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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLICATION NO.123 OF 2024**

**IN**

**CRIMINAL APPEAL (ST.) NO.1022 OF 2024**

(Dr. Priya Dongre w/o Pradneshkumar Koche Vs. Dr. Ajay s/o Vilas Ingle)

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

Court's or Judge's Order

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Dr. R.S. Sundaram, Advocate for the applicant.  
Mr. M.N. Ali, Advocate for the respondent.

**CORAM:- URMILA JOSHI-PHALKE, J.**

**DATED :- AUGUST 1, 2024**

Heard.

2. By preferring the appeal against acquittal along with the application for leave to file appeal, the appellant has challenged the order of the acquittal passed by the Judicial Magistrate First Class, Court No.1, Akola in S.C.C. No.2219/2018.

3. Learned Counsel for the appellant submitted that the learned trial Court has acquitted the accused by shifting the entire burden on the complainant ignoring the presumption under Section 139 of the Negotiable Instrument Act, 1881 which is in favour of the complainant. He submitted that the accused has admitted that there was a transaction of sale-deed. However, learned trial Court on assumption held that legally the accused was not bound to pay the disputed cheque amount unless the complainant in rebuttal disproves the

case of the accused and expressed the circumstance under which the additional amount of Rs.4,00,000/- was agreed to be paid. Thus, he submitted that the entire burden was shifted illegally on the complainant and thus the appellant is having many arguable points in the present appeal.

4. Learned Counsel for respondent strongly opposed the application on the ground that the complainant has admitted during the cross-examination that she has already received the entire amount.

5. I have heard learned Counsel for both the parties. Perused the impugned judgement. The paragraph No.17 of the judgement shows that the part payment of Rs.4,00,000/- and Rs.12,00,000/- at the time of sale-deed was paid by the accused. Therefore, legally the accused was not bound to pay the disputed cheque amount, unless the complainant, in rebuttal, disproves the case of the accused and explain the circumstances under which additional amount of Rs.4,00,000/- was agreed to be paid. Thus, it is apparent that the learned trial Court has shifted the burden on the complainant. Thus, the complainant has made out a case to show that she has many arguable points in the present appeal. In view of that, the complainant has made out a case for grant of leave.

6. Therefore, leave is granted.

7. The application is allowed and disposed of.

8. The appeal be registered.

**CRIMINAL APPEAL (ST.) NO.1022 OF 2024**

On registration of the appeal, Call for R. & P

2. Place the appeal before the Court after receipt of the R. & P from the trial Court.

**(URMILA JOSHI-PHALKE, J.)**

*\*Divya*