IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 51 of 2026
Reserved on: 14.10.2026
Date of Decision: 28.10.2026.

Rohit Chaudhary .... Appellant

Versus

Shyam Lal .... Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No.

For the Appellant : Mr Dheeraj K. Verma, Advocate.
For the Respondent : Mr Goldy Kumar, Advocate.

Rakesh Kainthla, Judge

The appellant had filed a complaint before the learned Additional Chief Judicial Magistrate, Court No. 1, Kangra, District Kangra (hereinafter referred to as the learned 'Trial Court') for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act), which was dismissed on 9.3.2026 and the accused was acquitted of the commission of the aforesaid offence.

---

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2026:HHC:46975

2. Being aggrieved by the judgment passed by the learned Trial Court, the appellant/complainant has filed an appeal under Section 419 of the Bharatiya Nagarik Suraksha Sanhita (corresponding to Section 378 of the CrPC). However, no application for seeking leave to appeal has been filed.

3. I have heard Mr Dheeraj K. Verma, learned counsel for the appellant and Mr Goldy Kumar, learned counsel for the respondent.

4. Mr Dheeraj K. Verma, learned counsel for the appellant, submitted that an appeal filed by the complainant against the acquittal in a complaint filed under Section 138 of the N.I. Act is maintainable before this Court without seeking leave to appeal, as the complainant is a victim. He relied upon the judgment of the Hon'ble Supreme Court in ***M/s Celestium Financial vs. A. Gnanasekaran, 2025 SCC OnLine SC 1320*** and the judgment of this Court in ***Harpreet Singh Arora vs. Bimla Devi, Cr.MP(M) No. 319 of 2025, decided on 18.7.2025*** in support of his submission.

5. Mr Goldy Kumar, learned counsel for the respondent-accused, submitted that an appeal under Section 419 of the BNSS is not competent without seeking leave to appeal, and the

complainant can file an appeal under Section 413 (corresponding to Section 372 of Cr.P.C.) before the Court of Sessions where an appeal against conviction lies. Since no leave to appeal has been sought in the present case, the appeal is not maintainable and is liable to be dismissed.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. It was laid down by the Hon'ble Supreme Court in ***Celestium Financial*** *(supra)* that the complainant has a right to prefer an appeal against acquittal recorded in proceedings under Section 138 of the N.I. Act before the learned Sessions Judge under the proviso to Section 372 of Cr.P.C. or before the High Court under Section 378 of Cr.P.C., but in the latter case, leave to appeal is required. It was observed:

> "**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.

xxxxxx

9......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*....."

8. Thus, it is apparent that the complainant is not required to obtain leave to appeal when he prefers an appeal under Section 372 of Cr.P.C. before the Court of Session, but he is required to

obtain special leave to appeal if he files an appeal under Section 419 (4) of the BNSS (corresponding to Section 378 (4) of the CrPC). It was laid down by the Hon'ble Supreme Court in ***Subhash Chand v. State (Delhi Admn.), (2013) 2 SCC 17: (2013) 1 SCC (Cri) 802: 2013 SCC OnLine SC 29*** that an appeal against acquittal filed by the complainant is not maintainable without seeking special leave to appeal. It was observed at page 26:

> "**17.** At the outset, it must be noted that as per Section 378(3), appeals against orders of acquittal which have to be filed in the High Court under Sections 378(1)(*b*) and 378(2)(*b*) of the Code cannot be entertained except with the leave of the High Court....."

9. It was rightly submitted on behalf of the respondent that an appeal against acquittal lies before the Court of Session at the instance of the victim under Section 372 of CrPC, where an appeal against conviction lies. It was laid down by the Hon'ble Supreme Court in ***Subhas Chandra Sarkar vs. The State of West Bengal and Ors. (22.09.2026 - SC): MANU/SC/1084/2026*** that an appeal against acquittal recorded by the Magistrate under Section 413 of Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023 (corresponding to Section 372 of the CrPC) lies before the Sessions Court and not before the High Court. It was observed:

> 12. Hence, when there is a conviction in a trial held by a Magistrate of the First Class or the Second Class, an appeal lies to the Sessions Court. Going by the proviso to Section 413, an appeal filed by a victim against an order of acquittal also has to be before the Court to which an appeal ordinarily lies against the order of conviction of such Court. The order of acquittal passed by a learned Magistrate, hence, has to be appealed before the Court in which a conviction ordered by a Magistrate can be appealed, which is the Sessions Court."

10. Thus, the complainant/appellant cannot prefer an appeal before this Court under the proviso to Section 413 BNSS (corresponding to Section 372 Cr.P.C.).

11. In ***Harpreet Singh Arora*** (supra), the special leave to appeal was sought and was granted; hence, the cited judgment does not apply to the present case.

12. Therefore, the present appeal lies before this Court under Section 419 of the BNSS after obtaining special leave to appeal. In the present case, leave to appeal has not been sought; hence, the present appeal is not maintainable and is dismissed as such.

13. The present appeal stands disposed of and so are the pending miscellaneous application(s), if any.

(Rakesh Kainthla)
Judge

28th October, 2026
(Chander)