



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

CRIMINAL APPLICATION (APPA) NO. 944 OF 2023
IN
CRIMINAL APPEAL STAMP NO. 7294 OF 2023

Laxmichand Lalchand Malpani Vs Dinesh Enterprises, Pro. Dinesh Hemraj Lodhaya

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

Court's or Judge's Order

Ms Shilpa O. Tapadiya, counsel for applicant/appellant.

Mr. Tejas S. Deshpande, counsel for respondent.

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

1. The present appeal is against acquittal along with leave to file an appeal.
2. Learned counsel for the appellant placed reliance in the case of ***M/s Celestium Financial Vs A. Gnanasekaran Etc [2025 (3) RCR (Criminal) 208]***, wherein the Hon'ble Apex court observed as follows:-

“the central issue arising for adjudication in the instant appeals is, whether an appeal would be maintainable under the proviso to Section 372 of the Code of Criminal Procedure (for short “CrPC”) against an order of acquittal passed in a case instituted upon a private complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the Act”), by treating the complainant in such a proceeding as a victim

within the meaning ascribed to the term under Section 2(wa) of the Cr.PC”.

3. As already noted, the Act does not have a provision for filing of an appeal. The Act is a special enactment. In the circumstances, the Cr.PC, which is general in nature, would have to be resorted to. The proviso to Section 372 of the CrPC considers the right of filing an appeal on the point of view of a victim, which expression not only includes an injured victim but also the legal representatives of a deceased victim. The inclusion of the proviso to Section 372 of the CrPC has to be read in the context of the definition of "victim" in clause (wa) of Section 2 of the CrPC. The expression ‘victim,’ as defined under the said provision, includes not only the person who has suffered any loss or injury caused by the reason of the act or omission for which the accused person has been charged, but the said expression also includes his or her guardian or legal heir.

4. In the context of offence 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

Cr.PC. 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.

5. It is further held that it is imperative to acknowledge that the parameters governing for consideration of an appeal under the proviso to Section 372 Cr.PC./Section 413 BNSS and those applicable to an appeal under Section 378(4) Cr.PC/419(4) BNSS are distinctly dissimilar, with the former possessing a markedly wider amplitude in scope as compared to the latter. Notwithstanding the procedural non-maintainability of the instant appeal, this court is of the considered view that a summary dismissal solely on a procedural technicality would constitute an unwarranted wastage of precious judicial time and resources already expended in the initiation of these proceedings.

6. This court deems it appropriate to relegate the matter to the concerned Sessions Court, with a clear direction that the present filing, along with all appended applications, be treated and adjudicated as an

appeal validly preferred under the proviso to Section 372 Cr.PC.

7. In view of the above observations of the Hon'ble Apex Court, the appellant is granted liberty to file an appeal under Section 372 proviso before the learned Sessions Judge, Malkapur, District Buldhana.

The Sessions Court shall consider the period of limitation in view of the law laid down and considering the period for which the appeal is pending before this Court.

The appellant is permitted to file an appeal within two weeks from today. The respondent and the appellate Court are directed not to raise the issue of limitation. The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]