2026:PHHC:011190

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

226 **CRA-AS-126-2016**
Date of Decision:-27.01.2026

DEVINDER KUMAR SHARMA .....APPELLANT

VS.

YASH KUMAR .....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Randhir Singh, Advocate and
Ms. Anisha, Advocate for
Mr. APS Shergill, Advocate for the applicant-appellant.

Mr. Lovish Arora, Advocate for the respondent.

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JASJIT SINGH BEDI, J.(ORAL)

1. The present application has been preferred under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter 'CR.P.C.') seeking grant of leave to appeal against the judgment of acquittal dated 15.02.2016 passed by the learned Judicial Magistrate Ist Class, Chandigarh in a case stemming from complaint dated 23.11.2010 filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter to be referred as 'NI Act').

2. A perusal of the file would reveal that vide order dated 29.08.2016 passed by the Co-ordinate Bench of this Court, the present application seeking leave to appeal was allowed/granted and the same is treated as CRA-AS-126-2016.

3. The complaint (supra) was filed on the ground of dishonour of cheque amounting to Rs.2,75,000/-. After assessing all the material available on the record, the learned trial Court acquitted the respondent

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vide judgment dated 15.02.2016.

4. The Hon'ble Supreme Court in ***M/s. Celestium Financial vs. A.Gnanasekaran Etc., 2025(3) RCR (Criminal) 208***, after considerable discussion and comparative interpretation of Sections 372 and 378(4) of Cr.P.C., concluded that the victim has a right to file an appeal under Section 372 of Cr.P.C. before the Court of Sessions. Speaking through Justice B.V.Nagarathna, the following was held:

> "*7.12 The reasons for the above distinction are not far to see and can be elaborated as follows:*
> *Firstly, the victim of a crime must have an absolute right to prefer an appeal which cannot be circumscribed by any condition precedent. In the instant case, a victim under Section 138 of the Act, i.e., a payee or the holder of a cheque is a person who has suffered the impact of the offence committed by a person who is charged of the offence, namely, the accused, whose cheque has been dishonoured.*
> *Secondly, the right of a victim of a crime must be placed on par with the right of an accused who has suffered a conviction, who, as a matter of right can prefer an appeal under Section 374 of the CrPC. A person convicted of a crime has the right to prefer an appeal under Section 374 as a matter of right and not being subjected to any conditions.*
> *Similarly, a victim of a crime, whatever be the nature of the crime, unconditionally must have a right to prefer an appeal.*
> *Thirdly, it is for this reason that the Parliament thought it fit to insert the proviso to sub-section 372 without mandating any condition precedent to be fulfilled by the victim of an offence, which expression also includes the legal representatives of a deceased victim who can*

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prefer an appeal.

On the contrary, as against an order of acquittal, the State, through the Public Prosecutor can prefer an appeal even if the complainant does not prefer such an appeal, though of course such an appeal is with the leave of the court. However, it is not always necessary for the State or a complainant to prefer an appeal. But when it comes to a victim's right to prefer an appeal, the insistence on seeking special leave to appeal from the High Court under Section 378(4) of the CrPC would be contrary to what has been intended by the Parliament by insertion of the proviso to Section 372 of the CrPC.

Fourthly, the Parliament has not amended Section 378 to circumscribe the victim's right to prefer an appeal just as it has with regard to a complainant or the State filing an appeal. On the other hand, the Parliament has inserted the proviso to Section 372 so as to envisage a superior right for the victim of an offence to prefer an appeal on the grounds mentioned therein as compared to a complainant.

Fifthly, the involvement of the State in respect of an offence under Section 138 of the Act is conspicuous by its absence. This is because the complaint filed under that provision is in the nature of a private complaint as per Section 200 of the CrPC and Section 143 of the Act by an express intention incorporates the provisions of the CrPC in the matter of trial of such a deemed offence tried as a criminal offence. Therefore, the complainant, who is the victim of a dishonour of cheque must be construed to be victim in terms of the proviso to Section 372 read with the definition of victim under Section 2(wa) of the CrPC."

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5. In view of the judgment rendered by the Hon'ble Supreme Court in ***Celestium Financial (supra***) and this Court in ***Satish Kumar vs. Jugal Kishor in CRM-A-277-MA-2016 decided on 02.07.2025***, the learned Sessions Judge, Chandigarh directed to treat the present leave to appeal as an appeal filed under Section 372 of the Cr.P.C. and entrust the same to appropriate Court for its disposal.

6. The Registry is directed to send the complete paperbook and the record of the case to the learned Sessions Judge, Chandigarh forthwith.

7. Disposed of accordingly.

8. Pending miscellaneous applications, if any, also stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

January 27, 2026
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Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***

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