

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 143 OF 2025
ALONGWITH
APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 144 OF 2025

Sunita Pradeep Kankariya

.....*Applicant/
Appellant*

: *Versus* :

Suhas Balasaheb Sawkar & Anr.

....*Respondents*

Mr. Jagdish Choudhary with Mr. Khushal Shekhawat i/b. Raj Legal, for the Applicant.

Mr. Sidheshwar N. Biradar, for Respondent No.1.

Mr. Balraj B. Kulkarni, APP for Respondent No.2-State.

CORAM : SANDEEP V. MARNE, J.

DATED : 9 SEPTEMBER 2025.

P.C :

1) These are applications seeking leave to Appeal under the provisions of sub-section (4) of Section 378 of the Code of Criminal Procedure, 1973 (**Code**).

2) The Applicant/Appellant is seeking leave of this Court to file Appeal against the judgment and order acquitting Respondent No.1 for offences punishable under Section 138 of the Negotiable Instruments Act, 1881 (**N.I. Act**).

3) At the outset, Mr. Choudhary, the learned Counsel appearing for the Applicant/Appellant invites attention of this Court to the judgment of the Apex Court in **Celestium Financial Versus. A. Gnanasekaran Etc.**¹. He would submit that the Supreme Court has merely recognised an additional remedy available to the Complainant to prefer appeal before the Sessions Court under Proviso to Section 372 of the Code by equating the complainant to that of a victim. He would submit that the observations of the Apex Court would clearly indicate that the Complainant in a complaint filed under Section 138 of the N.I. Act has an option of either preferring an Appeal by treating himself as a victim as provided in Proviso to Section 372 before the Court where the Appeal against conviction lies (Sessions Court) or he can file Appeal before the High Court by seeking its leave under sub-section (4) of Section 378. He would invite my attention to the Division Bench judgment of this Court in **Kushal Kawaduji Singanjude Versus. Ramnarayan Durgapreasad Agrawal (Kejadiwal)**² holding that once a case is instituted on a complaint and an order of acquittal is passed, the Complainant can file application under Section 378(4) of the Code for special leave to Appeal against an order of acquittal only in a High Court. He would submit that the Division Bench has also taken into consideration judgment of the Apex Court in **Mallikarjun Kodgali (Dead) Represented through Legal Representatives Versus. State of Karnataka and Ors**³ and has thereafter answered the Reference holding that an Appeal against acquittal in prosecution for offence punishable under Section 138 of the Act would lie under Section 378(4) of the Code.

1 2025 SCC OnLine 1320

2 2020(1) Mh.L.J. 748

3 2018 Mh. L.J. Online (Cri.) (S.C.)23

4) However, what Mr. Chaudhary ignores is the position that the judgment of the Apex Court in *Celestium Financial* is rendered subsequent to the Division Bench judgment in *Kushal Kawaduji Singanjude* (supra). The Division Bench did not have the benefit of the view taken by the Apex Court where a Complainant in a complaint filed under Section 138 of the N.I. Act is equated with a victim for the purposes of Proviso under Section 372 of the Code. In *Celestium Financial* (supra) the Apex Court has concluded in paras-9 and 10 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.

5) Thus in *Celestium Financial* the Apex Court has held that even if the victim of an offence is a Complainant, he can still proceed under Section 372 and need not advert to sub-section (4) of Section 378 of the Code. Thus the observations in para-10 of the judgment, make it apparent that Complainant's right to file a direct Appeal under Proviso to Section 372 has been recognised when the offence relates to Section 138 of the N.I. Act.

6) True it is that the Apex Court has recognised option available to the Complainant to either file Appeal under Proviso to Section 372 or to seek leave of the High Court for filing Appeal under Section 378. Thus while recognising Complainant's right to file Appeal directly before the Sessions Court under Proviso to Section 372 of the Code (without seeking leave) the Apex Court has not ruled that the remedy of filing appeal under Section 378(4) of the Code by seeking leave of the High Court would be barred. Thus the Apex Court Judgment indicates that both remedies are available to a Complainant in a complaint filed under Section 138 of N.I. Act.

7) Though Mr. Choudhary is assertive about maintainability of the present leave application and the Appeal filed under the provisions of Section 378(4) of the Code, he ultimately concedes to the position that the alternate remedy of filing a direct Appeal before the Sessions Court under Proviso to Section 372 of the Code would be faster

and more efficacious. Considering the position that the alternate remedy of filing appeal under Proviso to Section 372 can also be exercised by a Complainant in his/her capacity as victim without seeking leave of the Court, this Court suggested to Mr. Choudhary that it would be in the interest of the Applicant/Appellant to exercise alternate remedy of filing Appeal under Proviso to Section 372 of the Code. After considering the suggestion, Mr. Choudhary is agreeable to the arrangement of filing Appeal under Proviso to Section 372 of the Code before the Sessions Court considering the facts and circumstances of the present case.

8) In that view of the matter, the Applications, as well as Appeals are disposed of granting liberty to the Applicants/Appellant to file Appeal against the order of acquittal under Proviso to Section 372 of Criminal Procedure Code before the Sessions Court. The Applications, as well as Appeals are accordingly **disposed of**.

9) It appears that this Court has already condoned the delay in filing the application seeking leave to file Appeal by order dated 8 May 2025. Therefore, if the Applicant/Appellant files Appeal before the Sessions Court within a period of 4 weeks, he shall be entitled to the benefit of provisions of Section 14 of the Limitation Act while computing the period of limitation in filing Appeal before the Sessions Court.

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[SANDEEP V. MARNE, J.]