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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.A. 153/2015

S.S.SANGWAN .....Appellant

Through: Mr. Rohit Shama, Adv. (through VC)

versus

THE STATE & ANR .....Respondent

Through: Mr.Pradeep Gahalot, APP for State

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% 25.09.2025

1. The present appeal has been filed under Section 378(4) Cr.P.C. by the appellant/complainant against the judgement dated 04.01.2014 passed by learned JMFC, NI Act, Dwarka Courts in the case bearing CC No.3116/12 titled as 'S S SANGWAN v. RAJENDER KUMAR BANSAL' vide which the respondent was acquitted of the offense under Section 138 NI Act. The appellant had approached this Court vide CRL.L.P. No.225/2014 seeking leave to appeal and the same was granted by this Court vide order dated 02.02.2015, following which the appeals were duly admitted.

2. The appellant is the complainant under Section 138 of the NI Act who is aggrieved by the dishonour of the cheques statedly issued by the respondent. The trial which was initiated on the basis of his complaint has culminated in a finding of acquittal for respondent vide the impugned judgement. Naturally, the appellant is aggrieved by the said decision and

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wants to challenge the same.

3. During the course of proceedings, the attention of this Court is drawn to the recent decision of the Supreme Court in Celestium Financial vs A. Gnanasekaran etc, reported as **2025 SCC OnLine SC 1320** wherein, it has been held that the complainant under Section 138 NI Act, who suffers financial loss and injury on account of the dishonour of cheque, would qualify as a victim within the meaning of Section 2 (wa) Cr.P.C. It was further held that such a complainant could maintain an appeal under proviso to Section 372 CrPC in his own right, without complying with the rigours of Section 378(4) CrPC. The relevant portion is extracted hereunder:-

> *"7.7 In the context of offences under the Act, particularly under Section 138 of the said Act, the complainant is clearly the aggrieved party who has suffered economic loss and injury due to the default in payment by the accused owing to the dishonour of the cheque which is deemed to be an offence under that provision. In such circumstances,* ***it would be just, reasonable and in consonance with the spirit of the CrPC to hold that the complainant under the Act also qualifies as a victim within the meaning of Section 2(wa) of the CrPC. Consequently, such a complainant ought to be extended the benefit of the proviso to Section 372, thereby enabling him to maintain an appeal against an order of acquittal in his own right without having to seek special leave under Section 378(4) of the CrPC****.*
>
> *xxx*
>
> *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 offenceunder 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*

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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 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."***

4. To discuss the implications of the aforesaid decision, it would be prudent to first analyse the statutory matrix. Chapter XXIX of the Cr.P.C. contains the provisions governing appeals. Section 372 lays down, in unequivocal terms, that appeals can only be filed in accordance with the CrPC or any other law in force. Section 374 deals with appeals from conviction, which we are not concerned with presently. Section 378 lays down the procedure to be followed in cases of appeals from acquittals. Sub-section (4) of the said provision in particular, deals with appeals from acquittals in cases which were instituted on complaints, such as those under Section 138 of the NI Act. In such a case, the aggrieved complainant has to apply before the High Court for a special leave to appeal. If the High Court grants it, the complainant can present such appeal before the High Court. Section 378 (5) provides for the period of limitation for filing such application for leave to appeal, and Section 378 (6) states that if the High Court refuses the special leave to appeal, no appeal would lie from that order of acquittal under Section 378(1) or (2).

5. A careful reading of the above provisions would show that the right of the complainant to prefer an appeal against the order of acquittal is

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circumscribed by certain conditions precedent. However, if the complainant under the NI Act is also held to be a 'victim', then all the rights available to the victim by the Code would also be extended to such complainant, including a separate right to appeal. Before discussing the possible consequences of the above finding, it would be pertinent to understand how the Code defines and provides for the victim.

6. Section 2 (wa) of Cr.P.C. defines victim in the following fashion:-

> "*victim" means a person who has suffered any loss or injury caused by reason of the act oromission for which the accused person has been charged and the expression "victim" includes his orher guardian or legal heir*;

This definition was added to the Code with effect from 31.12.2009. This was accompanied by a slew of victim centric changes to the Code, such as the victim compensation scheme in Section 357A and 357B, free medical aid to the victims of certain offences under Section 357C, etc. One of the most important rights which has been provided to the victims is the right to appeal, which has been inserted as a proviso to Section 372 CrPC. It reads as under:-

> *"Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."*

A careful reading of the above proviso would show that the victim can appeal from three types of orders : a) an order of acquittal, b) a conviction for a lesser offence or c) imposing inadequate compensation. It also states that such appeal shall lie to the court to which an appeal

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ordinarily lies against the order of conviction of such court. Section 372 is a self-contained and independent provision which is not to be read conjointly with any other provision, including Section 378 Cr.P.C. It applies to acquittals from both Trial Court and Appellate Court and the appeal would lie in the first hierarchical superior court. (Ref: Asian Paints limited v. Ram Babu &Anr[1], Mahabir v. State of Haryana[2])

7. Introduction of this proviso does, in effect, two things. One, it provides the victim an individual right to appeal against an order of acquittal which is distinct from the right provided to the complainant under Section 378(4) Cr.P.C as in this case, no special leave to appeal needs to be obtained from the High Court. Secondly, there is a difference in the forum to which appeals can be preferred. While under Section 378(4) Cr.P.C, after granting special leave to appeal, the High Court would hear the appeal. However, in case of an appeal preferred by the victim under Section 372 CrPC, the same lies before the Court to which an appeal ordinarily lies against the order of conviction of such Court. Section 143 of the NI Act states that all offences under Chapter XVII of the Act, including an offence under Section 138 shall be tried by a Judicial Magistrate of First Class or by a Metropolitan Magistrate. An appeal against conviction, and thus an appeal preferred by the victim, would lie before the Sessions Court.

8. There are a number of reasons for this difference in the mechanism for a victim and a complainant. Rights of a victim are placed on par with the rights of the accused who suffers a conviction and as a matter of right

[1]SLP (Crl.) No.(s) 9888/2024, decided on 14.07.2025
[2]2025 SCC OnLine SC 184

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can prefer an appeal under Section 374 of the CrPC, without being subject to any conditions. The victim's right to prefer an appeal is also absolute, as is reflected from the language of the proviso to Section 372 CrPC. It is also worth noting that the parliament has not amended Section 378 CrPC to circumscribe the victim's appeal with the similar limitations as that of the complainant.

9. In light of the Supreme Court's recent clarification of the legal position, it is now evident that the appellant, being the complainant under Section 138 of NI Act, is also entitled to file an appeal against the impugned judgment of acquittal before the Sessions Court, since he is considered to be a victim. If this Court were to proceed to hear and decide the appeal at this stage, it could deprive the parties of an available forum i.e., this Court, for further challenge.

10. A Co-ordinate Bench of this Court in Vijender Singh v. Mahender Pal @ Bindu[3]while placing reliance on Celestium Financial(Supra), had relegated the parties to the Sessions Court. The differences in the remedies available under Section 378(4) and proviso to Section 372 CrPC were also discussed. The relevant portion is extracted hereunder:-

> *"21. It has been argued on behalf of the Petitioner that in Celestium Financial, (supra) the Apex Court has given an option to the Complainant to Appeal either under Section 372 Cr.P.C. or avail the remedy under Section 378(4) Cr.P.C.*
> *22. This argument is totally without any basis for the anomaly in adopting this approach is evident from the fact that* ***in case, the Leave to Appeal is denied under Section 378(4) Cr.P.C, the Complainant loses a chance to agitate his Appeal on merits as a matter of right in the first Appea****l.*
> *23. Similar facts were involved in Celestium Financial, (supra) whereby the Apex Court while setting-aside the Order dismissing*

[3]decided on 23.07.2025 in CRL.L.P. 215/2021

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the Leave to Appeal, had directed that the First Appeal as a matter of right be filed under proviso to Section 372 Cr.P.C.

24. ***The second aspect of the argument is that while an Appeal under proviso to Section 372 Cr.P.C is a matter of right, but under Section 378(4) Cr.P.C., Leave has to be sought. The two remedies cannot be equated as an alternate to each other.***

25. ***The third aspect is that by conferring a right of First Appeal as a matter of right, he would have an option to further challenge it by way of Revision or as per law. If Section 378(4) Cr.P.C. is invoked by the Complainant, then he loses his right of First Appeal.*** *The contention so raised on behalf of the Complainant is, therefore, without any merit.*

26. It is thus, held that a Complainant in a Complaint under Section 138 of N.I. Act, indeed is a victim, who has a substantial right to Appeal under proviso to Section 372 Cr.P.C. to the Court, which is immediately superior in hierarchy. This implies that the right to Appeal against the Judgment of acquittal by the learned Metropolitan Magistrate, in this Case under Section 138 of N.I. Act, lies before the Court of Sessions."

11. Other benches of this Court in Krishan Lal v. Wasim Khan[4] and Girish Rehani v. M/s Keltech Infrastructure Ltd. &Ors.[5] in cases where the leave to appeal under Section 378 (4) Cr.P.C. had already been granted, keeping in view the import of the decision in Celestium Financial(Supra), transferred the appeal to the Court of Sessions.

12. Similar view has been taken by the High Court of Andhra Pradesh in Charbel India v. State of Andhra Pradesh[6], High Court of Madhya Pradesh in Manorama Kankane v. Narendra Kumar Shukla[7], Late Kisan Sewa Kendra v. Pritam Singh[8], Smt. UrmitMadrah v. Samarpan Jain[9], High Court of Chattisgarh in Neelam Sahu v. NaradNagwanshi[10] and Smt.

[4]Decided on 28.07.2025 in CRL.A. 783/2018
[5]decided on 11.08.2025 in Crl.A 337/2025
[6]2025SCC OnLine AP 2815
[7]2025SCC OnLine MP 4779
[8]2025SCC OnLine MP 4818
[9]decided on 21.07.2025 in Criminal Appeal No. 11872 of 2022
[10]decided on 16.07.2025 in ACQA No. 340 of 2018

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Kirti Kurian v. Ajay Singh[11]; and Karnataka High Court in Sidagondappa v. ShafiAhammad[12]and Sri TH Lenkappa v. Sri Sanjay &Anr.[13]

13. An overall assessment of the Catena of decisions discussed hereinabove reveals that the Celestium Financial(Supra) has been relied upon by this Court as well other High Courts across the country, to relegate the parties back to the Sessions Court with directions to the Court to consider these appeals filed under Section 378(4) Cr.P.C as if they had been filed under Section 372 Cr.P.C. This Court feels no reason to take a contrary view in the present case.

14. Learned counsel for the appellant submits that he has no objection if the matter is remanded back to the Sessions Court.

15. Considering the above noted legal position, it is deemed fit to direct that the present appeal be transferred to the concerned Appellate Court of Sessions and be considered as an appeal under the proviso to Section 413 of BNSS(formerly Section 372 of CrPC) and numbered accordingly.

16. The Registry is directed to transfer entire record of the case including the requisitioned copies of TCR, to the concerned Principal District & Sessions Judge, who may assign it to the concerned Appellate Court/ learned ASJ having the jurisdiction and for which purpose, it would be listed before the concerned Principal District & Sessions Judge, at the first instance, on 01.12.2025 for directions.

17. In case there are applications pending for Condonation of Delay, the same be also transferred to be considered by the learned ASJ in accordance with law.

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[11]decided on 16.07.2025 in ACQA No. 198 of 2019
[12]decided on 31.07.2025 in CRL.A. No. 20021/2018

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18. Considering that the matter has been pending for considerable time, learned Appellate Court is requested to make an endeavour to dispose the matter as expeditiously as possible.

19. It is made clear that this Court has not made any observations as to the merits of the case and all rights and contentions of the parties are left open to be agitated before the Court concerned.

20. A copy of the order be sent to the concerned Principal District and Sessions Judge for necessary information and compliance.

MANOJ KUMAR OHRI, J

SEPTEMBER 25, 2025/sn

[13]decided on 23.07.2025 in CRL.A. No. 146/2015

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