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

+ CRL.L.P. 269/2023

RAKESH SHARMA

.....Petitioner

Through: Mr. Sameer Chandra , Adv.

versus

NITIN KUMAR

.....Respondent

Through: Mr. Himanshu Chhawdi and Mr. Sachin Bidhuri, Advs. along with Smt. Nirmala Devi, mother of the Respondent

+ CRL.L.P. 592/2023

RAKESH SHARMA

.....Petitioner

Through: Mr. Sameer Chandra , Adv.

versus

NITIN KUMAR AND ANOTHER

.....Respondents

Through: Mr. Himanshu Chhawdi and Mr. Sachin Bidhuri, Advs. along with Smt. Nirmala Devi, mother of the Respondent

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER

10.11.2025

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1. The petitioner has filed Leave to Appeal under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") against the



judgment dated 24.04.2023, whereby the learned MM-03, South-West District, Dwarka Courts, Delhi had dismissed Complaint Case No. 4994793/2016 and acquitted the respondents.

2. The two-fold questions which arise for determination in the present appeal are, firstly, whether the Appellant qualifies as a ‘victim’ within the meaning of Section 2(wa) of CrPC; and secondly, whether an appeal against an order of acquittal in a complaint instituted under Section 200 of CrPC would lie under the proviso to Section 372 of CrPC or is governed by the requirement of special leave under Section 378(4) of CrPC.

3. Adverting to the scheme of the Code, it is manifest that Section 2(wa) of CrPC defines a ‘victim’ as a person who has suffered any loss or injury caused by reason of the act or omission for which the accused has been charged. In the context of proceedings under Section 200 of CrPC, the complainant whose complaint was filed for the offences punishable under Sections 420/460/471 of the Indian Penal Code, 1860 stands dismissed, is undoubtedly a person who has suffered injury by reason of the dishonour of the cheque. Hence, such a complainant falls squarely within the definition of ‘victim’ under Section 2(wa) CrPC.

4. Section 372 CrPC states that an appeal can be filed only in accordance with what has been stated in the Chapter No. XXIX. It reads:

“372. No appeal to lie unless otherwise provided:—

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to



the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

5. Section 378 CrPC, in contrast, deals with appeals against acquittal and, under sub-section (4), traditionally required special leave in complaint cases. It reads as under:

“(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to Appeal from the order of acquittal, the complainant may present such an Appeal to the High Court.”

6. The insertion of the proviso to Section 372 CrPC was made through the amendment effective from 31.12.2009, conferring a substantive right upon a victim to prefer an appeal against (i) an order of acquittal, (ii) conviction for a lesser offence, and (iii) inadequate compensation without requiring special leave. The legislative intent is clear, i.e., to carve out a victim’s independent right of appeal without being fettered by the rigours of seeking special leave.

7. On the other hand, Section 378(4) of CrPC, deals with appeals against acquittal in complaint cases and required the complainant to first obtain special leave of the High Court. Notably, there is no proviso to Section 378 of CrPC conferring a substantive right to appeal; the right remained conditional upon the grant of leave.

8. Thus, prior to the introduction of the proviso to Section 372, a complainant filing a complaint under Section 200 of CrPC could only challenge an acquittal through Section 378(4), subject to special leave. However, once the complainant is recognized as a ‘victim’ under Section 2(wa), he acquires a statutory right of appeal under the proviso to Section



372 of CrPC in his own capacity, thereby obviating the requirement of seeking special leave under Section 378(4) of CrPC.

9. This issue has been settled by the Hon'ble Supreme Court in ***Celestium Financial v. A. Gnanasekaran*** 2025 SCC OnLine SC 1320, holding that 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 CrPC. The relevant part of the said judgment is produced as under, for reference:

“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.”

10. In light of the above, a complainant under Section 200 of CrPC is a victim entitled to appeal as of right under the proviso to Section 372 of CrPC before the appellate court of next higher hierarchy.

11. Accordingly, the present petition is treated as an appeal under the proviso to Section 413 of BNSS (earlier Section 372 of CrPC) and shall be numbered as such.

12. If any application for condonation of delay is pending, the same shall be transferred along with the case record to the concerned Appellate Court. The Registry is directed to transmit the entire record to the learned District & Sessions Judge, South-West District, Dwarka Courts, Delhi for marking to the appropriate court.

13. Furthermore, considering that the appeal has been pending for a



considerable time, the learned District & Sessions Court is requested to dispose of the matter as expeditiously as possible.

14. The parties shall appear before the learned District & Sessions Judge on 15.01.2026.

15. It is clarified that no opinion is expressed on the merits of the case and all rights and contentions are left open for the adjudication by the concerned Court.

16. The petitions are disposed of along with pending application(s), if any.

AJAY DIGPAUL, J

NOVEMBER 10, 2025

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