



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.
79 OF 2024

PRAKASH VITTHALRAO KAVTHEKAR
VERSUS
GOVARDHAN DILIP AJABE

...

Shri Kakade Amarsinha Shankar, Advocate for the Appellant.
Shri Sudarshan B. Jojar, Advocate h/f Shri S.E. Shekade,
Advocate for respondent.

...

AND

933 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.
135 OF 2024

ANANT SHIVRAJ DARADE (DIED) BY LEGAL HEIR
SHIVRAJ BHAGWANRAO DARADE
VERSUS
SANTOSH ANILRAO RATHOD

...

Shri Bhimrao R. Rathod, Advocate h/f Shri Bhapkar Shivaji
Bhimrao, Advocate for the Appellant.
Shri Dharurkar Chaitanya V., Advocate for the Respondent.

...

AND

935 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.
48 OF 2020

ANIL SHANKARRAO JADHAV
VERSUS
SHRAVAN KALLU YADAV AND ANR

...
Shri Z.H. Farooqui, Advocate h/f Shri Gaware Niteen V.,
Advocate for the Appellant.
Shri Karpe Rahul R., Advocate for Respondent No.1.
...

AND

**936 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 9
OF 2022**

RAMKRUSHNA GANGARAM BOBADE
VERSUS
SHIVAJI PRALHAD TANPURE

...
Shri Prasad D. Wakhare, Advocate h/f Shri Lavte Amar
Vinayakrao, Advocate for the Appellant.
...

AND

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

AURANGABAD DISTRICT CO-OPERATIVE MILK PRO.
UNI. LTD THROUGH, DR. PRADEEP BHAURAO PATIL
VERSUS
PADMAKAR JAGANNATH PATIL

...
Shri Dhongade Amit S., Advocate for THE Appellant.
...

AND

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

SHIVAJI GANPAT BADAR

VERSUS
NAGESH TRIMBAK GADHAVE

...
Shri More Abhijit S., Advocate for the Appellant.
Shri Talekar Nagesh G., Advocate for the Respondent.

...

AND

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

SHIVAJI DATTA GADHVE
VERSUS
MOMIN ABDUL JABBAR ABDUL JAVED

...
Shri Biradar R.D., Advocate for the Appellant.
Shri Rodge Krishna P., Advocate for the Respondent.

...

AND

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

DON BOSCO NAGARI SAHKARI PATSANTHA MARYADIT,
THROUGH, SACHIN PRABHAKAR SALAVE
VERSUS
ASHOK SHANKAR SHIRSATH

...
Shri Andhale Sandip Ramnath, Advocate for the Appellant.
Shri Zambare Sudheer R. and Shri Gavhane Khanderao R.,
Advocate for the Respondent.

...

AND

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

GORESHWAR GRAMIN BIGAR SHETI SAHAKARI
PATSANSTHA MARYADIT GOREGAON, THROUGH
JALINDAR JANAJI NARSALE

VERSUS

RAJENDRA CHANDRAKANT PACHARNE

...

Shri Anjanwatikar Vinay Bhalchandra, Advocate for the
Appellant.

...

AND

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

SHRI. VARDHAMAN SAHAKARI PATSANSTHA LTD.,
THROUGH, KEDAR SADASHIV NERPAGAR

VERSUS

RAJU BALIRAM MORE

...

Ms.Jakhade Rutuja L., Advocate for the Appellant.
Shri Pandit Sushil P., Advocate for the Respondent.

...

AND

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

SAMIR GANJUBHAI SHAIKH

VERSUS

GANESH SADASHIV KSHIRSAGAR AND ANOTHER

...

Advocate N.M. Jaju, Advocate h/f Shinde Bhagwat A., Advocate
for the Appellant.

Advocate K.S. Sarin, Advocate h/f Shri Bora Satyajit S.,
Advocate for the Respondents.

...

AND

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

SAMIR GANJUBHAI SHAIKH

VERSUS

GANESH SADASHIV KSHIRSAGAR AND ANOTHER

...

Advocate N.M. Jaju, Advocate h/f Shinde Bhagwat A., Advocate
for the Appellant.

Advocate K.S. Sarin, Advocate h/f Shri Bora Satyajit S.,
Advocate for the Respondents.

...

AND

945 CRIMINAL APPEAL NO. 167 OF 2006

SALIMSHAH HAJI SHAKURSHAN L.RS. SAYARABAI

SALIMSHAH AND ORS

VERSUS

SYD JAVDALI SYD ANWARALI AND ANR

...

Shri A. M. Gholap, Advocate for the Appellant.

Shri N.R. Dayama, APP for the Respondents/State.

Ms. Pooja Patil, Advocate h/f Shri P.R. Katneshwarkar, Advocate
for respondent No.1.

...

AND

946 CRIMINAL APPEAL NO. 411 OF 2006

THE STATE OF MAHARASHTRA

VERSUS

SUBHASH BHIKA PARDHI

...

Shri N.R. Dayama, APP for the Appellant/State.

Shri Amol Chate, Advocate h/f Shri A.K. Tiwari, Advocate for
the Respondent.

...

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 15 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).

kps

(SUSHIL M. GHODESWAR, J.)