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CRM-A-1748-2023 (O&M)

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2025.PHHC:113768



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

CRM-A-1748-2023 (O&M)

Date of decision: 26.08.2025

M/S FAIRWEALTH SECURITIES LTD

....Applicant

Versus

RAJESH UPADHAYA

....Respondent

CORAM:- HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present:- Mr. Pulkit Dhanda, Advocate and
Mr. Vineet Kumar Jakhar, Advocate for the applicant.

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RUPINDERJIT CHAHAL, J. (ORAL)

1. The present application has been filed under Section 378(4) Cr.P.C. seeking to challenge the order dated 27.09.2023 passed by the Court of Judicial Magistrate Ist Class, Gurugram, whereby, the complaint under Section 138 of the Negotiable Instruments Act, filed by the applicant-petitioner was dismissed and the accused/respondent was acquitted.

2. The appeal was preferred before this Court by the applicant within a period of limitation.

3. 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 NI Act can be entertained under the proviso to Section 372 of the Cr.P.C. (now Section 413 of BNSS) at the instance of the complainant?

4. 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. The relevant paragraph is reproduced 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 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 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.”*



5. In the light of the aforesaid decision of Hon’ble Supreme Court and considering the view taken by this Court in subsequent cases including in *Rajat Deep Versus Prince*, CRM-A-1320-MA-2016, decided on 21.07.2025, as also the guiding principle that procedural rule must serve and not obstruct the course of justice, this Court deems it appropriate to direct concerned Sessions Judge that the present appeal be treated as one authoritatively instituted under the proviso to Section 372 of the Cr.P.C. and entrust the same to an appropriate Court for disposal on merits.

6. The concerned Appellate Court shall proceed to decide the appeal expeditiously.

7. The Registry is directed to transmit this order along with copy of the complete paper-book and return the Trial Court record, if any received, to the concerned Sessions Judge forthwith.

8. Disposed of accordingly.

26.08.2025

Mohit Bishnoi

- i) Whether speaking/reasoned?
- ii) Whether reportable?

(RUPINDERJIT CHAHAL)
JUDGE

Yes/No
Yes/No