IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.57/2018
(Taslimbeg Sabjubeg Mirza VS Prakash G. Pohare and Others),
WITH
CRIMINAL APPEAL NO.174/2014
(Ramesh S/o Shriram Motghare VS Bhaurao S/o Devaji Gajbhiye and Others),
WITH
CRIMINAL APPEAL NO.545/2017
(Digambar S/o Jangluji Godbole VS Ashok K. Jadhav and Others),
WITH
CRIMINAL APPEAL NO.137/2018
(Lalchand S/o Sahajumal Panjawani VS Eklas S/o Harun Ansari and Others),
WITH
CRIMINAL APPEAL NO.378/2018
(Sushant Kalidhar @ Kalipada Banerjee VS Varsha Kamraj Jambhulkar and Another),
WITH
CRIMINAL APPEAL NO.614/2019
(Ramesh Mavjibhai Bhagat VS Dhuneshwar S. Pethe and Others),
WITH
CRIMINAL APPEAL NO.537/2021
(Dhondulal Ramchandra Zanvar VS Sunita Dnyaneshwar Jamgade and Another),
WITH
CRIMINAL APPLICATION [APPA] 681/2025 IN CRIMINAL APPEAL [ST] NO.6682/2025
(Smt. Zelu alias Vijaya Laldas and Another VS Smt. Bebi alias Babita Laldas Humne),
WITH
CRIMINAL APPLICATION [APPA] NO.488/2018
(Rajendra S/o Bhimrao Hinge VS Sohel Ejaj Mohammad Raisoddin Siddiki and others),
WITH
CRIMINAL APPLICATION [APPA] 262/2024 IN CRIMINAL APPEAL [ST] NO.1992/2024
(Mr. Sanjiv S/o Somaji Barai VS Mr. Vilas S/o Ramdas Barai),
WITH
CRIMINAL APPLICATION [APPA] 303/2025 IN CRIMINAL APPEAL [ST] NO.6256/2024
(Manda Vilas Thorat VS Ashok Gajanan Karale),
WITH
CRIMINAL APPEAL NO.324/2023
(Sheetal Ishwar Sankade VS State of Maharashtra and Others),
WITH
CRIMINAL APPEAL NO.181/2024
(Mr Vinod Sitaram Gawai VS Mangesh @ Sanjay Mahadeo Shelke and Others)

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Common Order.

CORAM : M.M. NERLIKAR, J.
DATE : NOVEMBER 27, 2025.

The principal challenge in all these matters pertains to

acquittal in cases under the provisions of Indian Penal Code, 1860. These Applications/Appeals are filed under Section 378 of the Code of Criminal Procedure, 1973. In some matters, applications are being filed either seeking condonation of delay in preferring the appeal or leave was sought to file appeal. In some matters, this Court has admitted the case.

2. Now so far as the issue in respect of preferring Appeal under Section 372 of the Code by the complainant/victim is concerned, the same was considered by the Hon'ble Supreme Court in case of ***M/s. Celestium Financial .Vrs. A. Gnanasekaran Etc*** **(2025 SCC Online SC 1320)**, wherein the Supreme Court has held as under:

> *"6.4 On a reading of the definition of 'victim', it is clear that the said expression is initially exhaustive and thereafter inclusive. The expression 'victim' means a person who has suffered any loss or injury. The loss or injury could be either physical, mental, a financial loss or injury. The expression injury could also be construed as a legal injury in a wider sense and not just a physical or a mental injury. The loss or injury must be caused by reason of an act or omission for which the accused person has been charged. Thus, it can be both by a positive act or negatively by an omission which is at the instance of the accused and for which such accused has been charged. Further, the expression 'victim' also includes his/her guardian or legal heir in the case of demise*

of the victim.

6.5 Thus, the expression 'victim' has been couched in a broad manner so as to include a person who has suffered any loss or injury. The expressions 'loss' or 'injury' themselves are of a very broad import which expressions also enlarge the scope of the expression 'victim'. Further, the expression 'victim' includes not only the person who has suffered any loss or injury caused by reason of any act or omission for which the accused person has been charged but also includes his or her guardian or legal heir which means that the definition of victim is inclusive in nature.

6.6 Having regard to the insertion of the proviso to Section 372 of the CrPC, we find that in the case of a victim who seeks to file an appeal, he or she could proceed under the proviso to Section 372 of the CrPC in the circumstances mentioned therein and need not prefer an appeal by invoking Section 378(4) of the CrPC which is in respect of appeals to be filed by a complainant. It may be that the complainant is a victim in certain cases and therefore, the victim has the right to file an appeal under the proviso to Section 372 of the CrPC and need not proceed under Section 378(4) of the CrPC. However, if the complainant is not a victim and intends to file an appeal, in such a case a complainant would have to proceed under Section 378 of the CrPC which circumscribes the right to file an appeal by virtue of the conditions which are stipulated under the said Section.

7.9 In this context, we wish to state that the proviso to Section 372 does not make a distinction between an accused who is charged of an offence under the penal law or a person who is deemed to have committed an offence under Section 138 of the Act. Symmetrical to a victim of an

offence, a victim of a deemed offence under Section 138 of the Act also has the right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing an inadequate compensation. When viewed from the perspective of an offence under any penal law or a deemed offence under Section 138 of the Act, the right to file an appeal is not circumscribed by any condition as such, so long as the appeal can be premised in accordance with proviso to Section 372 which is the right to file an appeal by a victim, provided the circumstances which enable such a victim to file an appeal are met. The complainant under Section 138 is the victim who must also have the right to prefer an appeal under the said provision. Merely because the proceeding under Section 138 of the Act commences with the filing of a complaint under Section 200 of the CrPC by a complainant, he does not cease to be a victim inasmuch as it is only a victim of a dishonour of cheque who can file a complaint. Thus, under Section 138 of the Act both the complainant as well as the victim are one and the same person.

8. The right to prefer an appeal is no doubt a statutory right and the right to prefer an appeal by an accused against a conviction is not merely a statutory right but can also be construed to be a fundamental right under Articles 14 and 21 of the Constitution. If that is so, then the right of a victim of an offence to prefer an appeal cannot be equated with the right of the State or the complainant to prefer an appeal. Hence, the statutory rigours for filing of an appeal by the State or by a complainant against an order of acquittal cannot be read into the proviso to Section 372 of the CrPC so as to restrict the right of a victim to file an appeal on the grounds mentioned therein, when none exists.

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. "

Further, in the latest judgment of the Supreme Court in the case of ***Khem Singh (D) Through Lrs. Vrs. State of Uttaranchal (Now State of Uttarakhand) & Another Etc.,*** 2025 SCC OnLine SC 1778, the Supreme Court has held as under :

"7.4 On a reading of the definition of 'victim', it is clear that the said expression is initially exhaustive and thereafter inclusive. The expression 'victim' means a person who has suffered any loss or injury. The loss or injury could be either physical, mental, a financial loss or injury. The expression 'injury' could also be construed as a legal injury in a wider sense and not just a physical or a mental injury. The loss or injury must be caused by reason of an act or omission for which the accused person has been charged. Thus, it can be both by a positive act or negatively by an omission which is at the instance of the accused and for which such accused has been charged. Further, the expression 'victim' also includes his/her guardian or legal heir in the case of demise of the victim.

7.5 Thus, the expression 'victim' has been couched in a broad manner so as to include a person who has suffered any loss or injury. The expressions 'loss' or 'injury'

themselves are of a very broad import which expressions also enlarge the scope of the expression 'victim'. Further, the expression 'victim' includes not only the person who has suffered any loss or injury caused by reason of any act or omission for which the accused person has been charged but also includes his or her guardian or legal heir which means that the definition of victim is inclusive in nature.

7.6 Having regard to the insertion of the proviso to Section 372 CrPC, we find that in the case of a victim who seeks to file an appeal, he or she could proceed under the proviso to Section 372 CrPC in the circumstances mentioned therein and need not prefer an appeal by invoking Section 378(4) CrPC which is in respect of appeals to be filed by a complainant. It may be that the complainant is a victim in certain cases and therefore, the victim has the right to file an appeal under the proviso to Section 372 CrPC and need not proceed under Section 378(4) CrPC. However, if the complainant is not a victim and intends to file an appeal, in such a case a complainant would have to proceed under Section 378 CrPC which circumscribes the right to file an appeal by virtue of the conditions which are stipulated under the said Section."

Further in the case of ***Asian Paints Limited Vrs. Ram Babu & Another,*** **2025 SCC OnLine SC 1427,** the Supreme Court while interpreting Sections 372 and 378 of Cr.P.C. has observed as under:-

"43. We are constrained to observe that the finding of the High Court that the Appellant could not have maintained the appeal before it would amount to completely negating the proviso to Section 372 of the CrPC. In our considered opinion, Section 372 of the CrPC

is a self-contained and independent Section; in other words, it is a stand-alone Section. Section 372 of the CrPC is not regulated by other provisions of Chapter XXIX of the CrPC. The proviso to Section 372 of the CrPC operates independently of and shall not be read conjointly with any other provision in the CrPC, much less Section 378 of the CrPC.

47. From the aforesaid elucidation, it is clear that the right to appeal accrues on the 'victim' from the instance of a Court acquitting the accused. The proviso to Section 372 of the CrPC is agnostic to the factum of such acquittal being by the Trial Court or the First Appellate Court. We can see the situation through another lens also. In the facts at hand, acquittal was by the First Appellate Court and not by the Trial Court. Therefore, since, in the present case, for the first time, the acquittal comes in at the stage of the First Appellate Court (being a Sessions Court), in law, the right of appeal by the victim would be to the next higher level in the judicial hierarchy, which would be the High Court. However, for that purpose, the High Court could also have been the First Appellate Court, if the Trial Court, being a Court of Sessions, had acquitted the accused. Thus, the reasoning of the High Court that if the Appellant was allowed to maintain the appeal, it would amount to an appeal as envisaged under Section 378 of the CrPC, is factually and legally erroneous, which proposition we negate."

However it would also be useful to refer to the judgment delivered by Punjab and Haryana High Court at Chandigarh in the case of ***Satish Kumar Vrs. Jugal Kishor*** (CRM-A-2700-MA-2018),

decided on 02/07/2025, wherein it is observed thus:-

> *"21. A perusal of Section 2(wa) of the Cr.P.C. would indicate that no distinction has been drawn between victims of a crime in a State case and a private complaint case. Therefore, the right to appeal vested in the victim under Section 372 of the Cr.P.C. is available to all victims alike as it too does not discriminate between the victim of a crime in a privately instituted complaint and the victim in a case emanating from an FIR registered by the jurisdictional police. Since Section 138 of the NI Act has been given a penal nature by the Legislature, the victim of such misdemeanor would be entitled to the same right, in spite of the fact that a private complaint is filed in this regard. Thus, the right of the victim under Section 372 Cr.P.C. cannot be limited to cases where criminal law machinery was set into motion by registration of an FIR only.*
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> *22. In a case instituted on a police report under Section 173 of the Cr.P.C, the victim has a right to challenge the acquittal of the accused before the Court of Sessions. On the other hand, the victims are compelled to travel long distances to the High Court and seek leave of the Court under Section 378(4) Cr.P.C. to pursue an appeal against acquittal in a private complaint case. It stands against reason to put the victim to such disadvantage. The inadvertent gap left by the legislature has caused hardship and inconvenience to the victim and creates an anomaly. Further, another incongruent situation arises when some of the accused are acquitted while some stand convicted in a privately instituted complaint case. The appeal against conviction, per Section 374 of the Cr.P.C.. lies before the Court of Sessions while the victim would have to travel to the High Court to pursue an appeal against acquittal under Section 378(4) Cr.P.C. The situation would also lead to conflicting views as the same case is dealt with by two different appellate forums.*

> *23. In Celestium Financial (supra), the Hon'ble Supreme Court has held that the right of the victim to prefer an appeal against acquittal is at par with the right of the accused to prefer one against his conviction under Section 374 Cr.P.C. In fact, the same has been construed as a fundamental right within the scope of Article 14 and 21 of the Constitution of India. Moreover, taking this approach would assist in the cases being decided expeditiously which is imperative to further the cause of justice. Further still, swift resolution not only bolsters public confidence in the justice administration mechanism but also reduces burden on Courts."*

3. Considering the above position of law as laid down by the Supreme Court in the cases referred *supra*, the learned Counsel appearing on behalf of either applicants/appellants/respondents submits that Section 372 of Cr.P.C. cannot be limited to the private cases filed by the victim, but also available to those victims wherein Police case was instituted / FIR was registered irrelevant of the fact that the FIR was registered at the behest of victim or not, therefore, 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 accused or convicting the 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, the learned Counsel prays that the matters be transferred to the concerned District and Sessions Court for its disposal in accordance with law.

4. In this view of the matter and considering the observations of the Supreme Court referred above, all the matters (applications and appeals) are required to be transferred for their disposal to the concerned District Court. Hence, the following order:-

ORDER

(1) The Applications/Appeals are transferred to the concerned District and Sessions Court, who shall after registering the matters, deal with the matter in accordance with law;

(2) Parties shall appear before the concerned District and Sessions Court, on 07/01/2026;

(3) If the non-applicants/respondents in any of these matters are not served or they are to be served, in that case the concerned District and Sessions Court shall issue notice to them and thereafter proceed further with the matter.

(4) The concerned District and Sessions Court are also directed to take into consideration the matters wherein this Court has appointed Advocate from Legal Aid Panel, and if the said Advocate from the Legal Aid Panel is unable to attend or appear before the Court where the matter is transferred, in that eventuality, the District

Court shall take necessary steps for appointing another Advocate from the Legal Aid panel for defending the non-applicants/ respondents.

(5) In case either of the parties remains absent after transfer of the matter to the District and Sessions Court, the concerned Court / Judge shall issue notice to the concerned party/ies before proceeding with the matter.

(6) All the concerned District and Sessions Court shall treat these matters as appeal under proviso to Section 372 of the Code as per the observations of the Supreme Court in case of ***M/s. Celestium Financial .Vrs. A. Gnanasekaran Etc (2025 SCC Online SC 1320), Khem Singh (D) Through Lrs. Vrs. State of Uttaranchal (Now State of Uttarakhand) & Another Etc.,*** 2025 SCC OnLine SC 1778, ***Asian Paints Limited Vrs. Ram Babu & Another,*** 2025 SCC OnLine SC 1427, and ***Satish Kumar Vrs. Jugal Kishor*** (CRM-A-2700-MA-2018),

(7) Considering the fact that the appeals/applications are preferred long back, therefore, in the interest of justice, it is desirable that the District and Sessions Court shall make an endeavor to dispose of those cases as expeditiously as possible.

(8) Registrar (Judicial) of this Court to take further necessary action for transferring these matters to the concerned District and Sessions Court immediately.

JUDGE