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

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 24 OF 2018

Baburao Ramchandra Patil ... Applicant

Versus

Maruti Babaji Patil and Anr. ... Respondents

Mr.Anand Patil a/w Mr.Sandip Kagade, Advocate for Applicant.

None for Respondent No.1.

Mr.H.J.Dedhia - APP for the Respondent No.2 – State.

CORAM : S. M. MODAK, J.

DATED : 20th JANUARY, 2023

P. C. :-

1. Heard learned Advocate Shri.Anand Patil for the Applicant – Complainant.
2. The correctness of the judgment passed by the trial Court Magistrate, Kolhapur in a case instituted for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (26 of 1881) [“N.I.Act.”]is challenged. Respondent-Accused was acquitted.
3. Case of the Complainant is advancing hand loan of Rs.1,50,000/- and towards its discharge, two cheques ; one for Rs.1,00,000/- and another for Rs.50,000/- were issued by the Respondent. He took a defence that the Appellant being a Chairman of Khansa Khore Co-operative Credit Society Ltd., Mumbai has advanced loan to the Respondent-Accused and Accused has issued cheques towards discharge of that loan. He further took a defence that the Complainant has misused those cheques and used it for his own benefit.

4. The defence of the Respondent was accepted by the trial Court. Whereas, in a statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (2 of 1974) [“Cr.P.C.”], Respondent took a defence that cheques are misused due to political rivalry.

5. Arguable case is made out. The stand of the Respondent-Accused is inconsistent that is to say during cross-examination and in 313 statement of Cr.P.C. Burden on Accused is not so heavy. The test of preponderance of probability is to be ascertained. Hence, order :-

ORDER

- (i) Special Leave is granted.
- (ii) Admit the Appeal.
- (iii) Initiate action under Section 390 of Cr.P.C. and in case of arrest, learned Magistrate to release the Respondent-Accused on furnishing appropriate bail.
- (iv) Record and proceeding be called for.

6. Let the matter be referred to Lok-Adalat to be held on 11th February, 2023. Let the Office of High Court Legal Services Committee to take appropriate steps.

(S. M. MODAK, J.)