



2025:DHC:6974



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

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Date of Decision: 31.07.2025

+ CRL.M.C. 7479/2023, CRL.M.A. 27895/2023

JAGDISH PARSHAD SHARMA

.....Petitioner

Through: Mr. Manish Kaushik, Mr. Vikas
Ashwani, Mr. Yashpriya Sharma,
Advocates.

versus

ASHOK KUMAR

.....Respondent

Through: counsel (appearance not given)

CORAM:**HON'BLE MR. JUSTICE ARUN MONGA****ARUN MONGA, J. (ORAL)**

1. Assailed herein is an order and judgment dated 19.07.2023 passed by the learned Sessions Court, Rohini, Delhi whereby an appeal against an acquittal order dated 22.10.2022 passed by the learned Metropolitan Magistrate dismissing the complaint under Section 138 of the Negotiable Instruments Act for non-prosecution was upheld.

2. Briefly speaking the facts and circumstances, as pleaded, leading to filing of the instant petition are that:

2.1 In November 2012, the Respondent approached the Petitioner at his premises and requested financial assistance to meet his genuine needs and requirements. Considering their relationship and the Respondent's position, the Petitioner arranged ₹20,00,000 from his relatives and acquaintances and an additional ₹1,55,000 from his own funds, thereby providing the Respondent a total of ₹21,55,000 (Rupees Twenty-One Lakhs and Fifty-Five Thousand only). The Respondent duly received this amount and promised to



return it within three months. However, in March 2013, after the expiry of the agreed period, when the Petitioner requested repayment, the Respondent avoided returning the money.

2.2. After persistent requests and persuasion, the Respondent issued and delivered three cheques in favor of the Petitioner, assuring him that the cheques were valid and would be honored on presentation. The Petitioner presented the said cheques to his banker, State Bank of Patiala, Model Town, Delhi-110009, but all were dishonored by the Respondent's banker with the remarks "Funds Insufficient," as per bank memos dated 26.03.2013. Thereafter, on 25.04.2013, the Petitioner issued a legal notice to the Respondent, which was duly served, but the Respondent replied on 07.05.2013 with a vague and frivolous response containing false and baseless allegations. Consequently, in May 2013, the Petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, which was admitted, and summons were issued to the Respondent.

2.3. Subsequently, at the stage of final arguments, the Petitioner's complaint was dismissed for non-prosecution by the Ld. Metropolitan Magistrate vide order dated 22.10.2022 due to miscommunication with the Petitioner's counsel, as the Petitioner was not informed of the hearing date. The non-appearance of the Petitioner was neither deliberate nor intentional but solely due to this reason.

2.4. The Petitioner thereafter filed a revision petition challenging the dismissal order; however, it was dismissed on 24.05.2023 on the ground of non-maintainability.

2.5. Thereafter, the Petitioner preferred an appeal under Section 372 (proviso) of the Code of Criminal Procedure seeking to set aside the order



dated 22.10.2022, as the Petitioner is a victim.

2.6. The appeal was also dismissed by the Ld. Sessions Court vide judgment and order dated 19.07.2023 as not maintainable.

3. In the aforesaid backdrop, I have heard the rival contentions and examined the file, including the impugned orders.

4. Learned counsel for the petitioner, *inter alia*, argues as below :

4.1 that Section 372 (proviso) CrPC grants a specific right to a victim to appeal against an acquittal, and courts have consistently held that this provision must be interpreted purposively to ensure full protection of victims' rights in the criminal justice system;

4.2. that the Ld. Sessions Court failed to appreciate that the complainant in a Section 138 NI Act case is also a victim;

4.3 that the proviso to Section 372 has a wide ambit and applies even to cases instituted upon complaints. The Sessions Court thus wrongly created distinctions between types of trials and misinterpreted the proviso by going beyond its text, ignoring that the language of Section 372 is explicit and should not be narrowed by unwarranted interpretations;

4.4 that an order of acquittal by a Magistrate can be challenged before the Sessions Court by a victim in the same manner as an appeal against conviction ;

4.5 that the Petitioner is a victim of cheque dishonor, has lost substantial hard-earned money, and has diligently pursued proceedings despite unavoidable absence due to counsel miscommunication and health issues;

4.6 that The original Section 138 complaint was dismissed for non-appearance, the revision was rejected, and the subsequent appeal under Section 372 proviso was also wrongly declined, despite the petitioner's



continuous and bona fide efforts to seek justice.

5. Per contra, learned counsel for the respondent argues that no interference is warranted by this Court. He supports that impugned order passed by the learned Sessions Judge and submits that the same is well-reasoned and self-speaking and therefore, the petition be dismissed.

6. Having heard the arguments I shall now proceed to render my opinion on the order passed by the learned Sessions Judge which is under challenge herein.

7. At the outset, it is pertinent to note that the complaint was dismissed in default due to non-appearance, and the reasons for this were adequately explained in the appeal filed before the learned Sessions Judge, which is appended as Annexure P-7. It is stated therein the Appellant could not appear before the Ld. Trial court on 22.10.2022 as his counsel has failed to inform him about the date of hearing and as such the non appearance of the Appellant is neither intentional nor deliberate but due to the reason stated above.

8. The impugned appellate order dated 19.07.2023, *inter alia*, is premised on the reasoning that the complaint under section 138 of NI ACT case was dismissed for non-prosecution. A revision petition against this dismissal was earlier rejected, holding that such dismissal amounts to an acquittal. However, it was held that Section 372 of CrPC does not apply to private complaints under Section 138 NI Act. It observed that when a complaint is dismissed for non-appearance and the accused is acquitted, the proper remedy is to file an appeal before the High Court under the appropriate provision with special permission, not before the Sessions Court under Section 372 of Cr.PC. Accordingly, the appeal was dismissed as not maintainable.

9. I am of the opinion that the learned appellate Judge erred in dismissing



the appeal merely on the ground that since it was filed under Section 372 Cr.P.C., therefore, it is not maintainable.

10. In cases arising under Section 138 NI Act, which is penal in nature, a complainant also qualifies as a victim and is entitled to invoke the proviso to Section 372 Cr.P.C. without seeking special leave. Therefore, the interpretation that such a complainant must necessarily proceed only under Section 378(4) Cr.P.C. is unsustainable.

11. Position in law on this point is no more *res integra*. Reliance may be had to a judgment of the Supreme Court in *Celestium Financial v. A. Gnanasekaran*¹, wherein it has been categorically held that the right to prefer an appeal is a statutory right, and the right of a victim to appeal under the proviso to Section 372 of Cr.PC cannot be restricted by reading into it the requirements of Section 378 of the Code. Section 138 of NI Act, being penal in nature, allows a victim, who may also be the complainant, to file an appeal against acquittal under the proviso to Section 372 without seeking special leave from the High Court.

12. I am thus unable to concur with the view taken by the Sessions Court.

13. Accordingly, the impugned order suffers from a fundamental error and cannot be sustained. The petition is allowed, the order of the Sessions Court is set aside, and the petitioner is granted liberty to file an appeal under Section 372 Cr.P.C. before the Sessions Judge. The period spent in pursuing this petition shall stand excluded for the purpose of limitation.

ARUN MONGA, J

JULY 31, 2025/Rn

¹2025 SCC OnLine SC 1320