

**CRM-A-848-2023****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****261****CRM-A-848-2023****Date of decision : 16.07.2025**

Sandeep Chawla

... Applicant

Versus

Subham

.. Respondent

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

Present:- Mr. Vishva Nath Sharma, Advocate for the applicant.

H.S. Grewal, J.(Oral)

1. The present application has been preferred under Section 378(4) Cr.P.C. seeking grant of leave to appeal against the order dated 15.05.2023 passed by Id. JMIC, Jagadhri at Yamuna Nagar in NIA Act No. 1879 of 2017 titled as Sandeep Chawla Vs. Subham offence under Section 138 of the Negotiable Instrument Act, 1881.

2. The brief facts of the case are that the respondent has got recorded his statement while admitting his liability towards cheque Ex. C1 and stated that the compromise has been effected with the complainant for an amount of Rs. 90,000/-. Thereafter, that the complaint filed by the complainant was dismissed as withdrawn with liberty to initiate legal proceedings against the respondent in case of non-fulfillment of compromise. Thereafter, complainant filed an application for the revival of the complaint on 18.12.2019. The case was restored on its original number and bailable warrants in the sum of Rs. 10,000/- with one surety in the like amount against the accused were issued for 07.04.2020. the case was adjourned for two dates and none has appeared on behalf of the complainant. On 29.11.2021, the respondent was declared as



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proclaimed person. Thereafter, the case was adjourned for 22.02.2022, 28.03.2023 for the appearance of the complainant but none has put in appearance on behalf of the complainant on the said dates. On 15.05.2023, the case has been dismissed in default for non-appearance of the complainant.

3. Learned counsel for the applicant submits that Id. Trial Court has failed to appreciate the provisions of Section 118 and 139 of Negotiable Instruments Act, 1881 and wrongly dismissed in default and the impugned order dated 15.05.2023 is liable to be set aside.

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

5. Before proceeding to hear the application (for grant of special leave to appeal)/appeal, it is important to decide whether the right of the victim to file an appeal in a complaint case would fall under Section 372 or Section 378(4) of Cr.P.C.

6. 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 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. "*

7. 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, Yamuna Nagar is directed to treat the present leave to appeal as an appeal filed under Section 372 of Cr.P.C. and entrust the same to appropriate Court for its disposal.

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

9. Disposed of accordingly.

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

(H.S.GREWAL)
JUDGE

16.07.2025
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No