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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**909 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 85
OF 2024**

RAMTARA TRADING CORPORATION THROUGH ITS PARTNER
KALASH KULBHUSHAN AGRAWAL

VERSUS

YUVRAJ CONSTRUCTION THROUGH ITS PROPRIETOR
YUVRAJ SHARAD MULAY AND ANOTHER

.....

Mr V. A. Bagdiya, Advocate for Applicant

AND

**910 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 86
OF 2024**

RAMTARA TRADING CORPORATION THROUGH ITS PARTNER
KALASH KULBHUSHAN AGRAWAL

VERSUS

YUVRAJ CONSTRUCTION THROUGH ITS PROPRIETOR
YUVRAJ SHARAD MULAY AND ANOTHER

.....

Mr V. A. Bagdiya, Advocate for Applicant

AND

**927 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 223
OF 2018**

DEVIDAS S/O DIGAMBARRAO JAMDADE

VERSUS

MAHAMATI D/O GAUTAMI HANKARE

.....

Ms Smita R. Kasture, Advocate h/f Ms M. R. Jamdhade, Advocate for
Applicant

Mr G. G. Suryawanshi, Advocate for Respondent

AND

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**928 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 46
OF 2022**

SACHIN DNYANDEO PAWAR
VERSUS
SHIRISH SAMBHAJI SHINDE

.....

Mr Z. H. Farooqui, Advocate h/f Mr N. V. Gaware, Advocate for
Applicant

AND

**929 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 59
OF 2022**

VIJAY SAMBHAJI MUNGASE
VERSUS
NANASAHEB MANOHAR VARUKSHE

.....

Mr A. T. Kanawade and Ms S. A. Kanawade, Advocates for Applicant
Mr G. P. Darandale, Advocate for Respondent

AND

**930 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 73
OF 2022**

RATAN BHANUDAS RANKHAMB
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....

Mr V. C. Solshe, Advocate for Applicant
Mr D. B. Bhange, APP for Respondent No.1/State
Mr Y. P. Jadhav, Advocate for Respondent No.2

AND

**931 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 83
OF 2022**

SANDEEP KADUBA DIVATE AND ANOTHER
VERSUS
SHRI NARAYAN PRO. OF SHRI KRUSHNA MOBILES

.....

Mr S. B. Kadu, Advocate for Applicants

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AND

**932 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 86
OF 2022**

SHANKAR GOVIND BAMANWAD

VERSUS

GOVIND SONAJI WAD

.....

Mr Vaibhav Dhage, Advocate for Applicant

Mr P. B. Vikhe, Advocate for Respondent

AND

**933 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 87
OF 2022**

M/S. APURVA TRADERS, JINTUR ROAD, PARBHANI THROUGH
ITS PROPRIETOR GOVIND LAXMANRAO MANE

VERSUS

KALYAN RAMRAO SABLE

.....

Mr V. P. Kadam, Advocate for Applicant

Mr P. N. Kalani, APP for Respondent

AND

**934 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 90
OF 2022**

SAVITA RAJENDRA BIRAJDAR AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....

Mr V. C. Solshe, Advocate for Applicants

Mr G. O. Wattamwar, APP for Respondent No.1/State

Mr H. V. Tungar, Advocate for Respondent No.2

AND

**935 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 95
OF 2022**

KAILAS RAJARAM PATIL

VERSUS

NARAYAN PUNDLIK PATIL AND ANOTHER

.....

Mr S. B. Jadhav, APP for Respondent/State

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AND

**936 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 105
OF 2022**

**937 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 106
OF 2022**

**938 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 107
OF 2022**

**939 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 108
OF 2022**

**940 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 109
OF 2022**

**941 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 110
OF 2022**

**942 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 111
OF 2022**

**943 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 112
OF 2022**

**944 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 113
OF 2022**

KAMALKUMAR MADANLAL JAIN (DECEASED) THROUGH
LEGAL REPRESENTATIVE, RUPESH KAMALKUMAR JAIN

VERSUS

MANOJ DWARKADAS AGRAWAL

.....

Ms Shital Pujari, Advocate h/f Mr Y. H. Jadhav, Advocate for
respective Applicant

Mr B. R. Kedar, Advocate for respective Respondent

AND

**945 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 117
OF 2022**

SHREE NARYAN MAHILA NAGARI SAHKARI PAT SANSTHA
LTD. PARBHANI THROUGH BALAJI GANGADHAR CHAVAN

VERSUS

JITENDRA PRABHAKAR DAHIWAL

.....

Mr C. R. Thorat, Advocate for Applicant

Mr R. M. Gaikwad, Advocate h/f Mr P. M. Gaikwad, Advocate for
Respondent

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AND

**946 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 4
OF 2024**

ASHOK SONAJI HEMBADE

VERSUS

MADAN TULSHIRAM HEMBADE AND ANOTHER

.....

Mr H. A. Shinde, Advocate h/f Mr V. R. Dhorde, Advocate for
Applicant

Mr R. N. Chavan, Advocate for Respondent No.1

Mr D. B. Bhange, APP for Respondent No.2/State

AND

**947 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 5
OF 2024**

DEVIDAS BABASAHEB KHATKE

VERSUS

SURESH BHANUDAS SANGULE

AND

**948 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 9
OF 2024**

YOGESHWAR NAGARI SAHAKARI PATSANTHA LTD
THROUGH ITS AUTHORISED PERSON SANDIP VASANT
BAVISKAR

VERSUS

SANJAY VASANT DEV

AND

**949 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 10
OF 2024**

RATAN BAJIRAO DAGLE

VERSUS

RAJENDRA NARAYAN HARDE

.....

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CORAM : SUSHIL M. GHODESWAR, J.**DATE : 16 OCTOBER 2025****P. C. :**

1. Since common issue is involved in these matters, therefore, they are being decided by this common order.

2. By these applications under Section 378(4) of the Code of Criminal Procedure, the respective applicants/appellants pray for leave to file an appeal against judgment and order of acquittal passed by respective learned Judicial Magistrates, First Class, in respective cases for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. Insofar as the issue in respect of preferring an appeal under Section 372 of the Code of Criminal Procedure by the complainant/victim is concerned, the same was considered by the Honourable Supreme Court in the matter of **Celestium Financial Vs. Ganasekaran Etc. [(2025) SCC OnLine SC 1320]**, wherein, it has been held as under :-

“9. In the circumstances, we find that Section 138 of the Act being in the nature of a penal provision by a deeming fiction against an accused who is said to have committed an offence under the said provision, if acquitted, can be proceeded against

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by a victim of the said offence, namely, the person who is entitled to the proceeds of a cheque which has been dishonoured, in terms of the proviso to Section 372 of the CrPC, as a victim. As already noted, a victim of an offence could also be a complainant. In such a case, an appeal can be preferred either under the proviso to Section 372 or under Section 378 by such a victim. In the absence of the proviso to Section 372, a victim of an offence could not have filed an appeal as such, unless he was also a complainant, in which event he could maintain an appeal if special leave to appeal had been granted by the High Court and if no such special leave was granted then his appeal would not be maintainable at all. On the other hand, if the victim of an offence, who may or may not be the complainant, proceeds under the proviso to Section 372 of the CrPC, then in our view, such a victim need not seek special leave to appeal from the High Court. In other words, the victim of an offence would have the right to prefer an appeal, *inter alia*, against an order of acquittal in terms of the proviso to Section 372 without seeking any special leave to appeal from the High Court only on the grounds mentioned therein. A person who is a complainant under Section 200 of the CrPC who complains about the offence committed by a person who is charged as an accused under Section 138 of the Act, thus has the right to prefer an appeal as a victim under the proviso to Section 372 of the CrPC.

10. As already noted, the proviso to Section 372 of the CrPC was inserted in the statute book only with effect from 31.12.2009. The object and reason for such insertion must be realised and must be given its full effect to by a court. In view of the aforesaid discussion, we hold that the victim of an offence has the right to prefer an appeal under the proviso to Section 372 of the CrPC, irrespective of whether he is a complainant or not. Even if the victim of an offence is a complainant, he can still proceed under the proviso to Section 372 and need not advert to sub-section (4) of Section 378 of the CrPC."

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4. Considering the above position of law as laid down by the Honourable Supreme Court, learned advocates appearing in the matter for the applicants/appellants submitted that under proviso to Section 372 of the Code of Criminal Procedure, since the victim has a right to prefer an appeal against the order passed by the Court acquitting the accused or convicting accused for lesser offence or imposing inadequate compensation, such appeal shall lie to the Court to which the appeal ordinarily lies against the order of conviction. In view of said proviso, learned Advocates pray that these matters be transferred to the concerned District and Sessions Courts for their disposal in accordance with law.

5. In that view of the matter and considering the observations of the Honourable Supreme Court in ***Celestium Financial (supra)***, these matters are required to be transferred for their disposal to the respective concerned District Courts. Hence, the following order :-

ORDER

- (1) The present proceedings be transferred to the concerned District and Sessions Courts.

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(2) Learned Registrar (Judicial) of this Court to take further necessary action for transferring these matters to the concerned District and Sessions Courts, immediately.

(3) Learned Courts to whom these matters would be assigned, after registering them, shall issue notice to the concerned parties, and thereafter, proceed further with the matters in accordance with law.

(4) The concerned Courts shall treat these matters as appeals under proviso to Section 372 of the Code of Criminal Procedure as per the observations of the Honourable Supreme Court in **Celestium Financial** (supra).

[SUSHIL M. GHODESWAR, J.]

sjk