IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

347 **CRM-A-1315-2024**

Date of decision: 07.08.2025

KANWAR SINGH

....APPELLANT

V/s

AJAY KUMAR

....RESPONDENT

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Ms. Bindu Bala, Advocate for
Mr. Vishal Munjal, Advocate
for the appellant/applicant.

Ms. Priya Sahoo, Advocate for
Mr. Mitul Singh Rana, Advocate
for the respondent.

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N.S.Shekhawat J. (Oral)

1. The present application has been filed under Section 378(4) Cr.P.C with a prayer to set aside the order dated 16.08.2024 passed by the Court of Judicial Magistrate Ist Class, Dasuya, whereby, the respondent was acquitted of the notice of accusation under Section 138 of the Negotiable Instruments Act.

2. During the course of arguments, learned counsel appearing on behalf of the respondent has referred to the law laid down by the Hon'ble Supreme Court in the matter of ***"M/s Celestium Financial Vs. A. Gnanasekaran Etc.2025(3) RCR (Criminal)208***, whereby, the Hon'ble Apex Court held as under:-

> *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*

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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 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 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

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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 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 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.

11.In the result, the impugned common order dated 12.06.2024 in Crl. O.P. Nos.929, 931 and 1034 of 2024 in Crl. A. SR. Nos.1282, 1300 and 1321 of 2024 is set aside. Liberty is reserved to the appellant herein to file the appeal(s) having regard to the proviso to Section 372 of the CrPC within four months from today.

12.Should the appeal(s) be filed within the period of four months from today, the issue of limitation may not be raised by the respondents herein or by the appellate court.

3. In view of the above referred judgment passed by the Hon'ble Supreme Court, the applicant is granted liberty to file an appeal against the impugned judgment dated 16.08.2024 passed by the Court of Judicial Magistrate Ist Class, Dasuya, before the concerned Sessions Judge within a period of two months from today.

4. In case, the appeal is filed within a period of 02 months from today, the question of limitation will not be raised by the respondent(s) or by the Appellate Court.

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5. The application stands disposed of with above referred directions.

6. The Lower Court Record, if received, may be sent back to the Trial Court forthwith.

(N.S.SHEKHAWAT)
07.08.2025 **JUDGE**
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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