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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

46 CRIMINAL APPEAL NO. 309 OF 2016

JAMILABEE LALKHAN @ NASIR KHAN (DIED) THOUGH LRS
1A) MANJUR S/O NASIR PATEL

VERSUS

SUDHAKAR GANGADHAR UDAWANT
AND

48 CRIMINAL APPEAL NO. 330 OF 2018

ABDUL RAHIM MOHAMMAD AKIL

VERSUS

AASIF KHA RAHEMAN KHAN PATHAN AND ANOTHER

(CORAM : SUSHIL M. GHODESWAR, J.)

DATE : 13 OCTOBER, 2025

PER COURT :

1. By these appeals under Section 378(4) of the Code of Criminal Procedure, the appellants prays for leave to file an appeal against judgment and orders of acquittal passed by the concerned learned Trial Court in respective petitions for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. So far as the issue in respect of preferring Appeals under

Section 372 of the Code of Criminal Procedure by the complainants/victims are concerned, the same was considered by the Hon'ble Supreme Court in the matter of **Celestium Financial Vs. Ganasekaran Etc. [(2025) SCC OnLine SC 1320]**, wherein the Supreme Court has 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."

3. Considering the above position of law as laid down by the Hon'ble Supreme Court, 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, these matters need to be transferred to the concerned District and Sessions Court for its disposal in accordance with law.

4. In that view of the matter and considering the observations of the Hon'ble Supreme Court referred above, these matters are required to be transferred for its disposal to the concern District Court. Hence, the following order :-

ORDER

(1) The present proceedings be transferred to the concerned District and Sessions Court. Learned Registrar (Judicial) of this Court to take further necessary action for transferring these matters to the concerned District and Sessions Court, immediately.

(2) The learned Trial Court to whom these matters will be assigned, after registering it, shall issue notice to the concerned parties, and thereafter, proceed further with the matters in accordance with law.

(3) The concerned Trial Court shall treat these matters as an appeals under proviso to Section 372 of the Code of Criminal Procedure as per the observations of the Hon'ble Supreme Court in case of Celestium Financial (supra).

(SUSHIL M. GHODESWAR, J.)