



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

**CRM-A No.1032 of 2025 (O&M)
Date of Decision: 18.07.2025**

Kulwant Singh

.....Applicant.

Versus

Honey Kumar

.....Respondent.

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Kuldip Singh, Advocate
for the applicant.

MEENAKSHI I. MEHTA, J.(Oral)

The applicant-appellant has filed the instant application under Section 419(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'the BNSS') for seeking special leave to file the accompanying appeal against the judgment dated 22.11.2024 handed down by learned Judicial Magistrate 1st Class, Jalalabad (W) in the Criminal Complaint Case bearing *NACT No.479 of 2019* titled as "*Kulwant Singh Vs. Honey Kumar*", as preferred by him under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the NI Act'), whereby the respondent-accused has been acquitted.

2. Before adverting to consideration on the merits of the present application (for grant of special leave to appeal), this Court finds it apposite



to refer to the verdict, as rendered by the Apex Court recently, in M/s Celestium Financial Vs. A. Gnanasekaran etc, 2025 INSC 804, while observing 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 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 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 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 CrPC.

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 CrPC and Section 143 of the Act by an express intention incorporates the provisions of the CrPC 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 CrPC.”

3. From the above-cited observations, it becomes explicit that an appeal against the order of acquittal in the proceedings under Section 138 of the NI Act does fall within the purview of the proviso as appended to Section 372 Cr.P.C (*in pari-materia with Section 413 of the BNSS*) and the “*complainant*” is squarely covered under the definition of “*victim*” and hence, he is not required to pursue the remedy of seeking special leave to appeal, as envisaged under Section 419(4) of the BNSS/378(4) Cr.P.C.

4. As a sequel to the fore-going discussion, the appeal, along-with accompanying application(s), is remitted to learned Sessions Judge, Fazilka, with the direction to treat the same as having been preferred under Section 372 Cr.P.C/413 of the BNSS, who shall either entrust the same to himself/herself or assign it to another Court of competent jurisdiction for its adjudication in accordance with law.

5. It is further clarified here that while passing the instant order, this Court has not delved/looked into the merits of the appeal and also the accompanying application(s) and the consideration thereon is being left open for the concerned Sessions Court and nothing observed here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the appeal and the accompanying application(s).

6. The applicant, through his counsel, is directed to appear before learned Sessions Judge, Fazilka, either in person or through his counsel, on 29.08.2025.



7. The Registry is directed to send the complete record of the present appeal (including the paper-book) to learned Sessions Judge, Fazilka.

8. The matter in hand stands disposed of accordingly.

July 18, 2025
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes