CRA-AS-99-2024

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-AS-99-2024
265 **Date of Decision: 15.09.2025**

OM ENTERPRISES SRI MUKTSAR SAHIB
THROUGH ITS PROPRIETOR OM PARKASH .....Appellant

Verus

GUPTA R.O. SYSTEM THROUGH ITS PROPRIETOR ATUL KUMAR GUPTA .....Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. G. S. Sandhu, Advocate for the appellant.

Mr. Arihant Goyal, Advocate for the respondent.

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ANOOP CHITKARA J.

Criminal Complaint	NI Act/248/2015 under Section 138 of the Negotiable Instruments Act, titled as "Om Enterprises Sri Muktsar Sahib through its proprietor Om Parkash Vs. Gupta R.O. System through its proprietor Atul Kumar Gupta" decided on 07.01.2017

1. Feeling aggrieved by the trial court's judgment, dismissing the complaint on merits, and acquitting the accused/respondent, the complainant had come up before this Court by filing the above-mentioned appeal.

2. Vide order dated 02.05.2024, the appeal was admitted.

3. 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".

4. 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 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

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order/judgment.

> 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.

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

6. 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.

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

8. If the accused has furnished the bail bonds, there shall be no need to refurnish the same, and the bonds furnished pursuant to the order of this Court shall be deemed to be furnished before the Sessions Court and shall also be executable by the concerned appellate Court.

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

(ANOOP CHITKARA)
JUDGE

15.09.2025
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Whether speaking/reasoned: Yes
Whether reportable: **No**.

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