

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

CRIMINAL APPLICATION [APPA] NO. 287/2024 IN
CRIMINAL APPEAL STAMP NO. 2226/2024

(Nitesh s/o Ganesh Yadav VS Pawan s/o Pramodrao Gaurkar),

WITH

CRIMINAL APPLICATION [APPA] NO. 389/2024 IN
CRIMINAL APPEAL STAMP NO. 3051/2024

(Ramrao Haribhau Ratnaparkhi VS Amit Ramesh Tayade),

WITH

CRIMINAL APPLICATION [APPA] NO. 394/2024 IN
CRIMINAL APPEAL STAMP NO. 3212/2024

(Chintaman Ganpatrao Kamble VS. Najukrao Yashwant Agame),

WITH

CRIMINAL APPLICATION [APPA] NO. 728/2024 IN
CRIMINAL APPEAL STAMP NO. 846/2024

(Gyandeep Traders, Ghatanji VS Uttam Baduji Rathod),

WITH

CRIMINAL APPLICATION [APPA] NO. 581/2024 IN
CRIMINAL APPEAL STAMP NO. 4849/2024

(Mr. Sushil S/o Kishorsingh Gawalpanchi VS Mr. Prashnat S/o Narendrasingh Gautam),

WITH

CRIMINAL APPLICATION [APPA] NO. 857/2024 IN
CRIMINAL APPEAL STAMP NO. 7584/2024

(Chandan s/o Fattulal Nagpure VS. Bedprakash s/o Madanlal Dhekwar),

WITH

CRIMINAL APPLICATION [APPA] NO. 986/2024 IN
CRIMINAL APPEAL STAMP NO. 8367/2024

(Shri Krishna Bhimraoji Dabrase VS. M/s Vyankatesh Buildcom Real Estate and Others),

WITH

CRIMINAL APPLICATION [APPA] NO. 886/2024 IN
CRIMINAL APPEAL STAMP NO. 6094/2024

(Ashwini D/o Narayan Pillare VS Subhash s/o Shamraoji Vaidya),

WITH

CRIMINAL APPLICATION [APPA] NO. 510/2024 IN
CRIMINAL APPEAL STAMP NO. 4220/2024

(Nilesh Sudhakarrao Suratkar VS. Mrs. Archana Kishor Bhujade),

WITH

CRIMINAL APPLICATION [APPA] NO. 1025/2022 IN
CRIMINAL APPEAL STAMP NO. 9109/2022

(Shri Surendra Janrao Raut VS Shri Rajendra Daulatrao Surjuse),

WITH

CRIMINAL APPLICATION [APPA] NO. 1055/2024 IN
CRIMINAL APPEAL STAMP NO. 6418/2024
(Us Enterprises VS Skyline Aviation Services Pvt. Ltd. & Others),
WITH
CRIMINAL APPLICATION [APPA] NO. 109/2025 IN
CRIMINAL APPEAL STAMP NO. 947/2025
(Vasantdas Maharaj Gramin Bigar Sheti Sahakari Patsanstha VS Nilesh R. Wankhede & Ano.),
WITH
CRIMINAL APPLICATION [APPA] NO. 537/2023 IN
CRIMINAL APPEAL STAMP NO. 1874/2023
(Devpal Tulsiram Meshram VS Hiralal Bhauji Bhoyar),
WITH
CRIMINAL APPLICATION [APPA] NO. 1163/2022 IN
CRIMINAL APPEAL STAMP NO. 2227/2022
(Shri Ashwin S/o Gangadhar Patil VS Sunil S/o Rambhau Karanjekar),
WITH
CRIMINAL APPLICATION [APPA] NO. 173/2022 IN
CRIMINAL APPEAL STAMP NO. 867/2022
(Arihant Traders VS M/s green Energy Technologies and Others),
WITH
CRIMINAL APPLICATION [APPA] NO. 940/2024 IN
CRIMINAL APPEAL STAMP NO. 6509/2024
(M/s Mukhtyar & Sons Mehkar & Ors. Vs Bhimsingh S/o Bajarangsingh Goutam),
WITH
CRIMINAL APPLICATION [APPA] NO. 1062/2024 IN
CRIMINAL APPEAL STAMP NO. 8932/2024
(The Nirmal Ujjwal Credit Operative Society Ltd. VS. Shri Bhavesh Deorao Kuchanwar),
WITH
CRIMINAL APPLICATION [APPA] NO. 761/2025 IN
CRIMINAL APPEAL STAMP NO. 7315/2025
(Rajesh S/o Wamanrao Lakhe VS Satish S/o Dadduji Hande),
WITH
CRIMINAL APPLICATION [APPA] NO. 808/2024 IN
CRIMINAL APPEAL STAMP NO. 6057/2024
(Sant Sawata Mali Nagri Sahakari Pat Sanstha VS Bhalchandra Shriram Mahadole),
WITH
CRIMINAL APPLICATION [APPA] NOS. 245/2023 & 306/2023 IN
CRIMINAL APPEAL STAMP NO. 9904/2022
(Ravindra Moreshwar Dahake VS Amit Raghvendra Deshpande),
WITH
CRIMINAL APPLICATION [APPA] NO. 1214/2024 IN
CRIMINAL APPEAL STAMP NO. 9871/2024
(Ajay Giridharilal Sharma VS Vitthal Rajanna Dasarwar),
WITH

CRIMINAL APPLICATION [APPA] NO. 357/2023 IN
CRIMINAL APPEAL STAMP NO. 2470/2023
(Sau. Josna W/o Sanjay Dongre VS Nayankishore S/o Ramnarayan Jaiswal),
WITH
CRIMINAL APPLICATION [APPA] NO. 879/2024 IN
CRIMINAL APPEAL STAMP NO. 7735/2024
(Kiran s/o Lalchand Khandare VS Santosh Sitaram Harshwal),
WITH
CRIMINAL APPLICATION [APPA] NO. 870/2024 IN
CRIMINAL APPEAL STAMP NO. 9784/2023
(Nitin Rasiklal Gaglani and Others Vs. M/s Chimote Medical Institute and Another),
WITH
CRIMINAL APPLICATION [APPA] NO. 1276/2023 IN
CRIMINAL APPEAL STAMP NO. 9771/2023
(Nitin Rasiklal Gaglani and Others Vs. M/s Chimote Medical Institute and Another),
WITH
CRIMINAL APPLICATION [APPA] NO. 570/2024 IN
CRIMINAL APPEAL STAMP NO. 2427/2024
(Sarita Gopal Rathi VS Mukesh Mohandas Motwani),
WITH
CRIMINAL APPLICATION [APPA] NO. 177/2023 IN
CRIMINAL APPEAL STAMP NO. 277/2023
(Ramavatar Bhagwandin Badadiya VS Abhimanyu Deoman Ingle and Another),
WITH
CRIMINAL APPLICATION [APPA] NO. 149/2023 IN
CRIMINAL APPEAL STAMP NO. 10445/2022
(Ramavatar Bhagwandin Badadiya VS Abhimanyu Deoman Ingle and Another),
WITH
CRIMINAL APPLICATION [APPA] NO. 489/2023 IN
CRIMINAL APPEAL STAMP NO. 3368/2023
(Radheshyam S/o Shankarlal Sao Vs Jainendra S/o Jawaharlal Lunkad),
WITH
CRIMINAL APPLICATION [APPA] NO. 312/2023 IN
CRIMINAL APPEAL STAMP NO. 2137/2023
(Amol s/o Rameshrao Pangul VS Naresh Baliram Suryawanshi),
WITH
CRIMINAL APPLICATION [APPA] NO. 1109/2023 IN
CRIMINAL APPEAL STAMP NO. 7644/2023
(M/s Berar Finance Ltd. Vs. Soni Gopichand Chaware),
WITH
CRIMINAL APPLICATION [APPA] NO. 1077/2023 IN
CRIMINAL APPEAL STAMP NO. 7806/2023
(Dulichand s/o Narayan Agrawal VS Irfan H. Chinni).

E-FILING -

CRIMINAL APPLICATION [APPA] NO. 337/2025 IN
CRIMINAL APPEAL STAMP NO. 2832/2025
(Davinder Singh S/o Surinder Singh Hoda VS. M/s. Faberkons and Another),
WITH
CRIMINAL APPLICATION [APPA] NO. 140/2024 IN
CRIMINAL APPEAL STAMP NO. 646/2024
(M/s Pooja Enterprises VS. Jayesh Sanjay Ratwani),
WITH
CRIMINAL APPLICATION [APPA] NO. 734/2025 IN
CRIMINAL APPEAL STAMP NO. 6446/2025
(Devendra Ruproji Daf VS Rajendra Bhimrao Khodake),
WITH
CRIMINAL APPLICATION [APPA] NO. 424/2025 IN
CRIMINAL APPEAL STAMP NO. 2590/2025
(Vikas Dadaji Shete VS Gopal Narayandas Agrawal),
WITH
CRIMINAL APPLICATION [APPA] NO. 52/2025 IN
CRIMINAL APPEAL STAMP NO. 452/2025
(Smt. Sushilabai Madhukarrao Sorte VS Smt. Smita Prashant Chincholkar),
WITH
CRIMINAL APPLICATION [APPA] NO. 151/2025 IN
CRIMINAL APPEAL STAMP NO. 1331/2025
(Avinash Naresh Agrawal VS Sampada Vinayak Lanjewar),
WITH
CRIMINAL APPLICATION [APPA] NO. 343/2025 IN
CRIMINAL APPEAL STAMP NO. 2806/2025
(Malabai Ramesh Mendhe VS Sudha Sidharth Naranje),
WITH
CRIMINAL APPLICATION [APPA] NO. 71/2024 IN
CRIMINAL APPEAL STAMP NO. 585/2024
(Vijay Punjalalji Saraf VS Ramratan @ Raj Jagannath Wawre),
WITH
CRIMINAL APPLICATION [APPA] NO. 148/2025 IN
CRIMINAL APPEAL STAMP NO. 1252/2025
(Rajesh Jagnath Gaikwad VS Amol Dnyaneshwar Bawane),
WITH
CRIMINAL APPLICATION [APPA] NO. 608/2024 IN
CRIMINAL APPEAL STAMP NO. 4999/2024
(Vainganga Mahila Nagri Sahakari Pat Sanstha Ltd. VS. Laxman Vishawanath Ghongade),
WITH
CRIMINAL APPLICATION [APPA] NO. 733/2025 IN
CRIMINAL APPEAL STAMP NO. 6051/2025
(Satpalsingh S/o Kasturilalji Arora VS Shri Shailesh Diwakar Pradhan),
WITH

CRIMINAL APPLICATION [APPA] NO. 426/2025 IN
CRIMINAL APPEAL STAMP NO. 2594/2025
(Vikas Dadaji Shete VS Gopal Narayandas Agrawal),
WITH
CRIMINAL APPLICATION [APPA] NO. 401/2025 IN
CRIMINAL APPEAL STAMP NO. 3557/2025
(Ambika Trader VS Sandip Hiribhau Chawre),
WITH
CRIMINAL APPLICATION [APPA] NO. 427/2025 IN
CRIMINAL APPEAL STAMP NO. 2588/2025
(Vikas Dadaji Shete VS Gopal Narayandas Agrawal),
WITH
CRIMINAL APPLICATION [APPA] NO. 585/2025 IN
CRIMINAL APPEAL STAMP NO. 5740/2025,
(Hitesh Ghanshyamdas Agrawal VS Simit Rajbhwan Mishra)
WITH
CRIMINAL APPLICATION [APPA] NO. 365/2025 IN
CRIMINAL APPEAL STAMP NO. 2638/2025
(Ramesh Baburao Sakhre VS Sumedh Laxman Sakhre),
WITH
CRIMINAL APPLICATION [APPA] NO. 719/2025 IN
CRIMINAL APPEAL STAMP NO. 6550/2025
(Mrs. Nishigandha w/o Mangesh Kale VS M/s V-Draw Risers and Others),
WITH
CRIMINAL APPLICATION [APPA] NO. 189/2025 IN
CRIMINAL APPEAL STAMP NO. 1547/2025
(Surendra Yashwantrao Admane VS Dhanraj Mahadeorao Dobarkar),
WITH
CRIMINAL APPLICATION [APPA] NO. 186/2025 IN
CRIMINAL APPEAL STAMP NO. 1551/2025
(Surendra Yashwantrao Admane VS Dhanraj Mahadeorao Dobarkar),
WITH
CRIMINAL APPLICATION [APPA] NO. 187/2025 IN
CRIMINAL APPEAL STAMP NO. 1546/2025
(Surendra Yashwantrao Admane VS Dhanraj Mahadeorao Dobarkar),
WITH
CRIMINAL APPLICATION [APPA] NO. 188/2025 IN
CRIMINAL APPEAL STAMP NO. 1548/2025
(Surendra Yashwantrao Admane VS Dhanraj Mahadeorao Dobarkar),
WITH
CRIMINAL APPLICATION [APPA] NO. 463/2025 IN
CRIMINAL APPEAL STAMP NO. 3614/2025
(Shobha w/o Kamlesh Phokmare VS Vilas Punjabrao Dhote),
WITH

CRIMINAL APPLICATION [APPA] NO. 425/2025 IN
CRIMINAL APPEAL STAMP NO. 2592/2025
(Vikas Dadaji Shete VS Gopal Naryandas Agrawal),
WITH
CRIMINAL APPLICATION [APPA] NO. 680/2025 IN
CRIMINAL APPEAL STAMP NO. 2351/2025
(Shankar Mahadeo Ingole (deceased) through L.Rs. VS. Bhaiyya Namdeo Makde),
WITH
CRIMINAL APPLICATION [APPA] NO. 506/2025 IN
CRIMINAL APPEAL STAMP NO. 4558/2024
(Nandlal Kanhaiyalal Alwani VS M/s S.J. Construction),
WITH
CRIMINAL APPLICATION [APPA] NO. 326/2025 IN
CRIMINAL APPEAL STAMP NO. 2530/2025
(Jayvanti @ Jaya Ashok Jajoo VS Sushil Devkisan Sarda),
WITH
CRIMINAL APPLICATION [APPA] NO. 448/2024 IN
CRIMINAL APPEAL STAMP NO. 3413/2024
(Shri Rajendra Mahadevrao Chaudhary VS Devraj Uttam Pachurkar),
WITH
CRIMINAL APPLICATION [APPA] NO. 288/2025 IN
CRIMINAL APPEAL STAMP NO. 2308/2025
(Zilla Parishad Primary Shikshak & Others VS. Kapil Laxmanrao Fuse),
WITH
CRIMINAL APPLICATION [APPA] NO. 315/2025 IN
CRIMINAL APPEAL STAMP NO. 2297/2025
(Hemant Pralhad Bhagre VS. Amit Ramnarayan Bhattad),
WITH
CRIMINAL APPLICATION [APPA] NO. 515/2025 IN
CRIMINAL APPEAL STAMP NO. 4931/2024
(Laxman S/o Rajaramji Borwar VS. Jiwan s/o Jaipal Satwase).

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 : SEPTEMBER 12, 2025.

The principal challenge in all these matters pertains to
acquittal in cases under Section 138 of the Negotiable Instruments

Act. These Applications/Appeals are filed under Section 378 of the Code of Criminal Procedure. In some matters, applications are being filed either seeking condonation of delay in preferring the appeal or leave to file appeal.

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.

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 for applicants/appellants 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 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 concern 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 13.10.2025.
- (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 *Celestium Financial* (supra).
- (7) Registrar (Judicial) of this Court to take further necessary action for transferring these matters to the concerned District and Sessions Court immediately.

JUDGE