



CRR-853-2010 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CRR-853-2010 (O&M)

Date of decision : 31.10.2025

MAHABIR

... PETITIONER

VERSUS

GAUTAM @ KALU AND ORS

.. RESPONDENTS

CORAM : HON'BLE MR. JUSTICE H.S.GREWAL

Present:- Ms. Nanvi Gupta, Advocate for the petitioner.

Ms. Mamta Saini, Advocate for respondents No. 1 to 4.

Mr. Sunny Namdev, AAG, Haryana

H.S. Grewal, J.(Oral)

1. The present petition has been preferred against impugned judgment dated 29.01.2009 passed by Court of Id. Judicial Magistrate Ist Class, Sonapat whereby the respondents have been acquitted of the charges under Sections 323,325 read with Section 34 IPC.

2. The brief facts of the case, as mentioned in the report under Section 173 Cr.P.C., are that on 06.11.2001, within the jurisdiction of Police Station Sadar, Sonapat, the respondents voluntarily caused simple and grievous injuries to Mahabeer, Deep Chand, and Satya Narain using blunt weapons. On the basis of this incident, a formal FIR was registered, and investigation was initiated.

3. Learned counsel for the petitioner, at the very outset, has relied upon the authority cited as *Purushotam Mantri vs. Vinod Tandon @ Hari Nath Tandon, 2009 (1) RCR (Criminal) 442* to submit that dismissal of a complaint in default amounts to acquittal of the accused and the remedy



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available to the complainant is to file an appeal or a revision. In view thereof, learned counsel for the petitioner, 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 petition 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 its disposal.

4. I have heard learned counsel for the applicant and have perused the material available on record.

5. Hon'ble the Supreme Court in *M/s Celestium Financial vs. A. Gnanasekaran Etc., 2025(3) RCR (Criminal) 208*, had laid comprehensive interpretation of Sections 372 and 378(4) of Cr.P.C. and had concluded that the victim has a right to file an appeal under Section 372 of Cr.P.C. before the Court of Sessions. The relevant extract thereof is reproduced hereunder:-

"7.12 xxxxxxxx

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 what has been intended by the Parliament by insertion of the proviso to Section 372 of the Cr.P.C.

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 Cr.P.C. and Section 143 of the Act by an express intention incorporates the provisions of the Cr.P.C. 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.

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10. As already noted, the proviso to Section 372 of the Cr.P.C. 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



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prefer an appeal under the proviso to Section 372 of the Cr.P.C., 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 Cr.P.C. "

6. In view of the judgment passed by the Hon'ble Supreme Court in **Celestium Financial** (supra) which has been followed by this Court in CRM-A-886-MA-2015, tilted as '**Rajesh Kumar versus M/s Success Enterprises and another**', decided on 08.07.2025 and similar view taken by the Coordinate Bench of this Court in **CRM-A-2700-MA-2018**, tilted as '**Satish Kumar vs. Jugal Kishor**' decided on 02.07.2025, the learned Sessions Judge, Sonipat is directed to treat the present petition as an appeal filed under Section 372 of Cr.P.C. and entrust the same to appropriate Court for its disposal.

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

8. Disposed of accordingly.

9. Pending application(s), if any, shall also stand disposed of.

31.10.2025

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(H.S.GREWAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No