Serial No.39
Regular Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CrlA(AS) No. 1/2024
CrlM No. 9/2024
CrlM No. 10/2024
CrlM No. 11/2024

Ali Jan **…Appellant(s)**

Through:
Mr. Syed Abid Parvez, Advocate.

V/s.

Firoz Ahmad Kashou **...Respondent(s)**

Through:

CORAM:
Hon'ble Mr Justice Shahzad Azeem, Judge.

ORDER
23.11.2026

ORAL

01. The appellant has invoked the jurisdiction of this Court under Section 378 of the Code of Criminal Procedure, 1973, challenging the order dated 26.07.2023 passed by the learned Special Mobile Magistrate, Baramulla in a complaint under Section 138 of the Negotiable Instruments Act, titled "Ali Jan vs Firoz Ahmad Kashou", whereby the complaint was dismissed for non-appearance of the appellant-complainant.

02. Since the dismissal of the complaint for non-appearance of the -appellant-complainant amounts to acquittal of the respondent/accused, therefore, the instant appeal is filed under Section 378 of the Code.

03. Since the matter is at its inception, therefore, it is proper for appellant to approach the Court of Sessions to which, in the ordinary course, the appeal lies against the order of the Magistrate.

04. The learned counsel for the appellant submits that he is willing to approach the Sessions Court for filing the appeal against the acquittal earned by way of dismissal for non-appearance of the appellant-complainant, but the only remedy available is an appeal under Section 378 of the Code.

05. Heard learned counsel for the appellant.

06. I am afraid that if the submission of learned counsel for the appellant is accepted, then the word "Victim" used in proviso to Section 372 of the Code would be rendered redundant. The complainant who comes up with a complaint under Section 138 of the Negotiable Instruments Act falls within the definition of "Victim" under Section 2 (wa) of the Code and can maintain an appeal before the Sessions Court. This proposition is no more *res integra* and already been put to rest by the Hon'ble Supreme Court in **"Celestium Financial vs A. Gnanasekaran Etc. (2025 SCC OnLine SC 1320).**

07. The Apex Court emphasized that the proviso to Section 372 of the Code must be given full effect. The object was to empower victims with an absolute right of appeal. Treating Section 378 of the Code as the exclusive remedy would render the proviso redundant.

08. The judgment in Celestium (supra) is a locus classicus judgment that has substantially eased the appellate process for complainants in Section 138 NI Act cases. By recognizing the complainant as a "victim" the Apex Court has removed a significant procedural hurdle".

09. In view of the above settled proposition of law, this appeal is disposed of with liberty to the appellant to approach the Sessions Court to maintain the appeal under the proviso to Section 372 of the Code.

10. The appeal shall stand **disposed of** accordingly along with connected application(s).

(Shahzad Azeem)
Judge

SRINAGAR:
23.11.2026
"HAMID"

HIGH COURT JAMMU & KASHMIR AND LADAKH

Abdul Hamid Bhat
I attest to the accuracy and
authenticity of this
document