



21.18alp etc

(1)

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

**940 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 21
OF 2018**

ROSHANKUMAR RATANLAL GUPTA
VERSUS
NOORMOHAMMAD GULMOHAMMAED LOHAR

.....

AND

**941 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 68
OF 2018**

AMBAJOGAI SAHAKARI SAKHAR KARKHANA LTD.
WAGHALA THROUGH LALASAHEB VISHVNATH INGALE
VERSUS
SHAIKH MUNAWAR SHAIKH DAGDU

.....

Mr P. V. Shinde, Advocate h/f Mr S. G. Kawade, Advocate for
Applicant
Mr Y. K. Bobade, Advocate for Respondent

AND

**942 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 74
OF 2018**

PRAKASHCHAND S/O. AMOLAKCHAND BARDIYA
VERSUS
SUNIL S/O. GAJANAN JOSHI

.....

Mr Padip S. Jadhav, Advocate h/f Mr V. P. Latange, Advocate for
Applicant
Mr R. N. Chavan, Advocate for Respondent/State

AND

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**943 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 120
OF 2018**

M/S. JAIN IRRIGATION SYSTEMS LTD. THROUGH ITS
EMPLOYEE AND AUTHORIZED PERSON KAILAS NAGOLAL
AGRAWAL

VERSUS

PHEPALE KRUSHI SEVA KENDRA THROUGH ITS PROPRIETOR
AND ANR

.....

Mr Ajinkya Reddy, Advocate for Applicant

Mr R. U. Gavhane, Advocate h/f Mr P. C. Mayure, Advocate for
Respondents

AND

**944 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 124
OF 2018**

AJIT S/O. BHAUSAHEB BENDRE

VERSUS

KISHOR S/O. VASANT TARATE AND ANR

.....

Ms P. S. Mogre, Advocate h/f Mr S. G. Mogre, Advocate for
Respondent No.1

Mr N. R. Dayama, APP for Respondent No.2/State

AND

**945 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 150
OF 2018**

SANTOSH S/O. DNYANDEO GAIKWAD

VERSUS

GANESH S/O. RAJARAM BHISE

.....

Mr D. R. Markad, Advocate for Applicant

AND

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**946 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 160
OF 2018**

SANDIP S/O. JUGALKISHOR KARWA
VERSUS
AMIT S/O. RAMESH BHANDARI

.....

Mr Vedant Kabra, Advocate h/f Mr R. F. Totala, Advocate for applicant
Mr M. S. Karad, Advocate for Respondent

AND

**947 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 196
OF 2018**

SUNIL S/O. GULABRAO DEVKAR
VERSUS
SHAIKH JAHUR S/O. SHAIKH NABI

.....

Mr A. A. Mukhedkar, Advocate for Applicant
Mr Joslyn A. Menezes, Advocate h/f Mr P. S. Paranjape, Advocate for
Respondent

AND

**948 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 201
OF 2018**

SHOBHA JAGANNATH GHUBADE
VERSUS
VIJAYMALA BARASU SARKATE

.....

Ms Neha B. Kamble, Advocate for applicant
Mr S. N. Dudhate, Advocate h/f Mr J. V. Deshpande, Advocate for
Respondent

AND

**949 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 35
OF 2020**

MAHINDRA S/O. HIRAMAN PIMPALE
VERSUS
YAYATI S/O. PRABHAKAR MUNDE

.....

Mr S. R. Bagal, Advocate h/f Mr B. N. Gadegaonkar, Advocate for
Respondent

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AND

**950 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 37
OF 2020**

MAHINDRA S/O. HIRAMAN PIMPALE

VERSUS

YAYATI S/O. PRABHAKAR MUNDE

.....

Mr S. R. Bagal, Advocate h/f Mr B. N. Gadegaonkar, Advocate for
Respondent

AND

**951 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 12
OF 2024**

THE AKOLA URBAN COOPERATIVE BANK LTD. BRANCH
NANDED, THROUGH DHAWAL JAYANT DOIPHODE

VERSUS

PRABHAKAR GOVINDRAO SURYAWANSHI

.....

Mr A. D. Dale, Advocate h/f Mr S. S. Rathi, Advocate for Applicant

AND

**952 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 14
OF 2024**

RAJSARSHI SHAHU MAHARAJ URBAN MULTISTATE CO-
CREDIT SOCIETY LTD., THROUGH PRALHAD GUNAJI DHAGE

VERSUS

BALIRAM SOPANRAO PANDULE

.....

Mr A. B. Lokhande, Advocate for Applicant
Mr H. U. Dhage, Advocate for Respondent

AND

**953 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 19
OF 2024**

SAYED ANWAR SHAFIUDDIN

VERSUS

SHAIKH IRFAN MUSTAFA AND ANOTHER

.....

Mr S. B. Jadhav, APP for Respondent No.2/State

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AND
**954 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 21
OF 2024**

PIRAJI BABURAO MANJULE
VERSUS
SATISH MAHADEO KHARPADE AND ANOTHER

.....

Mr S. H. Pathan, Advocate for Applicant
Mr G. O. Wattamwar, APP for Respondent NO.2/State

AND
**955 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 22
OF 2024**

THE DHULE AND NANDURBAR DIST. CENTRAL CO-OP BANK
LTD DHULE THROUGH RAJENDRA GANGARAM MAHALE
VERSUS
RUPCHAND BHOJU PATIL

.....

Mr Nitin P. Aute, Advocate h/f Mr D. B. Thoke, Advocate for
Applicant
Mr S. V. Suryawanshi, Advocate for Respondent

AND
**956 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 33
OF 2024**

IMRAN ALAM KHAN S/O. KHURSHID ALAM KHAN
VERSUS
GANESH MAGAN SONWANE AND ANOTHER

.....

Mr I. G. Durrani, Advocate for Applicant
Mr N. R. Dayama, APP for Respondent No.2/State

AND

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**957 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 35
OF 2024**

ASHOK SITARAM KUTE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....

Mr D. B. Bhange, APP for Respondent No.1/State

AND

**958 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 40
OF 2024**

BHARAT LIMBRAJ PADWAL

VERSUS

BALASAHEB SHIVAJI PADWAL AND ANOTHER

.....

Ms V. M. Shelke, Advocate h/f Mr V. B. Deshmukh, Advocate for
Applicant

Mr S. J. Salgare, Advocate for Respondent No.1

Mr S. B. Jadhav, APP for Respondent No.2/State

AND

959 CRIMINAL APPEAL NO. 645 OF 2006

KAILAS RAMDHAN ZALANI

VERSUS

THE STATE OF MAH AND ANR

.....

Mr R. R. Kakani, Advocate for Applicant

Mr N. R. Dayama, APP for Respondent No.1/State

.....

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 17 OCTOBER 2025

P. C. :

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

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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

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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.]

sjk