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

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CRM-A-1423-2023 (O&M)

Date of decision: July 22nd, 2025

Mukesh Kumar

.....Applicant/Appellant

Versus

Smartcity Developers Private Ltd. and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rajnish K. Gupta, Advocate
for the applicant.

MANJARI NEHRU KAUL, J.

1. The applicant has filed the present application seeking grant of leave to appeal against the judgment of acquittal passed in a complaint case instituted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'NI Act'), whereby the complaint filed by the applicant was dismissed and the accused was acquitted.

2. The limited question arising for consideration in the present proceedings is whether an appeal against an order of acquittal passed in a complaint case under Section 138 of the NI Act can be entertained under the proviso to Section 372 of the Cr.P.C. at the instance of the complainant?

3. The issue is no longer *res integra*. In '*M/s Celestium Financial Vs. A. Gnanasekaran Etc. 2025 INSC 804: 2025(3) RCR (Criminal) 208*', the Hon'ble Supreme Court authoritatively held that a complainant in a prosecution under Section 138 of the NI Act, qualifies



as a ‘victim’ under Section 2(wa) of the Cr.P.C., being the person who suffers financial loss due to the dishonour of a cheque. Consequently, such a complainant is entitled to pursue an appeal against acquittal under the proviso to Section 372 of the Cr.P.C., without the requirement of seeking special leave under Section 378(4) of the Cr.P.C.

4. It would be apposite to reproduce the relevant extract of the aforementioned judgment, which is set out below:-

“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. "

5. Thus, what flows from the above observations is that the Hon'ble Supreme Court, after an exhaustive examination of the statutory framework and previous judicial pronouncements including '***Mallikarjun Kodagali Vs. State of Karnataka & others***' 2019 (2) SCC 752, clarified that the right of appeal conferred upon the 'victim' under the proviso to Section 372 of the Cr.P.C. is independent and substantive in nature, not controlled by the procedural registration under Section 378(4) of the Cr.P.C.

6. Adopting a pragmatic and justice-oriented approach and guided by the principle that procedural rule must serve and not obstruct the course of justice, this Court deems it appropriate to direct that the



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present appeal be treated as one authoritatively instituted under the proviso to Section 372 of the Cr.P.C.

7. In view of the authoritative pronouncement in *M/s Celestium Financial's case (supra)* and the view taken by this Court also in *Satpal Singh v. State of Punjab & Anr.* CRM-A-233-MA-2016 disposed off on 21.07.2025, the present application is disposed of with a direction that the learned Sessions Judge concerned shall treat the present appeal as an appeal filed under the proviso to Section 372 of the Cr.P.C. and assign the same to an appropriate Court for disposal on merits, in accordance with law.

8. The concerned Appellate Court shall proceed to decide the appeal expeditiously, without being impeded by any delay in filing the appeal, in view of the legal position now clarified by the Hon'ble Apex Court.

9. The Registry is directed to transmit this order along with copy of the complete paper book and return the trial Court record, if received, to the learned Sessions Judge.

10. Disposed of accordingly.

July 22nd, 2025

Puneet

(MANJARI NEHRU KAUL)

JUDGE

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