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

CRIMINAL APPEAL NO. 323/2014.
Rameshwar Jagannath Khandelwal **Versus.** Ku.Pratibha Deshmukh.
CRIMINAL APPEAL NO. 323/2011.
Hemant Bhaurao Chopade **Versus.** Smt.Sundarabai Kale.
CRIMINAL APPEAL NO. 341/2011.
Suresh Pralhad Sontakke **Versus.** Smt.Rajshree Amar Kamble and another.
CRIMINAL APPEAL NO. 516/2011.
Narayan Vishwanath Jane **Versus.** Keshav Marotrao Chikhale.
CRIMINAL APPEAL NO. 531/2011.
Gautam Hiraman Dhargave **Versus.** Narendra Laxmanraoji Harde and another.
CRIMINAL APPEAL NO. 269 /2014.
Vanashri Dewaji Gabhane **Versus.** Seema Ashok Ramteke and another.
CRIMINAL APPEAL No.256/2011.
Avinash Madhaorao Palsodkar. **Versus.** Vivek Narhar Oke
CRIMINAL APPEAL NO. 277/2011.
Ra,bhau Balaji Ninawe **Versus.** Sunil Shyam Umredkar

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 : **DECEMBER 08, 2025.**

The principal challenge in these matters pertains to acquittal in cases under Section 138 of the Negotiable Instruments Act. This Appeal is filed under Section 378 of the Code of Criminal Procedure.

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 **Celestium Financial .vrs. A. Ganasekaran Etc (2025 SCC Online SC 1320)**, wherein the Supreme Court has held as under :

> *"7.7 In the context of offences under the Act, particularly under Section 138 of the said Act, the complainant is clearly the aggrieved party who has suffered economic loss and injury due to the default in payment by the accused owing to the dishonour of the cheque which is deemed to be an offence under that provision. In such circumstances, it would be just, reasonable and in consonance with the spirit of the CrPC to hold that the complainant under the Act also qualifies as a victim within the meaning of Section 2(wa) of the CrPC. Consequently, such a complainant ought to be extended the benefit of the proviso to Section 372, thereby enabling him to maintain an appeal against an order of acquittal in his own right without having to seek special leave under Section 378(4) of the CrPC.*
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> *7.8 In the case of an offence alleged against an accused under Section 138 of the Act, we are of the view that the complainant is indeed the victim owing to the alleged dishonour of a cheque. In the circumstances, the complainant can proceed as per the proviso to Section 372 of the CrPC and he may exercise such an option and he need not then elect to proceed under Section 378 of the CrPC.*

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.

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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 51 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."

3. Considering the above position of law as laid down by the Supreme Court, the learned Counsel appearing in the matter submitted that 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 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 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, the matters are required to be transferred for its disposal to the concern District Court, hence the following order.

ORDER

(1) The 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 12.01.2026.

(3) If the 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 is 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 Celestium Financial (supra).

(7) The District and Sessions Court to take endeavor to decide the matter expeditiously.

(8) Registrar (Judicial) of this Court to take further necessary action for transferring these matters to the concerned District and Sessions Court, along with the R & P (if received) immediately.

JUDGE