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IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 61 OF 2023
IN
CRIMINAL APPEAL NO.461 OF 2023/Filing

R. SANTHI THR. POA
DAINA SHINE

...APPLICANT.

VS

NILOFAR YUSUF KHAN
KITTUR AND ANR

...RESPONDENTS.

Mr Omkar Kulkarni, Advocate for the Applicant/Appellant
through VC.

CORAM:- SHREERAM V. SHIRSAT, J.

DATED:- 10th October, 2025.

P.C.:

1. The Applicant has approached this Court by filing the present leave to appeal against the Judgment and Order dated 29.4.2023, passed by the Judicial Magistrate First Class, Ponda in Criminal Case No.496/OA/NIA/2019/B. The Judicial Magistrate First Class, Ponda, has dismissed the complaint for non-prosecution.
2. The Applicant herein is the original complainant who

had filed complaint under Section 138 of the Negotiable Instruments Act against the Respondents herein being Criminal Case No. 496/OA/NIA/2019/B before the Judicial Magistrate First Class, Ponda. The complaint has been dismissed for non-prosecution vide order dated 29.4.2023. The Applicant thereafter has filed the present leave to appeal on 26.6.2023. The same was pending before this Court.

3. In the case of ***Celestium Financial V/s A. Gnanasekaran & ors.***¹, the Hon'ble Supreme Court in paragraph nos. 9 and 10 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 Code of Criminal Procedure, 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

¹ 2025 (3) MLJ (Crl)147

victim of an offence, who may or may not be the complainant, proceeds under the proviso to Section 372 of the Code of Criminal Procedure, 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 Code of Criminal Procedure 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 Code of Criminal Procedure.

10. *As already noted, the proviso to Section 372 of the Code of Criminal Procedure 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 Code of Criminal Procedure, 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 Code of Criminal Procedure”.*

4. The ruling of the Apex Court was brought to the notice of the Ld. Counsel for the Applicant herein, who is the complainant and that the complainant can approach the Sessions Court under Section 413 of BNSS (old Section 372 of Cr.P.C) in order to challenge the said impugned Judgment

and Order dated 29.4.2023 passed by the Judicial Magistrate First Class, Ponda.

5. The learned Counsel for the Applicant has also not disputed the said position of law and argued that if liberty is granted and delay is condoned, he is ready and willing to approach the Sessions Court under Section 413 of BNSS.

6. Section 413 of BNSS reads as under:

“413. No appeal to lie unless otherwise provided.—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Sanhita or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

7. Taking into consideration the above and the Judgment passed by the Hon’ble Supreme Court, there can be no doubt that the victim has a right to prefer an appeal against the order passed acquitting the Accused, and such an appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court, and therefore liberty is granted to the present Applicant to withdraw the

leave to appeal and approach the Sessions Court by filing appropriate proceedings to challenge the impugned Judgment and Order dated 29.4.2023. As the Applicant had approached this Court within limitation, and the leave to appeal was pending before this Court, the delay in approaching the Sessions Court to challenge the impugned Judgment and Order dated 29.4.2023 is condoned. The Registry to return the original certified copy of the impugned Judgment and order dated 29.4.2023, to the Applicant, which shall be replaced by a photocopy of the same in the records of the Court.

8. The Applicant shall approach the Sessions Court within a period of four weeks.

9. The Application is allowed to be withdrawn and disposed of accordingly.

10. In view of the above, nothing survives in Criminal Appeal No. 461 of 2023/F and hence the same stands disposed of.

SHREERAM V SHIRSAT, J.