IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

267 **CRM-A-352-2024**

Date of decision: 25.08.2025

SATYAPARKASH

....APPELLANT

V/s

BABRE KHAN ALIAS BABRE BHAN

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Bhumika Khatri, Advocate for
Mr. Ram Darshan Yadav, Advocate
for the appellant/applicant.

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SUMEET GOEL, J. (Oral)

1. The substantive prayer made in the present appeal reads, thus:

> *"It is therefore, respectfully prayed that the present appeal may kindly be allowed and impugned judgment dated 09.01.2024 passed by Ld. Judicial Magistrate, Ist Class, Gurugram, may kindly be set aside and complaint of the appellant may kindly be allowed throughout the cost and respondent may kindly be convicted under section 138 of N.I. Act and fine be also imposed against him, in the interest of justice."*

Alongwith an appeal, an application for grant of leave has also been preferred under Section 378(4) Cr.P.C., 1973

2. I have heard learned counsel for the appellant/applicant and have perused the paper-book.

3. Before proceeding to decide the application (for grant of special leave to appeal)/appeal, it would be apposite to refer herein to a judgment passed by this Court in ***CRM-A-826-2025*** titled as ***Raj Kumar vs. Rajender : 2025:PHHC:079740*** wherein, this Court, while relying upon the dicta of the Hon'ble Supreme Court in ***M/s Celestium Financial vs. A. Gnanasekaran Etc. 2025 INSC 804 : 2025(3) RCR (Criminal) 208,*** has

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held that an appeal against an order of acquittal in a proceeding under Section 138 of the Negotiable Instruments Act, 1881 preferred by the complainant, falls squarely within the purview of proviso to Section 372 of Cr.P.C./413 of BNSS, 2023. This judicial enunciation was predicated upon the interpretative understanding that, for the purposes of a complaint under Section 138 of the Negotiable Instruments Act, 1881, the complainant is encompassed within the expansive definition of '*victim*' as delineated in the Cr.P.C., 1973/BNSS, 2023. Consequently, the complainant is not constrained to pursue the more stringent procedure of seeking special leave to appeal under Section 378(4) of Cr.P.C., 1973/419(4) of BNSS, 2023. This Court underscored that the scope and ambit of proviso to Section 372 Cr.P.C./413 BNSS are inherently broader and more accommodating when juxtaposed with the comparatively narrower confines of Section 378(4) of Cr.P.C., 1973/419(4) of BNSS, 2023, which mandates the procurement of special leave from the High Court for an appeal against an acquittal in a complaint case.

However, demonstrating a profound commitment to the overarching principles of justice and a determination to preclude mere procedural technicalities from eclipsing the substantive adjudication of the case, this Court, instead of summarily dismissing the appeal on this technical infirmity, judiciously opted to relegate the appeal, along with accompanying application(s), to the concerned Sessions Court.

4. *Ergo;* in view of the dicta of the Hon'ble Supreme Court in ***M/s Celestium Financial*** (supra) as also the pronouncement of this Court in ***Raj Kumar*** (supra); the present appeal, along with accompanying application(s), is disposed of as hereunder:

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(i) The present appeal, along with accompanying application(s), is remitted to the learned Sessions Judge, Gurugram with a direction to treat the same as having been filed under Section 372 of Cr.P.C., 1973/Section 413 of BNSS, 2023. The said learned Sessions Judge may entrust the appeal to himself or assign it to another Court of competent jurisdiction for its disposal, as per law.

(ii) Needless to clarify that this Court has not delved into the merits of the appeal as also along with accompanying application(s); and the same is left open for consideration of the concerned learned Sessions Court, which shall indubitably adjudicate the same without getting influenced by any observation made hereinabove.

(iii). The Registry is directed to send, expeditiously, the complete records of the present appeal (including the paper-book) to the said learned Sessions Judge.

(SUMEET GOEL)
JUDGE

August 25, 2025
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

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