

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

**APPLICATION FOR LEAVE TO APPEAL (PVT.) NO.328 OF 2018
ALONG WITH
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M/s. Novateur Electrical and
Digital Systems Pvt. Limited

...Applicant

vs.

1. M/s. Dave Shah & Co[Switchgear]Pvt. Ltd.
 2. Mr. Dushyant Prahlad Dave,
 3. Ms. Shaila Dushyant Dave,
 4. State of Maharashtra
- ...Respondents

Mr. Sunil D'souza a/w Mr. Darryl Pereira a/w Adv. Beverly Fernandes, Advocate for the Applicant.

Saaya Sureshababu i/by Mr. Rakesh Kumar Singh - Advocate for the Respondent Nos. 1 to 3.

Mr. H. J. Dedhia-APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 6th DECEMBER 2023

P. C. :-

1. Heard learned Advocate for Applicant / Complainant and learned Advocate for the Respondent No.1 Company and Respondent Nos.2 and 3 directors and learned APP. Short question arises as to whether leave can be granted to prefer an

appeal against the order of dismissing the complaint and if yes whether appeal can be allowed.

2. When the Complainant filed an affidavit of examination-in-chief and also filed an application for adducing secondary evidence, the learned Metropolitan Magistrate dismissed three complaints for absence of Complainant's witness. This acquittal is prior to recording the evidence. The issue is whether power under Section 256 of the Code of Criminal Procedure is exercised properly or not. After hearing both the sides and going through documents, arguable case is made out. Hence leave to prefer an appeal is granted. All applications are disposed of.

[S. M. MODAK, J.]