



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-A-949-2022 (O&M)
Date of decision: 12.08.2025**

Sishan Kawar

....Applicant

Versus

Ishwar Singh and Ors

....Respondents

CORAM:- HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present:- Mr. Raj Kumar Arya, Advocate for the applicant.

.....

RUPINDERJIT CHAHAL, J. (ORAL)

CRM-49506-2022

Instant application has been preferred seeking condonation of delay of 1862 days in filing the appeal.

2. In the application the applicant has stated that he was pursuing criminal revision before the Sessions Judge, Jhajjar, which was dismissed vide order dated 30.04.2022, hence the delay.

3. Keeping in view the averments made in the application and in the interest of justice, application is allowed and delay of 1862 days in filing the present appeal is condoned subject to all just exceptions.

4. Application is disposed of accordingly.

Main Case

1. The present application has been filed under Section 378(4) Cr.P.C. seeking to challenge the order dated 03.08.2017 passed by the Court of Judicial Magistrate Ist Class, Bahadurgarh, District Jhajjar, whereby, the complaint under Sections 323, 307 IPC, filed by the



applicant-petitioner was dismissed and the accused/respondent was acquitted.

2. Mr. Raj Kumar Arya, Advocate has put in appearance on behalf of the applicant and has filed his vakalatnama, which is taken on record.

3. The limited question arising for consideration in the present proceedings is whether an appeal against an order of acquittal passed in a complaint case under Sections 323, 307 IPC can be entertained under the proviso to Section 372 of the Cr.P.C. (now Section 413 of BNSS) at the instance of the complainant?

4. The issue is no longer *res integra*. In '***M/s Celestium Financial Vs. A. Gnanasekaran Etc. 2025 INSC 804: 2025(3) RCR (Criminal) 208***', the Hon'ble Supreme Court authoritatively held that a complainant qualifies as a 'victim' under Section 2(wa) of the Cr.P.C., being the person who suffers at the hands of the accused. Consequently, such a complainant is entitled to pursue an appeal against acquittal under the proviso to Section 372 of the Cr.P.C., without the requirement of seeking special leave under Section 378(4) of the Cr.P.C. The relevant paragraph is reproduced as under:-

"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.

xxx

xxx

xxx

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 the light of the aforesaid decision of Hon’ble Supreme Court and considering the view taken by this Court in subsequent cases including in ***Rajat Deep Versus Prince, CRM-A-1320-MA-2016***, decided on **21.07.2025**, as also the guiding principle that procedural rule must serve and not obstruct the course of justice, this Court deems it appropriate to direct that the present appeal be treated as one authoritatively instituted under the proviso to Section 372 of the Cr.P.C.



6. Accordingly, the present application seeking leave to file the appeal is remanded back to the learned Sessions Judge concerned with the direction to treat the same as filed under Section 372 of Cr.P.C. (now Section 413 of BNSS) and assign the same to an appropriate Court for disposal on merits.

7. The concerned Appellate Court shall proceed to decide the appeal expeditiously.

8. The Registry is directed to transmit this order along with copy of the complete paper-book and return the Trial Court record, if any received, to the learned Sessions Judge, Jhajjar forthwith.

9. Disposed of accordingly.

(RUPINDERJIT CHAHAL)
JUDGE

12.08.2025

Mohit Bishnoi

i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No