

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

954 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 13 OF 2020

SHANKAR S/O. RANJIT HAKALE
VERSUS
VILAS S/O. KHANDOBA UGALE

...

Mr. Dnyaneshwar B. Pokale, Advocate for Appellant.
Mr. L. H. Kawale h/f. Mr. K. J. Suryawanshi, Advocate for
Respondent.

...

AND

955 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 22 OF 2020

MAHARU TANGA PATIL
VERSUS
SHANTILAL @ SHANTARAM BABURAO DESALE

...

None for the Applicant.

...

AND

956 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 23 OF 2020

POPATRAO S/O. EKNATH PALVE
VERSUS
SANTOSH S/O. KACHARU SALUNKE AND ANR

...

None for the Applicant.

...

AND

957 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 24 OF 2020

VISHNU S/O. ASARAM PANHALE
VERSUS
SATISH ASHOK SUKASE

...

Mr. Sandipan N. Morampalle, Advocate for Appellant.

...

AND

958 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 31 OF 2020

GORAKHNATH S/O. KAUTIK JANJAL

VERSUS

RAHUL S/O. KISAN CHATSI

...

Mr. Shrinivas A. Ambad, Advocate for Appellant.

...

AND

959 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 36 OF 2020

SHAMBHUDEV WAMANRAO RAJBHOJ

VERSUS

SAYYAD SALIM SAYYAD RASHID

...

None for the Applicant.

...

AND

960 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 38 OF 2020

ASHOK S/O. BHURAO WAGH

VERSUS

BHASKAR RAOSAHEB ADHANE

...

Ms. Sarita Rathod h/f. Mr. Nitin T. Tribhuwan, Advocate for Appellant.

...

AND

961 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 40 OF 2020

SAMRUDDHI TRADERS MAJALGAON THROUGH PROPRIETOR

SUYOG S/O. SANJAY REDASANI

VERSUS

SUDHAKAR S/O. ZUGRAJI UFADE

...

Mr. Sudarshan J. Salunke, Advocate for Appellant.

...

AND

962 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 44 OF 2020

SANJAY S/O. NIVRUTTI HIPPARGEKAR

VERSUS

DATTA S/O. ANKUSH DEVKATTE

...

Adv. Charuta Sunil Deshmukh, Advocate for Appellant.

...

AND

963 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 45 OF 2020

ANIL S/O. BABULAL KATARIYA

VERSUS

PRADEEPKUMAR POPATRAO THUBE AND ANR

...

Mr. Narayan B. Narwade, Advocate for Appellant.

Mr. G. B. Chate, Advocate for Respondent No.1.

...

AND

968 CRIMINAL APPEAL NO.349 OF 2006

NARAYAN PATILBUWA BHAKRE

VERSUS

SHAIKH SHAHABUDDIN SK ABBAS AND ANR

...

None for the Appellant.

...

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 14th 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 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."

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.
- (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.)