

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

APPLICATION FOR LEAVE TO APPEAL NO. 330 OF 2016

Vivek Kumar Sharma

...Applicant

vs.

The State of Maharashtra and Anr.

...Respondents

Mr. Jatin Shah i/by Pravina J. Kanani - Advocate for the Applicant

Mr. Subhash Jha i/by Law Global - Advocate for the Respondent No.

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Mrs. M. R. Tidke – App for the State

CORAM : S. M. MODAK, J.

DATE : 21st MARCH, 2023

P. C. :-

1. I have already heard learned Advocate for the Applicant on the last date. Today I have heard learned Advocate Shri Subhash Jha for the Respondent No. 2.

2. Initially, there was conviction for the offence punishable under Section 138 of the Negotiable Instruments Act, the trial court has not accepted the case of accused that he has repaid the amount founded on the basis of the personal noting diary (Exh. D-4). Whereas while reversing the judgment, the Appellate Court has accepted said personal noting diary and taken recourse to the

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provision under Section 73 of the Indian Evidence Act. There are limitations on exercise of power under that provision. It is contended that in fact it is denied by the complainant. Case for special leave is made out. Special leave is granted.

3. Appeal is admitted.
4. Call record and proceedings. Respondent No. 2 waives notice for the Appellant. Let the respondent no.2 to file note of appearance in the appeal proceedings. At present action under section 390 of Code of Criminal Procedure is not warranted. The appellant is at liberty to pray for that action in future in case of need.
5. Application for leave to appeal is disposed of.

[S. M. MODAK, J.]