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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of decision: 22nd July, 2025**
 + **CRL.L.P. 304/2019**

ASHU MAHENDRU
 W/o Sudhir Mahendru

.....Petitioner

Through: Ms. Shreya Mathur, Advocate.
 versus

NITASHA ARORA
 W/o Tushar Arora

.....Respondent

Through: Mr. Gaurav Chandhok and Ms.
 Nitasha Arora, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Criminal Leave Petition under Section 378(4) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.PC'*) has been filed on behalf of the Petitioner, Ashu Mahendru against the Judgment dated 21.02.2019 whereby the learned Metropolitan Magistrate (NI Act) has dismissed the Complaint Case bearing CC No. 5003086/2016 filed under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as 'N.I. Act'*) and has acquitted the Respondent.
2. The two pertinent questions raised in the present **Appeal** are ***whether the Appellant is a victim, in terms of Section 2(wa) Cr.P.C.*** and if so, ***whether the Appellant has a right of Appeal under proviso to Section 372 Cr.P.C. or is required to file an Appeal under Section 378 Cr.P.C.***
3. Section 372 Cr.P.C. is a preface to Chapter No. XXIX on Appeals,



which in substance states that Appeal can be filed only in accordance with what has been stated in the said Chapter. 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.”

4. The proviso to Section 372 Cr.P.C. makes it apparent that a victim shall have a right to prefer an Appeal against - (i) any Order passed by the Court acquitting the Accused or (ii) convicting for a lesser offence or (iii) imposing an inadequate compensation. ***Such Appeals shall lie in the Court, to which an Appeal ordinarily lies against an Order of conviction of such Court.***

5. Section 374 Cr.P.C. deals with *Appeals from convictions*. Section 378 Cr.P.C. in fact deals with an acquittal.

6. The question for determination is whether the Appeal in case of acquittal in a Complaint under Section 138 NI Act would lie under Section 372 Cr.P.C. or Section 378(4) Cr.P.C., as was being done traditionally. The first aspect has been considered in great detail in the recent Judgment of the Apex Court in Celestium Financial vs. A. Gnanasekaran, etc., 2025 SCC OnLine SC 1320. The relevant part of the said Judgment is produced as under, for reference:-

“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.”

7. The Apex Court held in the case of Celestium Financial, (supra) that Section 372 Cr.P.C. speaks of an embargo on the filing of an Appeal from a Judgment or Order of a Criminal Court except as provided for under the Cr.P.C. or any other law for the time being in force. In fact, this Section is couched in a negative language and states that no Appeal shall be filed against any Judgment or Order of the Criminal Court except as provided by Cr.P.C. In the context of a Complaint under Section 138 of N.I. Act, it has been



observed that as per the definition 2(wa) Cr.P.C., ‘victim’ means *a person who has suffered any loss or injury caused by reason of an act and omission of the accused person*. Thus, the Complainant whose Complaint is dismissed, falls within the definition of a victim and therefore, Section 372 Cr.P.C. would become applicable.

8. In contradistinction, Sub-Clause 4 to Section 378 Cr.P.C., expressly deals with a right of a Complainant, to seek Leave to file an Appeal against the acquittal in a Complaint case. 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.”

9. It is, therefore, evident that a Complainant aggrieved by an Order of acquittal, can file a Leave to Appeal before the High Court. However, the legislation in its wisdom, amended Section 372 Cr.P.C. w.e.f. 31.12.2009 by adding the proviso thereto. There was no corresponding amendment made to Section 378 Cr.P.C. Considering that a Complainant is a victim as defined under Section 2(wa) Cr.P.C., he would have a right to file an Appeal in the Court, in terms of proviso to Section 372 Cr.P.C. against an Order of acquittal in his own right, without having to seek Special Leave under Section 378(4) Cr.P.C.

10. It is further clarified that where the Appeal is sought to be preferred by a victim, whether he is a Complainant or not, then he has a right to Appeal, in terms of proviso to Section 372 Cr.P.C. and the mandate of seeking Special



Leave to Appeal, would not arise. The relevant part of the Judgment reads as under:-

*“7.11 A reading of Section 378 would clearly indicate that in case the complainant intends to file an Appeal against the order of acquittal, his right is circumscribed by certain conditions precedent. **When an Appeal is to be preferred by a complainant, the first question is, whether, the complainant is also the victim or any an informant.** If the complainant is not a victim and the case is instituted upon a complaint, then sub-section (4) requires that the complainant must seek special leave to Appeal from an order of acquittal from the High Court. As noted under sub-section (6), if the Application under sub-section (4) for grant of special leave to Appeal from the order of acquittal is refused, no Appeal from that order of acquittal would lie, inter alia, under sub-section (1) of Section 378. However, if the complainant is also a victim, he could proceed under the proviso to section 372, in which case the rigour of sub-section (4) of Section 378, which mandates obtaining special leave to Appeal, would not arise at all, as he can prefer an Appeal as a victim and as a matter of right. Thus, if a victim who is a complainant, proceeds under Section 378, the necessity of seeking special leave to Appeal would arise but if a victim whether he is a complainant or not, files an Appeal in terms of proviso to Section 372, then the mandate of seeking special leave to Appeal would not arise.”*

11. In the said case, the Petitioner/Complainant had filed a Leave to Appeal under Section 378(4) Cr.P.C. against the acquittal of the Respondent in a Complaint under Section 138 of N.I. Act. The Criminal Leave to Appeal was dismissed by the High Court, which came up in challenge before the Supreme Court.



12. It was thus, held in the case of Celestium Financial, (supra) that the Complainant being a victim, has a right to proceed under the proviso to Section 372 Cr.P.C., in which case rigors of Section 378(4) Cr.P.C, shall not arise and the victim can prefer the Appeal in his own right without seeking Leave. The Apex Court set-aside the Order of the High Court and gave liberty to the Petitioner to file its Appeal, in terms of proviso to Section 372 Cr.P.C., within four months.

13. In a more recent judgment of Asian Paints Limited vs. Ram Babu & Another, SLP (Crl.) No.(s) 9888/2024, decided by the Apex Court on 14.07.2025, the FIR under Sections 420/120B IPC and under Section 63/65 of the Copyright Act, 1957, was registered on the Complaint made by the AR of the Appellant against the Respondent No. 1. The learned Metropolitan Magistrate convicted the Accused but the said Judgment was set-aside by the first Appellate Court and the Respondent No. 1 was acquitted. Aggrieved, the Appellant preferred a Criminal Appeal under proviso to Section 372 Cr.P.C., challenging the Judgment of acquittal but the same was dismissed by the High Court, by observing that the Appeal was not maintainable under Section 372 Cr.P.C.

14. The question which came up for consideration was whether Section 372 Cr.P.C. was applicable to the Complainant, where the acquittal is in a Chargesheet, and that the Complainant had no right to file the Leave to Appeal under Section 378(4) Cr.P.C.

15. The Apex Court again referred to the definition of the victim under Section 2(wa) Cr.PC and observed that the Complainant *herein* was the authorized representative of the Appellant and came within the definition of



the victim. A reference was made to Section 372 Cr.P.C. and it was observed that “*Section 372 Cr.P.C. is a self-contained and independent Section; in other words, it is a stand-alone Section. Section 372 Cr.P.C. is not regulated by any other provisions of Chapter XXIX Cr.P.C. Proviso to Section 372 Cr.P.C. operates independently of and shall not be read conjointly with any other provision in the Cr.P.C, much less Section 378 Cr.P.C.*” It was further observed that the language of Section 372 Cr.P.C. is unambiguous and “*the proviso to Section 372 Cr.P.C. is agnostic to the factum of such acquittal being by the Trial Court or the First Appellate Court.*”

16. The Apex Court clarified that whether it is in a ***Complaint Case or in an FIR, if the Complainant is the victim, who has*** suffered loss or has aggrieved by the act of the Accused, then Appeal preferred by him, would be covered under proviso to Section 372 Cr.P.C. and would not be circumscribed by the rigours of Section 378 Cr.P.C. of first seeking leave to Appeal.

17. It was also held that when the acquittal comes at the stage of First Appellate Court (being a Sessions Court), ***the right to Appeal of the victim would be to the next higher level in the judicial hierarchy***, which would be the High Court under Proviso to Section 372 and not 378 Cr.P.C.

18. Similar observations have been made by the Apex Court in the case of *Mahabir vs. State of Haryana*, 2025 SCC OnLine SC 184 that the proviso to Section 372 Cr.P.C. confers certain rights to the victim. The proviso to Section 372 Cr.P.C *is a substantive enactment and is not merely excepting something out of or qualifying what was excepting or goes before*. Therefore, by adding the ‘proviso’ in Section 372 Cr.P.C. by this amendment, a right has been created in favour of the victim. It was thus, held that even if the



Judgment of acquittal has been passed by the first Appellate Court for the first time, *the right to Appeal shall be with the High Court being the first hierarchical superior court.*

19. *Therefore, it emerges that in the case of an acquittal whether in a Complaint Case or in a Chargesheet, the victim shall have a right to file an Appeal as a matter of right under proviso to Section 372 Cr.P.C. **before the Court of next hierarchy.***

20. It has been argued on behalf of the Petitioner that in Celestium Financial, (supra) the Apex Court has given an *option* to the Complainant to Appeal either under Section 372 Cr.P.C. or avail the remedy under Section 378(4) Cr.P.C.

21. This argument is totally without any basis for the anomaly in adopting this approach is evident from the fact that in case, the Leave to Appeal is denied under Section 378(4) Cr.P.C, the Complainant loses a chance to agitate his Appeal on merits as a matter of right in the first Appeal.

22. Similar facts were involved in Celestium Financial, (supra) whereby the Apex Court while setting-aside the Order dismissing the Leave to Appeal, had directed that the First Appeal as a matter of right be filed under proviso to Section 372 Cr.P.C.

23. The second aspect of the argument is that while an Appeal under proviso to Section 372 Cr.P.C is a matter of right, but under Section 378(4) Cr.P.C., Leave has to be sought. The two remedies cannot be equated as an alternate to each other.

24. The third aspect is that by conferring a right of First Appeal as a matter of right, he would have an option to further challenge it by way of Revision or



as per law. If Section 378(4) Cr.P.C. is invoked by the Complainant, then he loses his right of First Appeal. The contention so raised on behalf of the Complainant is, therefore, without any merit.

25. It is thus, held that a Complainant in a Complaint under Section 138 of N.I. Act, indeed is a victim, who has a substantial right to Appeal under proviso to Section 372 Cr.P.C. to the Court, *which is immediately superior in hierarchy*. This implies that the right to Appeal against the Judgment of acquittal by the learned Metropolitan Magistrate, in this Case under Section 138 of N.I. Act, lies before the Court of Sessions.

Conclusion:

26. In view of the above, the present matter is disposed of with direction that the present Petition be treated as an Appeal under the proviso to Section 372 of the Cr.P.C and numbered accordingly.

27. In case there is Application pending for Condonation of Delay, the same be also transferred along with the entire record to be considered by the learned ASJ in accordance with law.

28. The Registry is directed to transfer entire record of the case including the requisitioned copy of TCR, to the Learned Principal District & Sessions Judge, South-West District, Dwarka Courts, New Delhi for marking it to the concerned Appellate Court/ learned ASJ, on 22.08.2025.

29. The parties are directed to appear before the concerned learned Principal District & Sessions Judge on 22.08.2025.

30. It is hereby, clarified that there are no observations as to the merits of the case. All rights and contentions of the parties are left open to be agitated before the Court concerned.



31. In view of the above, the present Appeal is disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 22, 2025/RS