118 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1848-MA-2014 (O&M)
Date of Decision: 24.07.2025

Kulbir Singh and another ..... Applicants

vs.

Lekh Ram .....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Arnav Kumar Sood, Advocate, for the applicants (through VC).

None for the respondent.

Rajesh Bhardwaj, J. (Oral)

1. The applicants have filed the present application under Section 378(4) Cr.P.C. for grant of leave to file an appeal against the impugned order dated 14.07.2014 passed by learned Sub Divisional Judicial Magistrate, Rajpura, whereby, the trial Court has acquitted the respondent-accused in a complaint under Section 138 of the Negotiable Instruments Act, 1881.

2. 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. Relevant para of the said judgment is as under:-

> "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

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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 Cr.P.C.. 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 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 Cr.P.C. would be contrary to what has been intended by the Parliament by insertion of the proviso to Section 372 of the Cr.P.C.

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 Cr.P.C. and Section 143 of the Act by an express intention incorporates the provisions of the Cr.P.C. 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 Cr.P.C."

3. Further, applying the doctrine of prospective overruling,

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Hon'ble Supreme Court in **Directorate of Revenue Intelligence vs. Raj Kumar Arora in Criminal Appeal No. 1319 Of 2013 with Criminal Appeal No. 272 of 2014 decided on 17.04.2025,** while clarifying that judgments shall be applicable retrospectively, has held as under:-

> "91. The declaration of a statute dealing with substantive rights, by the legislature, is considered to be prospective unless it is expressly or by necessary implication made to have retrospective operation. The legal maxim "Nova Constitutio Futuris Forman Imponere Debet, Non Praeteritis" indicating that a new law ought to regulate what is to follow and not the past, carries with it a presumption of prospectivity and this presumption is generally said to operate unless the contrary is shown by an express provision in the statute or if the retrospectivity is otherwise discernible through necessary implication. This is because such statutes would have the consequence of affecting vested rights, impose new burdens or impair existing obligations. However, when a decision rendering an opinion as regards the interpretation of a penal provision is subsequently overruled by the decision of a larger bench, the consequence of the overruling is starkly different and by default, retrospective. **This is because it is settled law that the law declared by this Court is retrospective and is normally assumed to be the law from the inception**.
>
> 92. The operation of a newly enacted statute or rule must not be confused with the effect of a judgment. **A judgment or decision which interprets a statute or provision thereof declares the meaning of the statute as it should be construed from the date of its enactment. In other words, the judgment declares what the legislature had said at the time when the law was promulgated and therefore, it has retrospective effect.** On the contrary, it is the statute or the rule which is presumed to be prospective unless expressly made

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retrospective. What follows from the same, is that a decision or judgment enunciating a principle of law is applicable to all cases irrespective of the stage of pendency before different forums since what has been enunciated is the meaning of the law which existed from the inception of the concerned statute or provision. What has been declared to be the law of the land must be held to have always been the law of the land. This conclusion also stems from the rationale that the duty of the court is not to "pronounce a new law but to maintain and expound the old one". (emphasis added)

4. Therefore, in view of the judgments rendered by the Hon'ble Supreme Court in **Celestium Financial** (supra) and **Directorate of Revenue Intelligence** (supra), learned Sessions Judge, Rajpura, is directed to treat the present leave to appeal as an appeal filed under Section 372 of Cr.P.C. and entrust the same to the appropriate Court for its disposal on merits.

5. Registry is directed to send the complete paperbook and the record of the case to learned Sessions Judge, Rajpura, forthwith.

6. Disposed of, accordingly. Pending applications, if any, also stand disposed of.

(RAJESH BHARDWAJ)
JUDGE

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Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No

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