

In The High Court at Calcutta
Criminal Revisional Jurisdiction

Appellate Side

Coram:

The Hon'ble Justice Jay Sengupta

CRR 1687 of 2025

Kanchana Mukhopadhyay

Vs.

Ananda Mohan Roy

For the petitioner : Mr. Soumopriya Chowdhury

Mr. Koushik De

Ms. Mohini Majumder

Mr. Raghav Munshi

Ms. A. Ghosh

For the Opposite party : Mr. Rhidhiman Mukherjee

Mr. Subhomoy Dewanji

Heard on : 04.08.2025

Judgment on : 04.08.2025

Jay Sengupta, J.:- This is an application, *inter alia*, challenging an order dated 02.04.2025 passed by the learned Chief Judge, City Sessions Court, Calcutta in Criminal Revision No. 79 of 2025 thereby directing stay of all further proceedings in Complaint Case no. 5275 of 2011 pending before the

learned Judicial Magistrate, 5th Court, Calcutta under Section 138 of the Negotiable Instruments Act.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner's father filed a complaint under Section 138 of the Negotiable Instrument Act against the opposite party. She did not know about this during his life time. By the time she came to know this, the opposite party had been acquitted. As an aggrieved party, the petitioner preferred an appeal under Section 372 of the Code before the learned Sessions Judge. The order was set aside and remanded back to the Magistrate. The petitioner was examined as PW 1 and other side tried to protract the trial. DW was closed. Upon challenge the same was allowed, but within a time frame. On the last date fixed for argument, the opposite party was discharged on the ground that the order of the Sessions Judge was illegal. This was challenged before the Additional Chief Judge in City Sessions Court in revision, but he kept the matter pending and stayed the impugned proceedings to find out whether such an appeal would lie under Section 372 before the Sessions Court. As the petitioner was a victim, it was open to her to prefer an appeal whether under Section 372 or Section 374 of the Code. The law on this field is governed by the latest decision of the Hon'ble Supreme Court in ***Celestium Financial versus A. Gnanasekaran Etc, reported in (2025) SCC Online SC 1320***, where it was clearly held that the victim in such a case would prefer an appeal and leave was not required to be taken for such purpose. The proceeding is being unnecessarily protracted and the next date fixed for hearing is on 2.9.2025.

Learned counsel appearing on behalf of the opposite party opposes the prayer and submits as follows. When a revision is pending before the Sessions Court, let the same be decided in accordance with law and if a final order is passed with which if either party is aggrieved, then it can be taken up before this Court in revision. The case of the opposite party is that leave is required to be taken in filing an appeal under Section 372 of the Code and the same was not done in the present case.

It appears that the earlier order of the Sessions Judge remanded back the matter to the Magistrate was not challenged by the opposite party at the initial stage. Only at the far end of the proceeding before the Magistrate/Trial Court, he chose to take up this point that leave was not taken for filing an appeal under Section 372 of the Code.

However, the point whether a leave is required to be taken in case of an appeal under Section 372 of the Code to be preferred by a victim in a case of Section 138 of the Negotiable Instrument Act is well-settled now in view of the decision in **Celestium Financial** (supra). It had categorically held that no such leave was required to be taken.

However, in view of the fact that the revisional application is still pending before the learned Sessions Court, this Court remands the matter back to the Sessions Court and directs the Sessions Court to decide the matter in accordance with law and by taking into consideration the decision of the Hon'ble Apex Court laid down in **Celestium Financial** (supra) on the next date of hearing i.e. ,on 2.9.2025.

With the aforesaid observations and directions, the revisional application stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with requisite formalities.

(Jay Sengupta, J.)