

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:123926-DB



(241)

CRM-A-2556-2019 (O&M)

Decided on : 10.09.2025

Sarwan Singh Fauji

...Appellant(s)

Versus

Hari Singh & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE GURVINDER SINGH GILL
HON'BLE MR.JUSTICE DEEPINDER SINGH NALWA**

Present: Mr.BBS Sobti, Advocate (through VC), for the appellant.

Mr.Aayush Gupta, Advocate, for respondent No.1.

Mr.J.S.Mehndiratta, Advocate as Amicus Curiae
and Mr.M.S.Sidhu, Advocate, for respondents No.2, 3 & 5.

Mr.Harkirat Singh, Advocate, for
Mr.Kuljit Singh, Advocate, for respondent No.4.

GURVINDER SINGH GILL, J. (Oral)

1. The instant appeal has been preferred by the complainant – Sarwan Singh Fauji assailing judgment dated 12.07.2019 passed by the learned Judicial Magistrate Ist Class, Ludhiana, whereby her complaint under Sections 420, 201, 477, 120-B, 34 IPC filed against the respondents has been dismissed and consequently, all the respondents have been acquitted of all the charges framed against them.
2. Today, at the very outset, learned counsel for the appellant while referring to judgment of Hon'ble Apex Court in **M/s Celestium Financial Vs. A. Gnanasekaran, 2025 (3) RCR (Criminal) 208**, submitted that in view of the law laid down in the said judgment, the instant appeal be transmitted to the Court of Sessions at Ludhiana.

3. We have considered the aforesaid submission.
4. Before proceeding to examine the cited judgment, it is apposite to bear in mind the provisions of Section 372 and 378 Cr.P.C., which are reproduced herein under:

“372. No appeal to lie unless otherwise provided.— No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

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- 378. Appeal in case of acquittal.**—(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—
- (a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non bailable offence;
 - (b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.
- (2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—
- (a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

- (b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.
- (3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.
- (4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.
- (5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.
- (6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under subsection (2).”
5. Hon’ble Apex Court in M/s Celestium Financial’s case (supra) while interpreting Sections 372 and 378(4) Cr.P.C. held that the complainant in a private complaint has to be treated as a ‘victim’ and consequently, in terms of provisions of Section 372 Cr.P.C. has a right to file an appeal. The relevant extract from the cited judgment is reproduced herein under:

“**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 47 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 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 48 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 49 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.”

6. This Court in Dharampal Vs. State of Haryana & others, (CRM-A-489-MA-2017 decided on 11.08.2025) and Mahender Singh Vs. Sumesh Pal (CRM-A-192-2020 decided on 08.08.2025) while following the judgment in M/s Celestium Financial's case (supra) has ordered for transmitting the complete

paper-books and record of appeal/s arising out of complaint/s, which had been instituted in this Court alongwith an application for leave to file an appeal.

7. The instant case had arisen out of a private complaint instituted in the Court of learned Magistrate, wherein the Magistrate recorded the findings of acquittal of all the accused. Consequently, in terms of ratio of Hon'ble Supreme Court judgment in M/s Celestium Financial's case (supra), the complainant has to be treated as a 'victim' and resultantly would have a right in terms of Section 372 Cr.P.C. to file an appeal to the Court where an appeal against conviction would be maintainable.
8. Since, in case the accused had been convicted, it is the Court of Sessions where an appeal would have been maintainable, an appeal against acquittal would be maintainable before the same Court of Sessions. Rather, Section 372 Cr.P.C. vests the victim with an absolute right to institute appeal, whereas under Section 378 Cr.P.C., the complainant is required to seek leave to appeal. Accordingly, the Registry is directed to transmit the complete file of the instant appeal alongwith its record, if any, to the Court of Sessions at Ludhiana. Learned Sessions Judge concerned shall either try the appeal himself or entrust the same to any other Court competent to hear appeal, as deemed appropriate.
9. Disposed of accordingly.

(GURVINDER SINGH GILL)
JUDGE

(DEEPINDER SINGH NALWA)
JUDGE

September 10th, 2025
sailesh

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No