



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 169 OF 2024

Pankaj Garments thr. Proprietor Vs Suresh Hiranand Lundwani

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Nikhil A. Parwani, counsel for the appellant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/08/2025.

1. Present appeal is filed against the acquittal.
2. The learned counsel for the appellant submitted that now the issue is dealt by the Hon'ble Apex court in the case of *M/s Celestium Financial Vs A. Gnanasekaran Etc [2025 SCC OnLine SC 1320]*, wherein it is held that the right to prefer an appeal is no doubt the statutory right and the right to prefer an appeal by an accused person 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.

3. 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.

4. With the above observation, the Hon'ble Apex Court further observed that in view of the aforesaid discussion, we hold that the victim of a offence under 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, and granted liberty to the victim to prefer an appeal before the Appellate Court.

Similarly in the present appeal also, the liberty can be granted to the present appellant to prefer an appeal before the Sessions Court, in view of that, I proceed to pass the following order.

- a] The appeal is disposed of with liberty granted to the victim to file an appeal before the Sessions Court within one month from today.

- b] The issue of limitation shall not be raised by the respondent or by the Appellate court.

With the above directions, the appeal is **disposed of**.

[URMILA JOSHI-PHALKE, J.]