'ble Supreme Court has

held that it is not required to prove the source of the fund. The trial Court has not considered about the presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881 [“NI Act”] in proper spirit. By merely denying the liability, presumption is not rebutted. Hence, case for grant of Special Leave is made out.

3. Special Leave to prefer an Appeal is granted.
4. Admit the Appeal.
5. Call Record and Proceeding.
6. Issue notice to the Respondent No.1 returnable on **13th April, 2023**. Learned APP waives notice for Respondent No.2-State. An action be initiated under Section 390 of the Code of Criminal Procedure, 1973 [“Cr.P.C.”].

[S. M. MODAK, J.]