



CRA-AS-2-2025

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

355

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Date of Decision: 11.09.2025

Jasmer SinghAppellant

Versus

Radhe ShamRespondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S. Mamli, Advocate
for the appellant.

ANOOP CHITKARA J.

Criminal Complaint	No.145 of 2010 Date of decision: 04.02.2011
Criminal Appeal	Titled as Jasmer Singh vs. Radhe Shyam Decided on: 18.03.2013

1. Feeling aggrieved by the trial court's judgment, dismissing the complaint on merits, and acquitting the accused/respondent, after dismissal of appeal from the Court of Additional Sessions Judge, Kurukshetra, the complainant had come up before this Court by filing the above-mentioned appeal.
2. Counsel for the appellant submits that appeal preferred by complainant was dismissed by the Appellate Court vide order dated 18.03.2013.
3. Vide order dated 19.12.2024, the appeal was admitted.
4. Counsel for the appellant prays for setting aside of order of Appellate Court and transfer of appeal to the first Appellate Court in view of judgment of Hon'ble Supreme Court passed in "Celestium Financial v. A. Gnanasekaran, 2025(3) RCR(Criminal) 208, decided on 08.04.2025".
5. In Celestium Financial v. A. Gnanasekaran, 2025(3) RCR(Criminal) 208, decided on 08.04.2025, Hon'ble Supreme Court holds,



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[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.

[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.

[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.

6. In BNSS, 2023, S. 413 is analogous to S. 372 CrPC, 1973, and thus the ratio of Celestium Financial shall apply.

7. However, the complainant should not face the burden of filing an appeal again before the Sessions Court because the law has been interpreted recently. Therefore, in the interest of Equity, Justice, and Fair play, it would be appropriate to refer this matter to the Sessions Court, where it will be registered as an Appeal under the Proviso to S. 372 CrPC/413 BNSS, 2023, as applicable. If there is any objection regarding whether it is an appeal under the CrPC or BNSS, it shall be registered under the Proviso to S. 413 BNSS, 2023, because the CrPC, 1973, has been repealed.

8. Given the judgment in Celestium Financial's case (supra) appeal is maintainable before the First Appellate Court i.e. Sessions Court, as such order dated 18.03.2013, is set aside and matter is remand back for disposal in accordance with law.

9. Given above, the Registry is directed to send this file along with the Lower Court's



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Record, if any, to the concerned Sessions Division.

10. **Appeal is disposed** of in the terms mentioned above. All pending application(s), if any, stand closed.

(ANOOP CHITKARA)
JUDGE

11.09.2025

Anju rani

Whether speaking/reasoned: Yes

Whether reportable: No.