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**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL APPEAL NO.10 OF 2024.**

**ANTONIO DE SOUZA                      ...APPELLANT**

**VS**

**E.K. JOSHI                                      ... RESPONDENT.**

Mr. Vibhav Amonkar, Advocate for the Appellant.

Ms. Amina Shaikh, Advocate for the Respondent.

**CORAM:- SHREERAM V. SHIRSAT, J.**

**DATED:- 15<sup>th</sup> December , 2025.**

**P.C.:**

1. The Appellant has approached this Court, being aggrieved by the Judgment and Order dated 2.06.2022, passed by the Judicial Magistrate First Class 'E' Court Panaji in Criminal Case No.OA/892/2018/E. The Judicial Magistrate, First Class, 'E' Court, Panaji has acquitted the Respondent.

2. The Appellant herein is the original complainant who had filed complaint under Section 138 of the Negotiable Instruments Act, against the Respondent herein, being Criminal Case No. OA/892/2018/E before the Judicial

Magistrate, First Class ‘E’ Court Panaji. The Respondent has been acquitted. Thereafter, the Appellant filed a Special Leave to Appeal before this Court, which was granted vide order dated 12.3.2024. The Appeal was pending before this Court and was to be taken up for final disposal after the receipt of the Records and Proceedings.

3. During the pendency of the proceedings, the judgment of the Apex Court in the case of ***Celestium Financial V/s A. Gnanasekaran & ors.***<sup>1</sup>, was brought to the notice of this Court, wherein 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*

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<sup>1</sup> 2025 (3) MLJ (Crl)147

*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 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. 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.”*

5. 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 as such an appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. Therefore per the ruling of the Apex Court, the complainant can approach the Sessions Court under Section 413 of BNSS (old Section 372 of Cr.P.C)

in order to challenge the judgment and order of acquittal by way of Appeal.

6. The Delhi High Court in the case of **Krishan Lal VS Wasim Khan**<sup>2</sup>, has observed in paragraphs 4 and 5 as under:-

*4. In the present case, it is observed that leave to appeal under Section 378(4) was granted by this Court on 23rd July, 2018, following which the appeal was duly admitted. However, in light of the Supreme Court's recent clarification of the legal position, it is now evident that the Appellant, being a complainant under Section 138 of NI Act, is entitled to file an appeal against the impugned judgment of acquittal under Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (previously Section 372 of the Cr.P.C.) before the Sessions Court. If this Court were to proceed to hear and decide the appeal at this stage, it could deprive the parties of an available forum for further challenge.*

*5. In light of the above, it is deemed fit to direct that the present appeal be transferred to the concerned Appellate Court of Sessions and be considered as an appeal under the proviso to*

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<sup>2</sup> CRL.A.783/2018 & CRL. M.A. 2037/2024 decided on 28.7.2025

*Section 413 of BNSS. Let the appeal be numbered accordingly.*

7. The High Court of Punjab and Haryana at Chandigarh in the case of **Kesar Singh vs Manjinder Singh**<sup>3</sup> has observed at paragraphs 2 and 5 as under:-

*“2. Vide order dated 01.05.2024, leave to appeal was granted and the appeal was admitted for final hearing.*

*5. In the light of the aforesaid decision of Hon’ble Supreme Court as also guiding principle that procedural rule must serve and not obstruct the course of justice, this Court deem it appropriate to direct the concerned Sessions Judge that the present appeal be treated as one authoritatively instituted under the proviso to Section 372 of the Cr.P.C. and entrust the same to an appropriate Court for disposal on merits.”*

8. The learned Counsel for the Appellant has also not disputed the said position of law. It is submitted by the Ld. Counsel for the Appellant, on instructions, that if liberty is granted to the Appellant and the delay is condoned for the period the appeal was pending before this Court, the

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<sup>3</sup> CRA-AS-97-2024(O&M) decided on 29.9.2025

Appellant is ready and willing to approach the Sessions Court under Section 413 of BNSS. In this case the question of considering the delay will not arise before the Sessions Court, as the Appeal which was pending before this Court for final disposal, is being transferred to the Sessions Court and the Appellant is not required to institute any fresh proceedings before the Sessions Court.

9. In light of the aforesaid decision of the Hon'ble Supreme Court and various High Courts and bearing in mind the guiding principle that procedural rules are intended to advance and not obstruct, the course of justice and also that if this Court is to proceed to hear and decide the appeal at this stage, it could deprive the parties of an available forum for further challenge, this Court therefore deems it appropriate to direct the concerned Sessions Judge to treat the present appeal as one duly instituted under the proviso to Section 413 as per BNSS (Section 372 of the Cr.P.C) and to assign the same to an appropriate Court for disposal on its merits. It is made clear that this Court has not heard the case on merits and all the contentions of the parties are kept open to be agitated and canvassed before the concerned Court.

**ORDER**

- I.* The present proceedings be transferred to the concerned District and Sessions Court. The Learned Registrar (Judicial) of this Court to take further necessary action for transferring this matter to the concerned District and Sessions Court, immediately. The Registry is directed to send, expeditiously, the complete records of the present appeal (including the paper book) to the District and Sessions Court.
- II.* The Registry is directed to transmit a copy of this order along with the complete paper book to the concerned Sessions Judge forthwith and to return the Trial Court records, if received, without delay.
- III.* The Appeal is transferred to the concerned District and Sessions Court, who shall after registering the matter, deal with the matter in accordance with law.
- IV.* In case, either of the parties remains absent after the transfer of the matter to the District and Sessions Court, the concerned Court/Judge shall issue notice to the concerned party before proceeding with the matter.
- V.* The concerned Court shall treat this matter as appeal under proviso to Section 413 as per BNSS (Section 372 of the Cr.P.C) as per the observations of the Hon'ble Supreme Court

in the case of ***Celestium Financial***  
(supra).

- VI. Considering that the matter has been pending for a considerable time, the concerned Appellate Court is requested to make an endeavour to dispose the appeal expeditiously.

Appeal stands disposed of accordingly.

**SHREERAM V SHIRSAT, J.**