CRM-A-843-2024 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

225

CRM-A-843-2024 (O&M)
Date of Decision: 14.01.2026

Raj Kumar .....Applicant.

Verus

State of Punjab and Anr. .....Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Sunny K. Singla, Advocate, for the applicant.

Ms. Pooja Nayar Sharma, DAG, Punjab.

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ANOOP CHITKARA J.

Criminal Complaint	PBLD-0303-8086-2017 COMI/749/2017 Date of decision: 15.03.2024

1. Feeling aggrieved by the trial court's judgment, acquitting the accused/respondent No.2, the complainant had come up before this Court by filing the above-mentioned application for leave to appeal alongwith appeal.

2. Counsel for the appellant prays for transfer of appeal to the first Appellate Court in view of judgment of Hon'ble Supreme Court passed in "Celestium Financial v. A. Gnanasekaran, 2025(3) RCR(Criminal) 208, decided on 08.04.2025".

3. In Celestium Financial v. A. Gnanasekaran, 2025(3) RCR(Criminal) 208, decided on 08.04.2025, Hon'ble Supreme Court holds,

> [7.8] In the case of an offence alleged against an accused under Section 138 of the Act, we are of the view that the complainant is indeed the victim owing to the alleged

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> dishonour of a cheque. In the circumstances, the complainant can proceed as per the proviso to Section 372 of the CrPC and he may exercise such an option and he need not then elect to proceed under Section 378 of the CrPC.
>
> [8]. The right to prefer an appeal is no doubt a statutory right and the right to prefer an appeal by an accused against a conviction is not merely a statutory right but can also be construed to be a fundamental right under Articles 14 and 21 of the Constitution. If that is so, then the right of a victim of an offence to prefer an appeal cannot be equated with the right of the State or the complainant to prefer an appeal. Hence, the statutory rigours for filing of an appeal by the State or by a complainant against an order of acquittal cannot be read into the proviso to Section 372 of the CrPC so as to restrict the right of a victim to file an appeal on the grounds mentioned therein, when none exists.
>
> [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.

4. In BNSS, 2023, S. 413 is analogous to S. 372 CrPC, 1973, and thus the ratio of Celestium Financial shall apply.

5. However, the complainant should not face the burden of filing an appeal again before the Sessions Court because the law has been interpreted recently. Therefore, in the interest of Equity, Justice, and Fair play, it would be appropriate to refer this matter to the Sessions Court, where it will be registered as an Appeal under the Proviso to S. 372 CrPC/413 BNSS, 2023, as applicable. If there is any objection regarding whether it is an appeal under the CrPC or BNSS, it shall be registered under the Proviso to S. 413 BNSS, 2023, because the CrPC, 1973, has been repealed.

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6. Given above, the Registry is to send this file along with the Trial Court's Record, if any, to the concerned Sessions Division.

7. **Leave Appeal stand disposed** of in the terms mentioned above. All pending application(s), if any, stand closed.

(ANOOP CHITKARA)
JUDGE

(SUKHVINDER KAUR)
JUDGE

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Whether speaking/reasoned: Yes
Whether reportable: **No**.

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