APHC010862642018

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3369]**

FRIDAY, THE 20th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL APPEAL NO: 63/2019

Between:

1. K.NALINI, D.NO. 5-6-59-86-6A, R.C.M.CHURCH STREET, BHAIMANNAVARIPETA VIJAYAWADA

...APPELLANT

AND

1. KOTTTI BALA KRISHNA, D.NO. 8-26/1-19, AMBOTHULA APPARAO STREET, VIJAYAWADA
2. THE STATE OF ANDHRA PRADESH, HIGH COURT OF AP, AMARAVATHI

...RESPONDENT(S):

Appeal under Section 372/374(2)/378(4) of Cr.P.C praying that the High Court may be pleased to Pleased to call for the records to set a side the judgment dated 06-09-2018 in CC. 328/2016 on the file of Hon'ble Chief Metropolitan Magistrate, Vijayawada.

IA NO: 1 OF 2018

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant Special Leave to the Petitioner in filing Criminal Appellant 2018 against in C.C.No. 328/2016 dt 06/09/2018 on the file of Honble Chief Metropolitan Magistrate, Vijayawada, Krishna District and take up appeal on file of this Honble Court and pass

Counsel for the Appellant:

1. CH MARKONDAIAH

Counsel for the Respondent(S):

1. PUBLIC PROSECUTOR (AP)
2. GUNDAPU RAJESH KUMAR

The Court made the following:

THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

CRIMINAL APPEAL No. 63 OF 2019

JUDGMENT:

This Criminal Appeal has been filed by the appellant against the judgment dated 06.09.2018 passed by the learned Chief Metropolitan Magistrate, Vijayawada in C.C. No.328 of 2016, whereby the learned trial Court acquitted the respondent for the offence under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'the Act').

2. The parties are being referred to as per their positions before the trial Court, for the sake of convenience and clarity.

3. The appellant filed the complaint of the offence under Section 138 of the Act against the respondent No.1 as the cheque bearing No.975626, dated 09.07.2013 issued by the respondent No.2 is returned on the ground 'funds insufficient'.

4. At the culmination of trial, having considered the material, the learned trial Court acquitted the respondent No.1 of the offence under Section 138 of the Act. By that time, the Sessions Court has no jurisdiction to entertain the appeal challenging the judgment of acquittal of the offence under Section 138 of the Act and as such, feeling aggrieved by the said judgment of acquittal, the complainant preferred this instant criminal appeal.

5. The question before this Court is whether the instant appeal is covered under the proviso to Section 413 of BNSS (372 of Criminal Procedure Code, 1973 (hereinafter referred to as *'*Cr.P.C'). The issue is no longer *res integra* in view of the judgment of the Hon'ble Apex Court in ***Celestium Financial v. A.Gnanasekaran***[1]***.*** While dealing with the aspect whether the appeal under the proviso to Section 372 of Cr.P.C against the order of acquittal passed in a case instituted upon a private complaint under section 138 of the Act would be

[1] 2025 SCC Online SC 1320

maintainable or not treating the complainant as victim within the meaning prescribed under Section 2 (wa) of Cr.P.C, it is observed by the Hon'ble Supreme Court at para Nos.9 and 10 thus:

> "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."

6. So, the judgment in ***Celestium Financial*** (supra) applies to the present case also. The complainant being victim, has to file an appeal before the jurisdictional Sessions Court by invoking proviso to Section 372 of Cr.P.C. In

the aspect of applicability of judgment of Hon'ble Apex Court prospectively or retrospectively, in ***Kanishk Sinha vs. The State of West Bengal[2],*** it is held that the prospective operation is normally done to avoid any unnecessary burden to the persons or to avoid undue hardships to those who had bonafidely done something with the understanding of the law as it existed at the relevant point of time and further held that now the law of prospective and retrospective operation is absolutely clear and a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpreted by the Court and further the judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively and in ***Government of India & another v. Sri Devraj URS Medical College[3],*** it is held that if a decision of the Hon'ble Apex Court does not expressly provides its application to be prospective, then it is a settled law that all the decisions are retrospective in application.

7. In view of the law laid down by the Hon'ble Apex Court in ***Celestium Financial*** (supra), the instant appeal filed by the complainant against the order of acquittal is not maintainable before this Court since this Court has no jurisdiction to entertain this appeal on merits and as such, the appeal is to be transferred to the jurisdictional appellate Court/ Sessions Court.

8. The Registry shall transmit the entire appeal record to the jurisdictional sessions Court. It is needless to say that the learned counsel for the appellant shall have liberty to carry out the amendment in the cause title and also the provisos thereof and file neat copy of appeal.

9. Accordingly, for statistical purpose, this Criminal Appeal stands disposed of.

---

[2] 2025 INSC 278
[3] 2026 LiveLaw (SC) 766

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

_____
SUNITHA GANDHAM, J

20.11.2026
knl