



WEB COPY



Crl.OP.Nos.27089 & 27094 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2025

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.OP.Nos.27089 & 27094 of 2024

in

Crl.A.SR.Nos.49576 & 59577 of 2024

Crl.OP.No.27089 of 2024
in Crl.A.SR.No.49576 of 2024

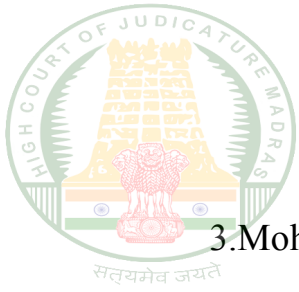
SPAC Tapioca Products (I) Ltd.,
A Limited company,
Now business at Poonachi Village,
Anthiyur Taluk
Represented by its executive director
R.P.Arul Sundaram,
Carrying on business in its registered office
at D.No.102, Shiek Dawood Street,
Erode 638 001
Rep. By its Power of Attorney
M.Balasubramanian,
(Manager Raja Chidambaram,
Human Resource Department

...Petitioner

Vs.

1.Arun Casuals India Ltd.,
Represented by its Managing Director
M.S.Arun Kumar,
Singampettai(Po),
Bhavani, Erode
2.Archana

1/22



Crl.OP.Nos.27089 & 27094 of 2024

3.Mohan

... Respondents

WEB CO

PRAYER: Criminal Original Petition filed under Section 419(4) of BNSS, 2023, praying to grant leave to file an appeal against the judgment of dismissal of complaint by acquitting the respondent/accused in CC.No.40 of 2009 on the file of Judicial Magistrate Court No.3, Erode by judgment dated 27.06.2024 and to convict the respondent/accused under Section 138 of NI Act.

For Petitioner : Mr.R.Ganesh

Crl.OP.No.27094 of 2024
in Crl.A.SR.No.59577 of 2024

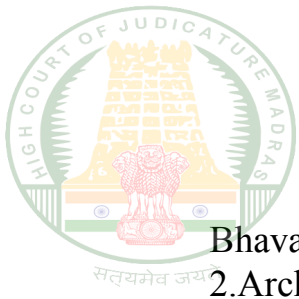
SPAC Tapioca Products (I) Ltd.,
A Limited company,
Now business at Poonachi Village,
Anthiyur Taluk
Represented by its executive director
R.P.Arul Sundaram,
Carrying on business in its registered office
at D.No.102, Shiek Dawood Street,
Erode 638 001
Rep. By its Power of Attorney
M.Balasubramanian,
(Manager Raja Chidambaram,
Human Resource Department

...Petitioner

Vs.

1.Arun Casuals India Ltd.,
Represented by its Managing Director
M.S.Arun Kumar,
Singampettai(Po),

2/22



Crl.OP.Nos.27089 & 27094 of 2024

Bhavani, Erode

2.Archana

3.Mohan

... Respondents

PRAYER: Criminal Original Petition filed under Section 419 of BNSS, 2023, praying to grant leave to file an appeal against the judgment of dismissal of complaint by acquitting the respondent/accused in CC.No.399 of 2008 on the file of Judicial Magistrate Court No.3, Erode by judgment dated 27.06.2024 and to convict the respondent/accused under Section 138 of NI Act.

For Petitioner : Mr.R.Ganesh

COMMON ORDER

The criminal original petition in Crl.OP.No.27089 of 2024 in Crl.A.SR.No.49576 of 2024 has been filed seeking relief to file an appeal against the judgment passed in CC.No.40 of 2009 on the file of the Judicial Magistrate-III, Erode dated 27.06.2024, thereby dismissed the complaint and acquitted the respondents for the offence punishable under Section 138 of NI Act. The criminal original petition in Crl.OP.No.27094 of 2024 in Crl.A.SR.No.59577 of 2024 has been filed seeking grant leave to file an appeal against the order of acquittal under Section 419(4) of BNSS, 2023.



2. It is relevant to extract the provisions under Section 419(4) of

BNSS, 2023 (Section 378(4) of Cr.P.C.), hereunder:

“If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.”

Thus, in an appeal against the order of acquittal passed in a case instituted upon a complaint, the application has to be made to grant leave by the complainant to file an appeal against the order of acquittal before this Court.

3. It is also relevant to rely upon the provisions under Section 413 of BNSS, 2023(Section 372 of Cr.P.C.), which are extracted hereunder:

413. No appeal to lie unless otherwise provided-

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Sanhita or by any other law for the time being in force:Provided 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



WEB COPY

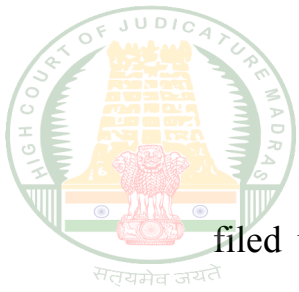


Crl.OP.Nos.27089 & 27094 of 2024

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.

Thus, it is clear 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 any compensation and such appeal shall lie to the court to which the appeal ordinarily lies. The present petition has been filed for grant leave to file an appeal against the order of acquittal under Section 419(4) of BNSS Act, 2023 (Section 378(4) of Cr.P.C.).

4. In this regard, the Hon'ble Supreme Court of India held in the case of ***M/s.Celestium Financial Vs. A.Gnanasekaran ETC.*** in SLP.(Crl)Nos.137-139 of 2025 reported in ***2025 INSC 804***, that against the order passed by this Court thereby dismissing the petition seeking leave to file an appeal against the order of acquittal in Crl.OP.Nos.929, 931 & 1034 of 2024 in Crl.A.SR.Nos.1282, 1300 & 1321 of 2024. The issue involved in the petition before the Hon'ble Supreme Court of India was that whether an appeal would be maintainable under the proviso to Section 372 of Cr.P.C. (Section 413 of BNSS, 2023) against the order of acquittal in a complaint



WEB COPY

filed under Section 138 of NI Act by treating the complainant in such a proceeding as a victim within the meaning ascribed to the term under Section 2 (wa) of Cr.P.C. (Section 2(1)(y) of BNSS, 2023). In this issue, the Hon'ble Supreme Court of India held as follows:

7.1 In the context of the present case, a person who fails to satisfy his legal liability to honour a cheque owing to insufficiency of funds, or other reasons concerning his bank account is deemed to have committed an offence under Section 138 of the Act and therefore is charged as an accused for such an offence and can be punished by imprisonment for a term which may extend to two years or a fine which may extend to twice the amount of the cheque or both.

7.2 The expression 'accused' is not defined under the CrPC but it denotes different meanings according to the context in which it is deployed. It, inter alia, means, a person against whom there is an accusation, or a person on trial, and so on. The expression 'accused' being used in different context would remind us of what has been cited by this Court in Directorate of Enforcement vs. Deepak Mahajan, (1994) 3 SCC 440 wherein Chapter IV of the book titled The Loom of Language by Frederick Bodmer has been cited in the following words:



WEB COPY



Crl.OP.Nos.27089 & 27094 of 2024

“Words are not passive agents meaning the same thing and carrying the same value at all times and in all contexts. They do not come in standard shapes and sizes like coins from the mint, nor do they go forth with a decree to all the world that they shall mean only so much, no more and no less. Through its own particular personality, each word has a penumbra of meaning which no draftsman can entirely cut away. It refuses to be used as a mathematical symbol.”

The expression ‘accused of any offence’ would include within its ambit only a person against whom formal accusation relating to 40 commission of offence has been levelled which in the normal course may result in his prosecution.

7.3 When is an accused charged of an offence under Section 138 of the Act would be relevant. It would be pertinent to refer to Section 200 of CrPC as a proceeding under Section 138 of the Act is commenced not on the basis of a police report but on the basis of a complaint filed under Section 200 of the CrPC. The expression ‘complaint’ is defined under Section 2(d) of the CrPC to mean an allegation made orally or in writing to a Magistrate with a view to his taking action under the CrPC, that some person, whether known or unknown, has committed an offence but does not include a police report.

7.4 When a complaint is filed under Section 200 of the CrPC, a Magistrate taking cognizance of an offence on such complaint examines upon oath the complainant and the witnesses present, if any, and the substance of such examination is reduced



WEB COPY



Crl.OP.Nos.27089 & 27094 of 2024

to writing which is required to be signed by the complainant and the witnesses and also the Magistrate. Section 202 of the CrPC states that any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process, and either inquire into the case himself or direct an investigation for the purpose of deciding whether or not there is sufficient ground for proceeding. However, no such direction for investigation shall be made where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200 of the CrPC.

7.5 Chapter XXI of the CrPC deals with summary trials. The said chapter has to be read in conjunction with Section 143 of the Act which states that all offences under Chapter XVII of the Act, including an offence under Section 138 (dishonour of cheque for insufficiency, etc., of funds in the account) shall be tried by a Judicial Magistrate of First Class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 of the CrPC (both inclusive), shall, as far as may be, apply to such trials. Thus, for an offence committed under Section 138 of the Act, the trial is as per Section 143 of the said Act read with Chapter XXI of the CrPC. The fact that under Section 138 of the Act, a deeming fiction has been introduced, wherein a person who comes within the scope and ambit of the section is a person who is deemed to have committed an offence and could be punished with both



WEB COPY



Crl.OP.Nos.27089 & 27094 of 2024

imprisonment as well as with fine, would mean that such a person is an accused and is charged for the said offence and tried under Chapter XXI of the CrPC by way of a summary trial.

7.6 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 CrPC, which is general in nature would have to be resorted to. The proviso to Section 372 of the CrPC considers the right of filing of an appeal from the point of view of a victim, which expression not only includes an injured victim but even 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.

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



WEB COPY



Crl.OP.Nos.27089 & 27094 of 2024

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



WEB COPY



Crl.OP.Nos.27089 & 27094 of 2024

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.

7.10 Section 378 of the CrPC is a specific provision dealing with appeals. Sub-section (3) of Section 378 states that no appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the Court, with which we are not concerned in the instant case. However, sub-section (4) of Section 378 is pertinent. It states that if an order of acquittal is passed in any case instituted upon a complaint and the High Court, on an application made to it by the complainant in that behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court. The limitation period for seeking special leave to appeal is six months where the complainant is a public servant and sixty days in every other case, computed from the date of the order of acquittal. Sub-Section (6) states that if, in any case, the application under sub-section (4) for grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2) of Section 378.



7.11 A reading of section 378 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. However, if the complainant is also a victim, he could proceed under the proviso to Section 372, in which case the rigour of sub-section (4) of Section 378, 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, 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, then the mandate of seeking special leave to appeal would not arise.

7.12 The reasons for the above distinction are not far to see and can be elaborated as follows:

Firstly, the victim of a crime must have an absolute right to prefer an appeal which cannot be circumscribed by any condition



WEB COPY



Crl.OP.Nos.27089 & 27094 of 2024

precedent. In the instant case, a victim under Section 138 of the Act, i.e., a payee or the holder of a cheque is a person who has suffered the impact of the offence committed by a person who is charged of the offence, namely, the accused, whose cheque has been dishonoured.

Secondly, the right of a victim of a crime must be placed on par with the right of an accused who has suffered a conviction, who, as a matter of right can prefer an appeal under Section 374 of the CrPC. A person convicted of a crime has the right to prefer an appeal under Section 374 as a matter of right and not being subjected to any conditions. Similarly, a victim of a crime, whatever be the nature of the crime, unconditionally must have a right to prefer an appeal.

Thirdly, it is for this reason that the Parliament thought it fit to insert the proviso to sub-section 372 without mandating any condition precedent to be fulfilled by the victim of an offence, which expression also includes the legal representatives of a deceased victim who can prefer an appeal.

On the contrary, as against an order of acquittal, the State, through the Public Prosecutor can prefer an appeal even if the complainant does not prefer such an appeal, though of course such an appeal is with the leave of the court. However, it is not always necessary for the State or a complainant to prefer an appeal. But when it comes to a victim's right to prefer an appeal, the insistence on seeking special leave to appeal from the High Court under Section 378(4) of the CrPC would be contrary to



WEB COPY



CrI.OP.Nos.27089 & 27094 of 2024

what has been intended by the Parliament by insertion of the proviso to Section 372 of the CrPC.

Fourthly, the Parliament has not amended Section 378 to circumscribe the victim's right to prefer an appeal just as it has with regard to a complainant or the State filing an appeal. On the other hand, the Parliament has inserted the proviso to Section 372 so as to envisage a superior right for the victim of an offence to prefer an appeal on the grounds mentioned therein as compared to a complainant.

Fifthly, the involvement of the State in respect of an offence under Section 138 of the Act is conspicuous by its absence. This is because the complaint filed under that provision is in the nature of a private complaint as per Section 200 of the CrPC and Section 143 of the Act by an express intention incorporates the provisions of the CrPC in the matter of trial of such a deemed offence tried as a criminal offence. Therefore, the complainant, who is the victim of a dishonour of cheque must be construed to be victim in terms of the proviso to Section 372 read with the definition of victim under Section 2(wa) of the CrPC.

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



WEB COPY



CrI.OP.Nos.27089 & 27094 of 2024

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



WEB COPY



Crl.OP.Nos.27089 & 27094 of 2024

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.

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.

Thus, the Hon'ble Supreme Court of India held that the complainant in a complaint filed under Section 138 of NI Act, shall be deemed to be a victim. Therefore, the victim can file an appeal under Section 372 of Cr.P.C (Section 413 of BNSS, 2023) without seeking any special leave to file an appeal from this Court. Further, a person who is a complainant under



Crl.OP.Nos.27089 & 27094 of 2024

Section 200 of Cr.P.C. who complains about the offence committed by a person who is charged as an accused under Section 138 of NI Act, has right to prefer an appeal as the victim under proviso to Section 372 of Cr.P.C. (Section 413 of BNSS Act, 2023).

5. In view of the above, the only point arising in this petition is that whether the above dictum laid down by the Hon'ble Supreme Court of India will have retrospective effect or prospective effect. On reading the above judgment, it does not say whether it will have effect retrospectively or prospectively. In this regard, in the case of ***Kanishk Sinha & Another Vs. The State of West Bengal & Another*** reported in ***2025 INSC 278***, the Hon'ble Supreme Court of India held as follows:

“Now the law of prospective and retrospective operation is absolutely clear. Whereas a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpreted by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively.



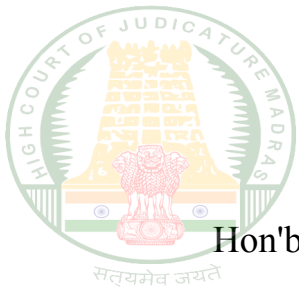
WEB COPY



Crl.OP.Nos.27089 & 27094 of 2024

The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had bona fide done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many.”

6. Therefore, when there is no specific explicit mentioning of the date on which the dictum come into force or retrospectively or prospectively, it can be construed that it would come into effect retrospectively. But, in the present scenario, there are thousands of appeals against acquittal which were already filed, are pending. Therefore, if the order of the Hon'ble Supreme Court come into effect retrospectively, it will cause prejudice to the parties and also there will be practical difficulties to the Registry of this Court to transfer all the cases, which will burden the district judiciary. In order to avoid these difficulties, the order of the Hon'ble Supreme Court of India can be implemented prospectively and there will be no prejudice caused to any party in doing so. Number of appeals with regards to Section 138 of NI Act that were allowed through petition to grant leave by this Court before and after the order passed by the



Crl.OP.Nos.27089 & 27094 of 2024

Hon'ble Supreme Court, are still pending. Therefore, this Court is inclined to draw an outer line to file a petition seeking leave to file an appeal against the order of acquittal to avoid the plethora of difficulties that would arise when the judgment is applied retrospectively. Hence, this Court fixes cut off date as 04.07.2025 (as the last date) for filing any petition seeking to grant leave to file an appeal against the order of acquittal under Section 419(4) of BNSS, 2023. The Registry of this Court is directed not to entertain any petition to grant leave to file an appeal under Section 378(4) of Cr.P.C. against the order of acquittal for the offences under Section 138 of NI Act from 07.07.2025. The District Courts are directed to entertain the appeals arising out of the judgment of acquittal under Section 372 of Cr.P.C. (Section 413 of BNSS, 2023) from 07.07.2025 onwards.

7. The Registrar General is directed to circulate this direction to all the district courts concerned of Tamilnadu & Pondicherry by way of circular. It is made clear that the Registry of this Court can number the petitions / appeals which were already filed / returned for want of any query on or before 04.07.2025. Accordingly, these criminal original petitions are



Crl.OP.Nos.27089 & 27094 of 2024

allowed and the Registry is directed to number the connected criminal appeals, if they are otherwise in order.

WEB COPY

30.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

lok



Crl.OP.Nos.27089 & 27094 of 2024

WEB COPY

To
1.The Registrar General,
High Court of Madras,
Chennai
2.Judicial Magistrate Court No.3, Erode
3.Managing Director,
Arun Casuals India Ltd.,
Singampettai(Po),
Bhavani, Erode



WEB COPY



Crl.OP.Nos.27089 & 27094 of 2024

G.K.ILANTHIRAIYAN, J.

lok

Crl.OP.Nos.27089 & 27094 of 2024
in
Crl.A.SR.Nos.49576 & 59577 of 2024

30.06.2025