



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

CRIMINAL WRIT PETITION NO.941 OF 2024

(Sanjay s/o Satyanarayan Joshi Vs. Narhari s/o Shamrao Supare)

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

Court's or Judge's Order

Mr. S.S. Sitani, Advocate for the petitioner.
Mr. A.V. Bhide, APP for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : JULY 31, 2025.
PRONOUNCED ON : AUGUST 26, 2025.

The writ petition is filed for quashing and setting aside of the impugned judgement dated 09/11/2022 passed by the learned 13th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Special Court under Section 138 of the Negotiable Instrument Act in Criminal Complaint Case bearing S.C.C. No.5994/2020 and confirmed by the 9th District and Additional Sessions Judge, Nagpur in Criminal Revision Application No.18/2023.

2. The petitioner is the original complainant who had filed criminal complaint bearing S.C.C. No.940/2022 under Section 138 of the Negotiable Instrument Act against the respondent claiming therein that the respondent has failed to repay the amount of Rs.2,25,000/- which was given as hand loan and against the discharge of the legal and enforceable debt. He issued the four cheques drawn on Union Bank of India dated

20/12/2019, 20/01/2020, 21/02/2020 of Rs.25,000/- each. On depositing the said cheques, the said cheques were dishonoured and hence the petitioner has filed the complaint.

3. The petitioner adduced the evidence. The learned trial Court by impugned judgement pleased to convict the accused; however, the trial Court has not sentenced the accused by passing an order of appropriate sentence and only sentenced to undergo simple imprisonment till rising of the Court.

4. Being aggrieved with the same, the petitioner/complainant preferred a revision application bearing No.18/2023 before the learned District and Sessions Judge, Nagpur. The learned Sessions Judge pleased to reject the said revision application by order dated 14/08/2024.

5. Being aggrieved and dissatisfied with the same, present writ petition is preferred by the petitioner.

6. The question arises :

(1) Where no appeal is brought though appeal lies under the Court?

(2) Whether revision application can be entertained at the instance of the party who could have appeal?

7. After the amendment in Section 372 of the Code of Criminal Procedure by which proviso to Section 372 of Cr.P.C. came to be inserted by Act 5 of 2009 with effect from 31/12/2009, the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lessor offence or imposing inadequate compensation and as per the said proviso, such an appeal lies to the court to which an appeal would ordinarily lie against the order of conviction of such Court. It is submitted that therefore once the victim has a statutory right of appeal against the order of acquittal or for enhancement of the sentence under Section 372 of the Cr.P.C., the revision application before the Sessions Court shall not be entertained against the judgement and order of the inadequate sentence. This aspect is considered by the Hon'ble Apex Court in the case of Joseph Stephen and ors. Vs. Santhanasamy and ors. [(2022) 13 SCC 115]. Before the Hon'ble Apex Court the issue raised were as follows:

i) Whether the High Court in exercise of the revisional jurisdiction under Section 401 Cr.P.C. is justified in setting aside the order of acquittal and convicting the accused by converting the finding of acquittal into one of conviction?;

ii) In a case where the victim has a right of appeal against the order of acquittal, now as provided under Section 372 Cr.P.C and

the victim has not availed such a remedy and has not preferred the appeal, whether the revision application is required to be entertained at the instance of a party/victim instead of preferring an appeal?; and

iii) While exercising the powers under sub-section (5) of Section 401 Cr.P.C. treating the revision application as petition of appeal and deal with the same accordingly, the High Court is required to pass a judicial order?

8. While answering the question No.(1) namely in a case where no appeal is brought though appeal lies under the Court?, whether revision application still to be entertained at the instance of the party who could have a appeal, the answer lies in sub-section (4) of Section 401 of Cr.P.C. itself.

Sub-section (4) of Section 401 Cr.P.C. reads as under:

“401(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

9. In paragraph No.13.1 the Hon’ble Apex Court observed as follows:

“13.1 - It cannot be disputed that now after the amendment in Section 372 Cr.P.C.

after 2009 and insertion of proviso to Section 372 Cr.P.C., a victim has a statutory right of appeal against the order of acquittal. Therefore, no revision shall be entertained at the instance of the victim against the order of acquittal in a case where no appeal is preferred and the victim is to be relegated to file an appeal. Even the same would be in the interest of the victim himself/herself as while exercising the revisional jurisdiction, the scope would be very limited, however, while exercising the appellate jurisdiction, the appellate Court would have a wider jurisdiction than the revisional jurisdiction. Similarly, in a case where an order of acquittal is passed in any case instituted upon complaint, the complainant (other than victim) can prefer an appeal against the order of acquittal as provided under sub-section (4) of Section 378 Cr.P.C., subject to the grant of special leave to appeal by the High Court.

“13.2. - As observed by this Court in the case of Mallikarjun Kodagali Vs. State of Karnataka [(2019) 2 SCC 752], so far as the victim is concerned, the victim has not to pray for grant of special leave to appeal, as the victim has a statutory right of appeal under Section 372 proviso and the proviso to Section 372 does not stipulate any condition of obtaining special leave to appeal like sub-section (4) of Section 378 Cr.P.C. in the case of a complainant and in a case where an order of acquittal is passed in any case instituted upon complaint. The right provided to the

victim to prefer an appeal against the order of acquittal is an absolute right. Therefore, so far as issue no.2 is concerned, namely, in a case where the victim and/or the complainant, as the case may be, has not preferred and/or availed the remedy of appeal against the order of acquittal as provided under Section 372 Cr.P.C. or Section 378(4), as the case may be, the revision application against the order of acquittal at the instance of the victim or the complainant, as the case may be, shall not be entertained and the victim or the complainant, as the case may be, shall be relegated to prefer the appeal as provided under Section 372 or Section 378(4), as the case may be. Issue (ii) is therefore answered accordingly.

10. In view of the above observation, in the present case also, the petitioner has preferred the revision before the Sessions Court when the appeal lies. Thus, the victim has a statutory right of appeal under Section 372 proviso and the proviso of Section 372 does not stipulate any condition of obtaining special leave to appeal like sub-section (4) of Section 378 Cr.P.C. in the case of a complainant and in a case where an order of acquittal is passed in any case instituted upon complaint. The right provided to the victim to prefer an appeal for the enhancement of the sentence, if the sentence is inadequate.

11. Thus, in view of the above observation, the revision application bearing No.18/2023 requires to be remanded back to the 9th District and Additional Sessions Judge, Nagpur.

12. Learned Sessions Judge shall permit the petitioner to convert the said revision into the appeal and shall dispose of the appeal as per the law.

13. The parties to appear before the 9th District and Additional Sessions Judge, Nagpur on 12/09/2025.

14. With this direction, the writ petition is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*