

Mr. Hanumant D. Naik, Advocate for the Applicant.

Mr. Shailendra G. Bhobe, Public Prosecutor for the Respondent/State.

DATED:- 1st October, 2025.

1. The Applicant has approached this Court by filing the present leave to appeal against the Judgment and Order dated 10.05.2022, passed by the Judicial Magistrate First Class, 'E' Court Mapusa in Criminal Case no. 333/S/2013/E. The Judicial Magistrate First Class, 'E' Court Mapusa, had acquitted the Respondent herein (original Accused) under Section 354 of the Indian Penal Code (in short IPC).

2. The Ld. Public Prosecutor Mr. Shailendra Bhole, appearing for the State, invited my attention to the Judgment passed by the Hon'ble Supreme Court in ***Celestium***

Financial V/s A. Gnanasekaran & ors.¹ and pointed out para 10 which reads as under:

“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”.

3. It was thus submitted that the Applicant herein, who is the victim can approach the Sessions Court in order to challenge the said impugned Judgment and order dated 10.05.2022 passed by the Judicial Magistrate First Class, ‘E’ Court Mapusa under Section 372 of Cr.P.C. (now Section 413 of BNSS).

4. 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.

5. Section 413 of BNSS reads as under:

¹ 2025 (3) MLJ (Crl)147

“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.”

6. 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 10.05.2022. 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 10.05.2022 is condoned. The Registry to return the original certified copy of the impugned

Judgment and order dated 10.05.2022, to the Applicant, which shall be replaced by a photocopy of the same in the records of the Court.

7. The Applicant shall approach the Sessions Court within a period of 1 week.

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 The Application is allowed to be withdrawn and disposed of accordingly.

SHREERAM V. SHIRSAT, J.