251/2 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2025:PHHC:086675

CRM-A-716-2024 (O&M)
Date of Decision: 15.07.2025

RAKESH KUMAR GOYAL ... APPELLANT

VERSUS

SANJEEV VERMA ... RESPONDENT

CORAM : HON'BLE MR. JUSTICE H.S.GREWAL

Present:- Mr. Anmol Puri, Advocate for the appellant.

H.S. GREWAL, J. (ORAL)

CRM-22130-2024

For the reasons stated in the application, the same is allowed and delay of 18 days in filing the instant application is hereby condoned.

Main application

1. The present application has been preferred under Section 378(4) Cr.P.C. seeking grant of leave to appeal of the judgment of acquittal dated 13.02.2024 passed by the learned Judicial Magistrate First Class, Ludhiana, in the complaint case filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to be as the 'Act').

2. The brief facts of the case are that the respondent, in order to discharge his liability, had issued a cheque bearing No. 049190 dated 25.10.2018, amounting to Rs.9,00,000/- drawn on IDBI Bank Ltd., Miller Ganj, GT Road, Ludhiana which was dishonoured with the remarks 'Funds insufficient'. Consequently, the complaint under Section 138 of Act was filed against the respondent which was dismissed by learned trial Court vide

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judgment dated 13.02.2024 and the accused was acquitted. Feeling aggrieved with the said finding, the present application seeking grant of leave to appeal has been preferred.

3. I have heard learned counsel for the applicant and have perused the material available on record.

4. Before proceeding to hear the application (for grant of special leave to appeal)/appeal, it is important to decide whether the right of the victim to file an appeal against acquittal in a complaint case would fall under Section 372 or Section 378(4) of Cr.P.C.

5. Hon'ble the Supreme Court in ***M/s Celestium Financial vs. A. Gnanasekaran Etc., 2025(3) RCR (Criminal) 208,*** had laid comprehensive interpretation of Sections 372 and 378(4) of Cr.P.C. and had concluded that the victim has a right to file an appeal under Section 372 of Cr.P.C. before the Court of Sessions. The relevant extract thereof is reproduced hereunder:-

> *"7.12 xxxxxxx*
>
> *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 CrPC. 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*

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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 CrPC 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.

xxxxxxxxx

10. As already noted, the proviso to Section 372 of the Cr.P.C. 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 Cr.P.C., 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 Cr.P.C. "

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6. In view of the judgment passed by the Hon'ble Supreme Court in **Celestium Financial** (supra) which has been followed by this Court in **CRM-A-886-MA-2015**, tilted as **'Rajesh Kumar versus M/s Success Enterprises and another',** decided on 08.07.2025 and similar view taken by the Coordinate Bench of this Court in **CRM-A-2700-MA-2018**, tilted as **'Satish Kumar vs. Jugal Kishor'** decided on 02.07.2025, the learned Sessions Judge, Ludhiana is directed to treat the present leave to appeal as an appeal filed under Section 378(4) Cr.P.C. and entrust the same to appropriate Court for its disposal.

7. The Registry is directed to send the complete paper-book and the record of the case to the learned Sessions Judge, Ludhiana forthwith.

8. Disposed of accordingly.

9. Pending miscellaneous application(s), if any, shall also stand disposed of.

(H.S.GREWAL)
JUDGE

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

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