IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

277 **CRM-A-533-2019(O&M)**
Date of decision: 5th August, 2025

Mohinder Gautam since deceased thr. Lrs
Santra and others

...Applicants

Versus

Darshan Lal

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rajesh K. Kataria, Advocate for the applicants.

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MANISHA BATRA, J (ORAL):-

1. The instant application has been filed under Section 378(4) of the Code of Criminal Procedure, 1973 *(for short 'Cr.P.C.')* seeking grant of leave to file an appeal against the judgment of acquittal dated 22.10.2018 passed by the learned Judicial Magistrate Ist Class, Chandigarh in Criminal Complaint bearing No. 7054/2016, titled as *Mohinder Gautam vs. Darshan Lal*, filed under Section 138 of the Negotiable Instruments Act, 1881 *(for short 'N. I. Act')*, whereby respondent was acquitted for commission of offence punishable under Section 138 of the N. I. Act.

2. Today, learned counsel for the applicants, while relying upon a recent pronouncement of Hon'ble Supreme Court in ***M/s. Celestium Financial vs. A. Gnanasekaran Etc., 2025(3) RCR (Criminal) 208***, has submitted that by directing the present application as an appeal, filed under Sections 372 of Cr.P.C. *(which is pari materia with Section 413 of Bharatiya Nagarik Suraksha Sanhita, 2023)*, the same be sent to appropriate Court for

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its disposal.

3. In ***M/s. Celestium Financial***'s case (supra), the Hon'ble Supreme Court has interpreted Sections 372 and 378(4) of Cr.P.C. and has observed that the victim in a private complaint case has a right to file an appeal, under Section 372 of Cr.P.C., against the order of acquittal before the Court of Sessions. The Hon'ble Supreme Court has observed as follows:

> "7.12 The reasons for the above distinction are not far to see and can be elaborated as follows:
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> **Firstly**, the victim of a crime must have an absolute right to prefer an appeal which cannot be circumscribed by any condition 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.
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> **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

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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 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 Cr.P.C.

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

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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 50 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

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> 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."

4. On going through the above mentioned pronouncement of the Apex Court, it is clear that an appeal against an order of acquittal in a proceeding under Section 138 of the NI Act preferred by the complainant squarely falls within the ambit of proviso to Section 372 of Cr.P.C. (which is pari materia with Section 413 of BNSS). Similar observations have been made by this Court in ***Satish Kumar vs. Jugal Kishore***, ***CRM-A-2700-MA-2018*** and ***Ajmer Kundu (deceased) through LRs vs. Pardeep Sharma***, ***CRM-A-481-2022***, vide orders dated 02.07.2025 and in ***Raj Kumar vs. Rajender, CRM-A-826-2025(O&M)*** vide order dated 07.07.2025.

5. In view of the discussion as made above and the observations made by Hon'ble Supreme Court in ***M/s. Celestium Financial***'s case (supra), the appeal along with the accompanying application is ordered to be remitted to the Court of learned Sessions Judge, Chandigarh with a direction to treat the same as having been filed under Section 372 of Cr.P.C.. The learned Sessions Judge, Chandigarh may entrust the appeal to herself or assign it to some other court of competent jurisdiction for its disposal.

6. Needless to clarify that it is left open for the consideration of the Sessions Court concerned to delve into the merits of the appeal as this Court has not gone into the same.

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7. Learned counsel for the applicants, present in Court, is directed to inform the applicant for appearance before the Sessions Court, Chandigarh. The applicants are also directed to appear before the learned Sessions Judge, Chandigarh in person or through his counsel on 02.09.2025.

8. The Registry is directed to send the complete paper-book and record of the case to learned Sessions Judge, Chandigarh forthwith.

9. Disposed of.

[MANISHA BATRA]
JUDGE

5th August, 2025
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No

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