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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 104/2025

NOMESH DUTT

.....Petitioner

Through: Mr. Sushil Kumar Sapra, Advocate.

versus

ASHU VASHISTH

.....Respondent

Through: Mr. Md. Asif, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

29.07.2025

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1. The Appellant has filed the instant leave to appeal under Section 419(4) read with 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Sections 378(4) and 482 of the Code of Criminal Procedure, 1973²) against judgment of acquittal dated 14th October, 2024, passed by the Judicial Magistrate First Class (NI Act), East District, Karkardooma Courts, New Delhi in Complaint Case No. 2465/2021 pertaining to an offence under Section 138 of the Negotiable Instruments Act, 1881³.

2. In the recent judgment, *Celestium Financial v. A. Gnanasekaran Etc.*,⁴ the Supreme Court has held that in cases involving an offence under Section 138 of the NI Act, the complainant qualifies as a “victim” as defined under Section 2(wa) of CrPC. Therefore, he may proceed under the proviso

¹ “BNSS”

² “CrPC”

³ “NI Act”



to Section 372 of CrPC and need not invoke Section 378(4) of CrPC.

3. In light of the afore-noted judgment, counsel for the Appellant seeks leave to withdraw the present petition, with liberty to file an appeal under the proviso to Section 372 of CrPC.

4. Considering the above, the following directions are issued:

4.1. Leave and liberty granted. The Appellant is permitted to file an appeal under the proviso to Section 372 of CrPC against the judgment of acquittal dated 14th October, 2024, in light of the decision of the Supreme Court in ***Celestium Financial***.

4.2. Considering the fact that the legal position has been elucidated by the Supreme Court only recently, it is directed that the time period from the date of the initial filing of the present appeal with the Registry of this Court till the expiry of one week from today, shall be excluded for the purpose of computing the period of delay. The Appellant shall be at liberty to pursue the remedy as noted above and may file an application for condonation of delay, if any, which shall then be considered on its own merits and in accordance with law.

5. In view of the above, the present appeal is disposed of along with the pending application.

6. The Court has not commented on the merits of the case. All rights and contentions of the parties are left open.

SANJEEV NARULA, J

JULY 29, 2025

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⁴ 2025 SCC OnLine SC 1320.