IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 223 of 2019

With
CRIMINAL MISC.APPLICATION (FOR ADDITIONAL EVIDENCE) NO. 1 of 2025
In R/CRIMINAL APPEAL NO. 223 of 2019

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KANUBHAI MOTIBHAI PATEL
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR P P MAJMUDAR(5284) for the Appellant(s) No. 1
MR. RADHESH Y VYAS(7060) for the Opponent(s)/Respondent(s) No. 2
MR.YOGESH M VYAS(7258) for the Opponent(s)/Respondent(s) No. 2
MS. DIVYANGANA JHALA, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

Date : 28/04/2026

ORAL ORDER

1. This Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973 ("Code or CrPC") / Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (`BNSS' for short) by the Complainant against the impugned judgment and order whereby the learned trial Court had acquitted the respondent/s/accused of the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the `NI Act' for short).

2. Heard learned advocates for the parties. Learned APP has submitted that this matter is required to be transferred in view of the recent decision of this Court passed in ***Criminal Miscellaneous Application Nos. 12753 of 2019 with 12908 of 2019.***

3. Before entering into the merits of this case, this Court deems it proper to refer to the latest decision rendered by this Court in the case of

Shivsinh Ganpatsinh Solanki V/s State of Gujarat & Anr. **being** ***Criminal Miscellaneous Application Nos. 12753 of 2019 with 12908 of 2019****,* wherein, after considering the various judgments of the Hon'ble Supreme Court, more particularly, the judgment in the matter of ***M/s Celestium Financial V/s A.Gyanasekaran***. *reported in* 2025 INSC 804*,* has held (in Paragraph Nos.11, 19 to 23, 31, 32, 34 43, 56, 78 to 80) as under:

> " *xxxxx*
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> *11. Upon a perusal of the aforesaid judgment, it becomes evident that in paragraph 7.7 the Apex Court has, in clear terms, recognized that a Complainant under Section 138 of the NI Act, having suffered financial loss and injury arising from the dishonour of a cheque, is an "aggrieved party" and, therefore, falls within the definition of a "Victim" under Section 2(wa) of the Code.*
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> *xxxxx*
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> *19. Having dealt with the first limb of the argument, the only other argument which can possibly be made is that the Victim has the option to choose the hat that he wishes to wear (i.e., that of a Victim or of a Complainant). It can be argued that if the Victim chooses to appeal as a Victim, he/she can go under Section 372 of the Code and if as a Complainant, then under Section 378 of the Code.*
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> *20. It is clear that the Code provides for two remedies. First, under Section 372 for a Victim. Second, under Section 378(4) for a Complainant. There is no confusion if a person is either a Victim or a Complainant. There is some divergence of thought when the Victim is also the Complainant.*
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> *21. While trying to approach this issue, at a bare glance, the statutory framework appears to offer a Complainant (who is a Victim in given case) two parallel avenues of appeal (i.e.,*

Section 372 and Section 378). Therefore, one may well argue that it is for the person to choose the hat that he wishes to wear to file the Appeal.

22. *This argument, undoubtedly, seems attractive at first blush. However, venturing a little deeper, it turns out to be wanting. This is for several reasons which are as follows.*

23. ***First**, a Victim was given a right to file an Appeal under the Code pursuant to some object and keeping in mind some reasons thereof. Relevant extract of the Statement of Objects and Reasons of the Criminal Amendment Act, 2009 [Act 5 of 2009] by way of which the proviso to Section 372 of the Code was introduced, is extracted hereinbelow:*

> *At present, the Victims are the worst sufferers in a crime and they **don't have much role in the court proceedings. They need to be given certain rights and compensation**, so that there is no distortion of the criminal justice system. (emphasis supplied).*

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31. *Bare perusal of the language of the provision, along with the law as laid down by the Hon'ble Apex Court in **Celestium**, **Mahabir** (supra) and **Joseph** (supra) would show in certain terms that the right of a Victim to file an Appeal against an Order of acquittal is on a higher footing than that of a Complainant. This is for the simple reason, that the Victim, in essence is a sufferer/aggrieved party of the alleged offence, who has been conferred with this right by the legislature, which is not the case for a Complainant.*

32. *Hence, to contend that a Victim may simply proceed as a Complainant under Section 378 of the Code would then render illusory, the very purpose for which an independent and substantive right of appeal was conferred upon a Victim. Such an interpretation would dilute the legislative intent behind introducing a distinct, unqualified appellate remedy under the proviso to Section 372 of the Code and would fail to give meaningful effect to that statutory right.*

xxxxx

34. ***Second,*** *as regards the question of "choice" or "election," this Court is not persuaded to readily accept (neither would it be possible for anyone to readily infer) that a person who is aware of the statutory right to appeal as a Victim (as an absolute right) would voluntarily subject himself to the more taxing requirements of Section 378(4) of the Code by appealing as a Complainant, i.e., to seek special leave of the Court for filing the Appeal.*

xxxxx

43. *A harmonious reading of the provisions therefore requires that, for the purpose of appellate remedy, a Victim, though a Complainant in a given case, must proceed under Section 372 of the Code rather than invoking Section 378(4) of the Code.*

xxxxx

56. *In the present case, in Section 372 of the Code, the said Appeal has to be filed before the Sessions Court. The Apex Court, in the said judgment, has also taken into consideration that the acquittal would be challenged at the stage of first appeal before the Sessions Court. The Appeal would not lie to the High Court.*

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78. *For the foregoing reasons, this Court holds that where an order of acquittal is rendered by a Magistrate, the statutory remedy available to the Victim is to institute an appeal before the Sessions Court in terms of the proviso to Section 372 of the Code, which mandates that such an appeal shall lie to the court that would ordinarily entertain an appeal against an order of conviction passed by that Court.*

79. *In view of the above, it transpires that the Complainant, in a complaint under Section 138 of the N.I. Act, being a Victim, has a specific right to appeal under proviso of Section 372 of the Code to the Court which is immediately superior in hierarchy i.e., the Sessions Court.*

> *80. In view of the above, the applications/appeals which are pending before this Court can be disposed of with a direction to transfer the said application/appeal to the concerned Sessions Court. After it is transferred to the concerned Sessions Court, it has to be treated as an Appeal under the proviso under Section 372 of the Code and numbered accordingly.*
>
> *xxxxx*"

4. Therefore, it has been held in the aforesaid judgment that the Complainant, in a Complaint under Section 138 of the N.I. Act, being a Victim, has a specific right to appeal under proviso of Section 372 of the Code (Section 413 of BNSS) to the Court which is immediately superior in hierarchy i.e., the Sessions Court. The applications for leave to appeal/ appeals which are pending before this Court can be disposed of with a direction to transfer the said application/appeal to the concerned Sessions Court.

5. In the present case also, given the position of law as now settled and since the Complainant in the present case is also a *Victim*, there is no reason for this Court to take any view different from that taken in ***Shivsinh Ganpatsinh*** (supra).

6. In view of the above, this Appeal along with the connected application is disposed of with a direction to the Registry to transfer the appeal to the concerned Sessions Court. After it is transferred to the concerned Sessions Court, it has to be treated as an Appeal under the proviso under Section 372 of the Code (Section 413 of BNSS) and numbered accordingly. The Registry is directed to transfer the entire record of the case, including the certified copies of the order impugned

and Record and Proceedings, if lying with this Court, to the concerned lower Appellate Court, forthwith. It is open for the parties to agitate all the grievances before the concerned Court afresh. It is clarified that this Court has not gone into the merits of the matter at this stage.

(SANJEEV J.THAKER,J)

ADITYA SINGH

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ADITYA SINGH(HC02376), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 28/04/2026 16:22:12