IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 756 of 2023

In R/CRIMINAL APPEAL NO. 96 of 2023

With
R/CRIMINAL APPEAL NO. 96 of 2023

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THAKOR KAPURJI PRADHANJI
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MS JEMINI S PATEL(10140) for the Applicant(s) No. 1
MR MEHUL SHARAD SHAH(773) for the Respondent(s) No. 2
MR RONAK RAVAL, ADDL.PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**

Date : 01/03/2024

ORAL ORDER

ORDER IN R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 756 of 2023

1. Learned advocate Ms.Jemini Patel submits that bare denial of the respondent-accused with regard to the debt was accepted by the learned trial Court while acquitting to the respondent-accused. Learned advocate Ms.Patel submits that minor discrepancies i.e. no independent evidence produced except the cheque showing that the amount was lent, except the signature on the cheque and

other body handwriting was filled by the other person were given more weightage while passing the judgment and order of the acquittal.

2. Learned advocate Ms.Patel submits that learned trial Court committed an error in holding that as the cheque was not sent to the handwriting expert to show that the signature and the other body handwriting of the cheque are same would create doubt on the case of the complainant. Learned advocate Ms.Patel submits that after proving the prima facie case under Section 118 of the N.I.Act, presumption would come in favour of the complainant and unless and until this presumption would be rebutted by the respondent-accused by creating probable defence, the complainant cannot be shifted with the onus to prove the case.

3. Learned advocate Ms.Patel submits that the learned trial Court without calling upon any proof from the respondent-accused with regard to the issuance of the cheque has acquitted the respondent-accused from the charges.

4. Considering the avernments made in the application and

submissions made by the learned advocate appearing for the applicant, this Court finds that there is some arguable case in favour of the applicant, therefore, leave, as prayed for, is granted. This application is allowed.

ORDER IN R/CRIMINAL APPEAL NO. 96 of 2023

1.The appeal is ***admitted***. Learned A.P.P. Mr.Ronak Raval waives service of notice of admission on behalf of respondent – State. Learned advocate Mr.Mehul Sharad Shah waives service of notice of admission on behalf of the respondent-accused.

2. Registry is directed to list the Criminal Appeal in seriatim.

(M. K. THAKKER,J)

M.M.MIRZA