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THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 26.09.2025

+ **CRL.L.P. 465/2018 & CRL.M.A. 28369/2018**

SANDEEP KAUSHIK

.....Petitioner

versus

MUKESH KUMAR

.....Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Saurabh Sharma and Ms. Puja Kumari
Shaw, Advs.

For the Respondent : Mr. Sharad Chandra, Adv.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present leave to appeal is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') against the judgment dated 10.01.2018 (hereafter '**impugned judgment**') passed by the learned Metropolitan Magistrate ('MM'), South West District, New Delhi in CC No. 7080/2014 whereby the respondent was acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act').



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2. On 23.04.2025, the matter was reserved for orders, whereafter, it was put up for clarification in light of the judgment in the case of ***Celestium Financial v. A. Gnanasekaran* : 2025 SCC OnLine SC 1320**, which was decided on 08.04.2025.

3. The Hon'ble Apex in ***Celestium Financial v. A. Gnanasekaran (supra)***, opined that a complainant who prefers a complaint under Section 138 of the NI Act is an aggrieved party who suffers economic loss due to the dishonour of cheque, and such a complainant qualifies as a victim within the meaning of Section 2(wa) of the CrPC. Consequently, it was held that such a complainant is entitled to the benefit of the *proviso* of Section 372 of the CrPC, enabling them to maintain an appeal against an order of acquittal without seeking leave to appeal under Section 378(4) of the CrPC.

4. As the petitioner was the complainant in the complaint preferred under Section 138 of the NI Act, he is thus entitled to maintain an appeal under Section 372 of the CrPC.

5. However, when the matter was listed for clarification, the learned counsel for the petitioner asserted that the petitioner wishes to press the petition before this Court rather than pursuing his remedy of preferring an appeal before the learned Sessions Court under Section 372 of the CrPC.

6. The learned counsel for the respondent seconded the submissions made on behalf of the petitioner and it was argued that



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Celestium Financial v. A. Gnanasekaran (supra) provides that the complainant has the option to proceed either under Section 378 of the CrPC or under Section 372 of the CrPC.

7. Reliance was placed on the following paragraphs in *Celestium Financial v. A. Gnanasekaran* (supra) to endorse their submissions:

*“7.8. In the case of an offence alleged against an accused under Section 138 of the Act, we are of the view that the complainant is indeed the victim owing to the alleged dishonour of a cheque. In the circumstances, the complainant can proceed as per the proviso to Section 372 of the CrPC and **he may exercise such an option** and he need not then elect to proceed under Section 378 of the CrPC.*

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*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. 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.*

(emphasis supplied)

8. At this juncture, the short question before this Court is whether the complainant has the *option* of pursuing the remedy under Section 378 of the CrPC by approaching the High Court directly instead of availing the remedy under Section 372 of the CrPC when the order of acquittal which is sought to be challenged has been passed by the learned Magistrate.

9. At the outset, this Court considers it apposite to refer to the aforesaid provisions:

“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.



378. Appeal in case of acquittal.—

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(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.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.”

10. It is pertinent to note that in the remedy under Section 378 of the CrPC, the complainant moves at a fair disadvantage where he has to first satisfy the Court that the case merits further appellate scrutiny. In contrast, the proviso to Section 372 of the CrPC bestows an indefeasible right of appeal upon the victim.

11. The jurisprudence in relation to the rights of victims has developed over the years as need was felt to extend the rights of the victims and enable them to prefer an appeal against any adverse order passed by the Court acquitting an accused, convicting for a lesser offence or imposing a lighter sentence. In the 221st Report of the Law Commission of India, it was noted that an aggrieved person could not file an appeal against an order of acquittal. It was found that although a victim could prefer a revision petition, however, the same was a cumbersome process as the Sessions Court could have only remanded the matter if it found that the accused had been wrongly acquitted. Similarly, a complainant had no remedy to approach the Sessions



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Court against an order of acquittal passed by the Magistrate in a case instituted upon a complaint, and they were constrained to the remedy provided under Section 378 of the CrPC. Thus, to plug this gap, the proviso to Section 372 of the CrPC was added by way of an amendment in the year 2009.

12. However, no amendment was made in Section 378 of the CrPC to limit the remedy of a complainant, who being a victim, had now been enabled to directly approach the Court of Sessions in appeal under Section 372 of the CrPC.

13. In the case of ***Celestium Financial v. A. Gnanasekaran*** (*supra*), the Hon'ble Apex Court has recognized a complainant in an NI Act case as a victim and observed that such complainants are entitled to prefer an appeal under Section 372 of the CrPC against order of acquittal. It is pertinent to note that although the Hon'ble Apex Court has observed that the complainant has the option of choosing between the remedies, however, no specific consideration is rendered on the fact as to whether the victim is required to first exhaust his remedy under Section 372 of the CrPC. In the said case, pursuant to acquittal of the accused for the offence under Section 138 of the NI Act by a Magistrate, the complainant had approached the High Court under Section 378(4) of the CrPC and the High Court had declined to exercise discretionary jurisdiction to grant leave as the observations made by the Magistrate were not found to be perverse. In the said judgment, it was also noted that Section 378 of the CrPC



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circumscribes the right to file an appeal by certain conditions precedent.

14. In the said case as well, while allowing the appeals, the Hon'ble Apex Court observed that the object and reason for insertion of Section 372 of the CrPC was to be effected and reserved the liberty of the complainant company to prefer appeals under Section 372 of the CrPC rather than under Section 378 of the CrPC.

15. Despite the limitation on the scope of proceedings under Section 378 of the CrPC, it is argued that the complainant cannot be denied the option to pursue their remedy in the aforesaid manner.

16. In the opinion of this Court, the very purpose of Section 372 of the CrPC shall stand defeated if the victim is allowed to forego and waive the remedy before the learned Sessions Court under Section 372 of the CrPC. If the petition is allowed to continue before this Court, the parties will also stand to lose a forum of challenge. If the said proposition is expounded, in cases with multiple complainants, one complainant could choose to institute proceedings under Section 372 of the CrPC whilst the other may opt to approach the High Court. Such an eventuality will be absurd with potential of conflicting views being taken by Court of Sessions and the High Court.

17. Moreover, it is pertinent to note that one of the factors which weighed the Hon'ble Apex Court in ***Celestium Financial v. A. Gnanasekaran*** (*supra*) was that the right of a victim of a crime is to



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be placed at par with that of an accused, who, as a matter of right, can prefer an appeal under Section 374 of the CrPC, without being subject to any conditions. Unlike a victim, an accused has no such option to skip the forum of Sessions Court which creates disparity in the rights available to the parties and is in teeth with the reasoning of the Hon'ble Apex Court.

18. Thus, there can be a situation where the judgment is challenged by both the accused and the victim requiring consideration by two different Courts being the Court of Sessions and the High Court.

19. Even if the *dictum* in ***Celestium Financial v. A. Gnanasekaran*** (*supra*) is read to signify that the victim has the choice of forum and that the High Court has concurrent jurisdiction to entertain an appeal under Section 378 of the CrPC, as a rule of prudence and judicial propriety, it would not be appropriate for the High Court to entertain the present petition before the Court of Sessions has appraised the matter on merits and the same is also an alternate efficacious remedy, unless there are compelling and substantial reasons rather than any perceived advantage that the victim hopes to secure.

20. In the present case, no such reasons have been made out by the parties apart from their apprehension that the proceedings before the learned Sessions Court may be protracted and that the matter has been pending before this Court for quite some time. The present case relates to the offence under Section 138 of the NI Act and while the Hon'ble Apex Court has repeatedly emphasized that there is a requirement of



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expeditious disposal of such matters, the same cannot come in way of judicial propriety to honour the hierarchy of Courts. It is incumbent on this Court to cede jurisdiction to a more appropriate forum.

21. Any issue in relation to apprehended protraction of proceedings can be addressed by providing for decision of the case in a time bound manner and preserving the pleadings of the parties before this Court.

22. In view of the above, this Court is of the opinion that once an order of acquittal is passed by the learned Magistrate, the remedy available to the victim is to prefer an appeal before the Court of Sessions which is the Appellate Court in terms of the proviso to Section 372 of the CrPC which provides that an appeal by the victim *shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.*

23. In the present case, the leave to appeal has also not been granted. The pleadings in the present case are also complete. In view of the above, the present petition is disposed of with direction to the Registry to transfer the entire record of the case to the concerned Appellate Court of Sessions.

24. The order be communicated to the concerned Principal District & Sessions Judge for compliance and listing before the concerned Appellate Court on 30.10.2025.

25. The parties are directed to appear before the concerned Appellate Court on 30.10.2025.



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26. Considering that the matter has been pending before this Court since the year 2018, the learned Sessions Court is requested to dispose of the matter expeditiously and make endeavours to pass a final order with a period of 6 months.

AMIT MAHAJAN, J

SEPTEMBER 26, 2025

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