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

+ **CRL.L.P. 473/2024 & CRL.M.A. 29174/2024**

RAJESH KUMAR

.....Petitioner

Through: Mr. Navdeep Kumar, Mr. Sameer
Chandra and Mr. Fahad Zia, Advs.

versus

AKASH PATHAK

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER

% **20.08.2025**

1. The petitioner has filed Leave to Appeal under Section 378(4) Code of Criminal Procedure, 1973 (hereinafter "CrPC") against the judgment dated 31.05.2024, whereby the learned Metropolitan Magistrate, Shahdara, Karkardooma Courts, Delhi dismissed Complaint Case No. 1784/2021 under Section 138 Negotiable Instruments Act, 1881 (hereinafter "NI Act) and acquitted the respondent.

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 138 NI Act would lie under the proviso to Section 372 CrPC or is governed by the requirement of special leave under Section 378(4) CrPC.



3. Adverting to the scheme of the Code, it is manifest that Section 2(wa) 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 138 NI Act, the complainant whose complaint 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) 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 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 in a Section 138 NI Act case 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 CrPC in his own capacity, thereby obviating the requirement of seeking special leave under Section 378(4) 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 a complainant in a Section 138 NI Act case is a 'victim' within the meaning of Section 2(wa) CrPC and can appeal under the proviso to Section 372 CrPC without seeking special leave under Section 378(4) CrPC. 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.”

10. In light of the above, a complainant under Section 138 NI Act is a victim entitled to appeal as of right under the proviso to Section 372 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 Bharatiya Nagarik Suraksha Sanhita, 2023 (earlier Section 372 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, Shahdara, Karkardooma 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 02.09.2025.

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 petition is disposed of along with pending application (s), if any.

AJAY DIGPAUL, J

AUGUST 20, 2025
gs/yr