APHC010609932026

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI **[3521]**

FRIDAY, THE 20th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL APPEAL NO: 708/2026

Between:

1. M/S SOWMYA TRADERS, KUYYERU, REPRESENTED BYITS PROPRIETOR CH.VEERABHADRA RAO, S/O. SURYARAO,BUSINESS, A/40 YEARS, RESIDENT OF D.NO. 4-54,KUYYERU KAJULURU MANDAL, EAST GODAVARI DISTRICT.APPELLANT COMPLAINANT IN THE CALENDAR CASE

...APPELLANT

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY ITS PUBLIC PROSECUTOR,HIGH COURT OF A P, AMARAVATI.

2. RAYUDU MUSALAYYA, S/O. ADINARAYANA,A/45 YEARS. CULTIVATION, RESIDENT OF D.NO. 3-5,BACK SIDE OF RAMALAYAM STREET, KUYYERU VILLAGE,KAJULURU MANDAL, EAST GODAVARI DISTRICT.ACCUSED IN THE CALENDAR CASE

...RESPONDENT(S):

Counsel for the Appellant:

A RAVEENDRA BABU

Counsel for the Respondent(S):

PUBLIC PROSECUTOR

The Court made the following:

J U D G M E N T:

Heard the learned Counsel for the Appellant and the learned Assistant Public Prosecutor.

2. The Criminal Appeal is filed under Section 378(4) of the Code of Criminal Procedure, 1973 (for brevity 'the Cr.P.C.,') challenging the Judgment dated 08.07.2026 passed in C.C.No.1667 of 2021 on the file of the learned III Additional Judicial Magistrate of First Class-Cum-III Additional Junior Civil Judge, Kakinada.

3. While considering the maintainability and forum of the present appeal, this Court takes note of the authoritative pronouncement of the Hon'ble Supreme Court in **Celestium Financial v. A. Gnanasekaran**[1], at paragraph Nos.7.9, 7.10, 7.11 & 9 held as under:

> *"7.9. In this context, we wish to state that the proviso to Section 372 does not make a distinction between an accused who is charged of an offence under the penal law or a person who is deemed to have committed an offence under Section 138 of the Act. Symmetrical to a victim of an offence, a victim of a deemed offence under Section 138 of the Act also has the right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing an inadequate compensation. When viewed from the perspective of an offence under any penal law or a deemed offence under Section 138 of the Act, the right to file an appeal is not circumscribed by any condition as such, so long as the appeal can be premised in accordance with proviso to Section 372 which is the right to file an appeal by a victim, provided the circumstances which enable such a victim to file an appeal are met. The complainant under Section 138 is the victim who must also have the right to prefer an appeal under the said*

[1] 2025 SCC OnLine SC 1320

provision. Merely because the proceeding under Section 138 of the Act commences with the filing of a complaint under Section 200 of the CrPC by a complainant, he does not cease to be a victim inasmuch as it is only a victim of a dishonour of cheque who can file a complaint. Thus, under Section 138 of the Act both the complainant as well as the victim are one and the same person.

7.10. Section 378 of the CrPC is a specific provision dealing with appeals. Sub-section (3) of Section 378 states that no appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the Court, with which we are not concerned in the instant case. However, sub-section (4) of Section 378 is pertinent. It states that if an order of acquittal is passed in any case instituted upon a complaint and the High Court, on an application made to it by the complainant in that behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court. The limitation period for seeking special leave to appeal is six months where the complainant is a public servant and sixty days in every other case, computed from the date of the order of acquittal. Sub-Section (6) states that if, in any case, the application under sub-section (4) for grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2) of Section 378.

7.11. A reading of section 378 would clearly indicate that in case the complainant intends to file an appeal against the order of acquittal, his right is circumscribed by certain conditions precedent. When an appeal is to be preferred by a complainant, the first question is, whether, the complainant is also the victim or only an informant. If the complainant is not a victim and the case is instituted upon a complaint, then sub-section (4) requires that the complainant must seek special leave to appeal from an order of acquittal from the High Court. As noted under sub-section (6), if the application under sub-section (4) for grant of special leave to appeal from the order of acquittal is refused, no appeal from that order of acquittal would lie, inter alia, under sub-section (1) of Section 378. However, if the complainant is also a victim, he could proceed under the proviso to Section 372, in which case the rigour of sub-section (4) of Section 378, which mandates obtaining special leave to appeal, would not arise at all, as he can prefer an appeal as a victim and as a matter of right. Thus, if a victim who is a complainant, proceeds under Section 378, the necessity of seeking special leave to appeal would arise but if a victim whether he is a complainant or not, files an appeal in terms of proviso to Section 372, then the mandate of seeking special leave to appeal would not arise.

> *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."*

4. Thus, in **Celestium Financial** *supra*, the Hon'ble Apex Court authoritatively expounded that a complainant under Section 138 of 'the N.I.Act.,' is, in essence, the victim of the offence and, therefore, possesses an independent and substantive statutory right to prefer an appeal under the proviso to Section 372 of 'the Cr.P.C.,' against an order of acquittal, without being constrained to seek special leave under Section 378(4) of 'the Cr.P.C.' The Court lucidly delineated the distinction between a mere complainant and a complainant who is also

a victim, holding that where the complainant and victim are one and the same, the appellate remedy under the proviso to Section 372 of 'the Cr.P.C.,' is available as a matter of right, thereby obviating the rigours attendant upon Section 378(4) of 'the Cr.P.C.,' and reinforcing the legislative intent of affording an efficacious remedy to victims of cheque dishonour proceedings.

5. In the light of the aforesaid exposition of law by the Hon'ble Apex Court, this Court is of the considered opinion that the present appeal, though filed under Section 378(4) of 'the Cr.P.C.,' is required to be treated as an appeal preferred by a victim under the *proviso* to Section 372 of 'the Cr.P.C'. Consequently, the matter warrants relegation to the jurisdictional learned Sessions Judge for adjudication on merits in accordance with law.

6. Accordingly, the Criminal Appeal is disposed of. The Registry is directed to return the original bundle forthwith to the appellant, to enable his to represent the appeal within four (04) weeks from the date of receipt of the copy of this order before the concerned Sessions Court, in accordance with law. On such representation, the learned Sessions Judge shall proceed to consider and dispose of the appeal expeditiously, strictly in accordance with law, uninfluenced by any observations made herein. The learned Appellate Court shall endeavour to conclude the proceedings at the earliest and submit a

compliance report to the Registrar (Judicial) within a period of two (02) years from the date of receipt of the copy of this order.

7. In the result, the Criminal Appeal is disposed of. There shall be no order as to costs.

As a sequel, interlocutory applications, if any pending, shall stand closed.

DR.Y.LAKSHMANA RAO, J

Date: 20.11.2026
RSI

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THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

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