



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

CRIMINAL APPLICATION (APPA) NO.639 OF 2024

IN

CRIMINAL APPEAL STAMP NO.5462 OF 2024

Shilpa w/o Swaroop Jindal

Vs.

Veena w/o Rakesh Khurana

WITH

CRIMINAL APPLICATION (APPA) NO.646 OF 2024

IN

CRIMINAL APPEAL STAMP NO. OF 2024

Mr. Swaroop s/o Rajesh Jindal

Vs.

Smt Veena w/o Rakesh Khurana

WITH

CRIMINAL APPLICATION (APPA) NO.640 OF 2024

IN

CRIMINAL APPEAL STAMP NO.5461 OF 2024

Mrs Shilpa w/o Swaroop Jindal

Vs.

Smt Veena w/o Rakesh Khurana

WITH

CRIMINAL APPLICATION (APPA) NO.641 OF 2024

IN

CRIMINAL APPEAL STAMP NO.5463 OF 2024

Mrs Kusum w/o Rajesh Jindal

Vs.

Smt Veena w/o Rakesh Khurana

WITH

CRIMINAL APPLICATION (APPA) NO.642 OF 2024

IN

CRIMINAL APPEAL STAMP NO.5489 OF 2024

Mr Swaroop s/o Rajesh Jindal

Vs.

Smt Veena w/o Rakesh Khurana

WITH
CRIMINAL APPLICATION (APPA) NO.644 OF 2024
IN
CRIMINAL APPEAL STAMP NO.5502 OF 2024
Mrs Kusum w/o Rajesh Jindal
Vs.
Smt Veena w/o Rakesh Khurana

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

Court's or Judge's Order

Mr. Shriram Chopde, counsel h/f Mr. Mr.R.D. Dharmadhikari, counsel for applicants/appellants.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 22/08/2025.

1. By these applications, the applicants are seeking leave to file an appeal against acquittal. During the pendency of these applications, the aspect of filing of the appeal under Section 372 of the CrPC and whether the complainant in the proceedings under Section 138 of the Negotiable Instruments Act, is victim or not, is considered by the Hon'ble Apex Court in the case of *Celestium Financial Vs. A. Gnanasekaran Etc., reported in 2025 SCC OnLine 1320*. In view of the said judgment, the learned Counsel for the appellants prays that the matters be remitted to the District and Sessions Court, Nagpur.

2. I have perused the judgment wherein the aspects of the appeal under Sections 372 and 378 of the CrPC are considered by the Hon'ble Apex Court and it is observed that a reading of Section 378 of the CrPC would clearly indicate that in case the complainant intends to file an appeal against the order of acquittal, his right is

circumscribed by certain conditions precedent. When an appeal is to be preferred by a complainant, the first question is, whether, the complainant is also the victim or only an informant. If the complainant is not a victim and the case is instituted upon a complaint, then sub-section (4) requires that the complainant must seek special leave to appeal from an order of acquittal from the High Court. As noted under sub-section (6), if the application under sub-section (4) for grant of special leave to appeal from the order of acquittal is refused, no appeal from that order of acquittal would lie, inter alia, under sub-section (1) of Section 378 of the CrPC. However, if the complainant is also a victim, he could proceed under the proviso to Section 372 of the CrPC, in which case the rigour of sub-section (4) of Section 378 of the CrPC, which mandates obtaining special leave to appeal, would not arise at all, as he can prefer an appeal as a victim and as a matter of right. Thus, if a victim who is a complainant, proceeds under Section 378 of the CrPC, the necessity of seeking special leave to appeal would arise but if a victim whether he is a complainant or not, files an appeal in terms of proviso to Section 372 of the CrPC, then the mandate of seeking special leave to appeal would not arise.

3. It is further observed by the Hon'ble Apex Court that 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 of India. 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.

4. 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 of the CrPC 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.

5. Learned Counsel for the applicants submitted that as the appeal under Section 372 of the CrPC under the proviso that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. In view of the above said proviso, learned Counsel for the applicants prays that the appeals be remitted to the Sessions Court for its disposal.

6. In view of the observation made by the Hon'ble Apex Court in the case of ***Celestium Financial*** referred supra, all these appeals are to be transferred for its disposal to the District and Sessions Court, Nagpur.

7. In view of that, I proceed to pass the following order.

a] The Criminal Application (APPA) Nos. 639 of 2024, 646 of 2024, 640 of 2024, 641 of 2024, 642 of

2024, 644 of 2024, be transferred to the District and Sessions Court, Nagpur.

b] Parties to appear before the District and Sessions Court, Nagpur on 17.09.2025.

[URMILA JOSHI-PHALKE, J.]