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

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 44 OF 2016

Narendra K. Kalra and Anr. ... Applicants

Versus

Anil A. Kalra and Ors. ... Respondents

Mr.G.S.Vaidya, Advocate for the Applicants.

Mr.Prashant Pawar a/w Mr.Hrishikesh Guhagarkar a/w Mr.Amit Diwale,
Advocate for Respondent Nos.1 and 2.

Mr.VR.Kasle, Advocate for Respondent No.3.

CORAM : S. M. MODAK, J.

DATED : 1st FEBRUARY, 2023

P.C. :-

1. Heard learned Advocate for the Applicants – Complainants and learned Advocate for the Respondent Nos. 1 and 2 as well as learned Advocate for the Respondent No.3.

2. The order passed by the learned Metropolitan Magistrate, 60th Court, Kurla, Mumbai on 6th January, 2016 is challenged. Special Leave is sought. The complaint was dismissed by exercising power under Section 256 of the Code of Criminal Procedure, 1973 (2 of 1974) [“Cr.P.C.”]. All the Respondents were acquitted for the offence punishable under Section 500 read with 34 of the Indian Penal Code, 1860 (45 of 1860) [“IPC”].

3. This order was passed prior to recording of evidence. This Court on 19th January, 2023 had made it clear that Court will hear the Leave Application as well as the Appeal finally. However, today the arguments

are advanced, but learned Advocate for Respondent Nos.1 and 2 restricted his arguments on the grant of leave and reserved his arguments so far as merits of the Appeal are concerned. Whereas, learned Advocate for the Respondent No.3 even made submission that let the name of Respondent No.3 be deleted. Even he relied upon a judgment in case of *Central Bureau of Investigation, Hyderabad V/s. K. Narayana Rao [Criminal Appeal No. 1460 of 2012 : Supreme Court of India]* on the point of the role of an Advocate in his professional capacity while defending the client.

4. I do not want to make any comment on the prayer for deleting the name at this stage. It seems that the Respondents are not ready for hearing the Appeal also. In view of that, today I am only dealing with the issue ; whether leave is to be granted or not.

5. Process was issued for the offence punishable under Section 500 read with 34 of IPC. Such case is to be tried by following the procedure laid down for a summons case. From the copy of the roznama produced, it is clear that case was fixed for recording plea of the accused persons. In spite of that, the complaint was dismissed. Hence, case for grant of leave is made out. Hence, the Application is allowed in terms of prayer clause (a).

6. Appeal be admitted.

7. Learned Advocate for Respondent Nos. 1 to 3 waives notice of the Appeal.

8. Appeal be listed for final hearing. Liberty is granted to Appellant to seek early hearing of the Appeal.

9. Appellant undertakes to give copies of the complaint and other papers to the Respondents.

(S. M. MODAK, J.)