



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

276-2

CRA-AS-161-2019

Date of decision: 23rd July, 2025

M/s Pooja Cosmetics

...Appellant

Versus

Ghulam Sarwar

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sachin Mittal, Advocate for the appellant.

Mr. Vikrant Rana, Advocate for the respondent.

MANISHA BATRA, J (ORAL):-

1. The instant appeal has been filed against the judgment of acquittal dated 15.09.2016, passed by the learned Judicial Magistrate Ist Class, Gurgaon in Criminal 2448KG dated 13.08.2015, titled as '*M/s Pooja Cosmetics vs. Ghulam Sarwar*', filed under Section 138 of Negotiable Instruments Act, 1881 (for short, '*NI Act*'), whereby the respondent/accused was acquitted for commission of aforementioned offences.

2. Today, the case was fixed for addressing arguments. Learned counsel for the parties, 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*, have submitted that the present appeal may be sent to appropriate Court for 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:

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.

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



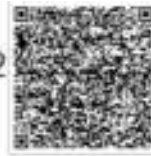
proviso to Section 372 of the CrPC.

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.”

4. A coordinate Bench of 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, while relying upon *M/s. Celestium Financial's* case (supra), has ordered to treat the application seeking leave to file appeal as an appeal filed under Section 372 of Cr.P.C.

5. Therefore, in view of the judgment rendered by the Hon'ble Supreme Court in *M/s. Celestium Financial's* case (supra), coupled with the fact that the present appeal is pending since long, the present appeal along with the accompanying application(s) is remitted to learned Sessions Judge, Gurgaon with direction to either decide the appeal himself/herself or entrust



the same to appropriate Court 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.

7. The parties are directed to appear before the learned Sessions Judge, Gurgaon in person or through their counsel on 29.08.2025. Learned counsel for the parties are directed to inform the parties for appearance before the Sessions Court, Gurgaon on the date so fixed.

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

9. Disposed of.

[MANISHA BATRA]
JUDGE

23rd July, 2025

Parveen Sharma

1. *Whether speaking/ reasoned*
2. *Whether reportable*

: *Yes / No*
: *Yes / No*