IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 1657 of 2013

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JAYANTIBHAI DEVSHIBHAI PATEL
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MS HETVI H SANCHETI(5618) for the Appellant(s) No. 1
MR. SOEB R. BHOHARIA(2205) for the Opponent(s)/Respondent(s) No. 2
MR YUVRAJ BRAHMBHATT, APP for the Opponent(s)/Respondent(s) No. 1
VALIMOHAMMED PATHAN(6383) for the Opponent(s)/Respondent(s) No. 2

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CORAM:**HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

Date : 06/04/2026

ORAL ORDER

1. This Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973 ("Code or CrPC") / Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (`BNSS' for short) by the Complainant against the impugned judgment and order whereby the learned trial Court had acquitted the respondent/s/accused of the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the `NI Act' for short).

2. Heard learned advocates for the parties.

3. Before entering into the merits of this case, this Court deems it proper to refer to the latest decision rendered by this Court in the case of ***Shivsinh Ganpatsinh Solanki V/s State of Gujarat & Anr.*** **being** ***Criminal Miscellaneous Application Nos. 12753 of 2019 with 12908 of 2019,*** wherein, after considering the various judgments of the Hon'ble Supreme Court, more particularly, the judgment in the matter of ***M/s Celestium Financial V/s A.Gyanasekaran***. *reported in* 2025 INSC 804, has held (in

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Paragraph Nos.11, 19 to 23, 31, 32, 34 43, 56, 78 to 80) as under:

> " *xxxxx*
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> 11. *Upon a perusal of the aforesaid judgment, it becomes evident that in paragraph 7.7 the Apex Court has, in clear terms, recognized that a Complainant under Section 138 of the NI Act, having suffered financial loss and injury arising from the dishonour of a cheque, is an "aggrieved party" and, therefore, falls within the definition of a "Victim" under Section 2(wa) of the Code.*
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> *xxxxx*
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> 19. *Having dealt with the first limb of the argument, the only other argument which can possibly be made is that the Victim has the option to choose the hat that he wishes to wear (i.e., that of a Victim or of a Complainant). It can be argued that if the Victim chooses to appeal as a Victim, he/she can go under Section 372 of the Code and if as a Complainant, then under Section 378 of the Code.*
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> 20. *It is clear that the Code provides for two remedies. First, under Section 372 for a Victim. Second, under Section 378(4) for a Complainant. There is no confusion if a person is either a Victim or a Complainant. There is some divergence of thought when the Victim is also the Complainant.*
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> 21. *While trying to approach this issue, at a bare glance, the statutory framework appears to offer a Complainant (who is a Victim in given case) two parallel avenues of appeal (i.e., Section 372 and Section 378). Therefore, one may well argue that it is for the person to choose the hat that he wishes to wear to file the Appeal.*
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> 22. *This argument, undoubtedly, seems attractive at first blush. However, venturing a little deeper, it turns out to be wanting. This is for several reasons which are as follows.*
>
> 23. ***First**, a Victim was given a right to file an Appeal under the Code pursuant to some object and keeping in mind some*

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reasons thereof. Relevant extract of the Statement of Objects and Reasons of the Criminal Amendment Act, 2009 [Act 5 of 2009] by way of which the proviso to Section 372 of the Code was introduced, is extracted hereinbelow:

> *At present, the Victims are the worst sufferers in a crime and they **don't have much role in the court proceedings. They need to be given certain rights and compensation**, so that there is no distortion of the criminal justice system. (emphasis supplied).*

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31. *Bare perusal of the language of the provision, along with the law as laid down by the Hon'ble Apex Court in **Celestium**, **Mahabir** (supra) and **Joseph** (supra) would show in certain terms that the right of a Victim to file an Appeal against an Order of acquittal is on a higher footing than that of a Complainant. This is for the simple reason, that the Victim, in essence is a sufferer/aggrieved party of the alleged offence, who has been conferred with this right by the legislature, which is not the case for a Complainant.*

32. *Hence, to contend that a Victim may simply proceed as a Complainant under Section 378 of the Code would then render illusory, the very purpose for which an independent and substantive right of appeal was conferred upon a Victim. Such an interpretation would dilute the legislative intent behind introducing a distinct, unqualified appellate remedy under the proviso to Section 372 of the Code and would fail to give meaningful effect to that statutory right.*

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34. ***Second,** as regards the question of "choice" or "election," this Court is not persuaded to readily accept (neither would it be possible for anyone to readily infer) that a person who is aware of the statutory right to appeal as a Victim (as an absolute right) would voluntarily subject himself to the more taxing requirements of Section 378(4) of the Code by appealing as a Complainant, i.e., to seek special leave of the*

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Court for filing the Appeal.

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43. *A harmonious reading of the provisions therefore requires that, for the purpose of appellate remedy, a Victim, though a Complainant in a given case, must proceed under Section 372 of the Code rather than invoking Section 378(4) of the Code.*

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56. *In the present case, in Section 372 of the Code, the said Appeal has to be filed before the Sessions Court. The Apex Court, in the said judgment, has also taken into consideration that the acquittal would be challenged at the stage of first appeal before the Sessions Court. The Appeal would not lie to the High Court.*

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78. *For the foregoing reasons, this Court holds that where an order of acquittal is rendered by a Magistrate, the statutory remedy available to the Victim is to institute an appeal before the Sessions Court in terms of the proviso to Section 372 of the Code, which mandates that such an appeal shall lie to the court that would ordinarily entertain an appeal against an order of conviction passed by that Court.*

79. *In view of the above, it transpires that the Complainant, in a complaint under Section 138 of the N.I. Act, being a Victim, has a specific right to appeal under proviso of Section 372 of the Code to the Court which is immediately superior in hierarchy i.e., the Sessions Court.*

80. *In view of the above, the applications/appeals which are pending before this Court can be disposed of with a direction to transfer the said application/appeal to the concerned Sessions Court. After it is transferred to the concerned Sessions Court, it has to be treated as an Appeal under the proviso under Section 372 of the Code and numbered accordingly.*

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4. Therefore, it has been held in the aforesaid judgment that the Complainant, in a Complaint under Section 138 of the N.I. Act, being a Victim, has a specific right to appeal under proviso of Section 372 of the Code (Section 413 of BNSS) to the Court which is immediately superior in hierarchy i.e., the Sessions Court. The applications for leave to appeal/appeals which are pending before this Court can be disposed of with a direction to transfer the said application/appeal to the concerned Sessions Court.

5. Similar view has been taken by the Hon'ble Delhi High Court in the case of ***Viijender Singh S/o. Late Sh. Kunwar Singh*** reported in **(2025) ibclaw.in 2150 HC**, order dated 4th September 2025 in Criminal L.P. No. 429 of 2024 ***Wipro Limited v. Eroads Technology Limited & Ors***. in the case of ***Sandeep Kaushik V/s. Mukes*h Kumar** in Crl. L.P. 465/2018 and Crl.M.A. 28369/2018, dated 26th September 2025. Similar view is also taken by different High Courts in the following cases:

(i) Order dated 3.9.2025 passed in Crl.L.P.No.429 of 2024 in the case of Wipro Limited V/s Eroads Technology Limited & Ors. Of the Delhi High Court.

(ii) Judgment dated 22.8.2025 passed in ACQA 143 of 2003 in the case of Prateek Kumar Gupta V/s Smt.Rubina Sheikh of the Chhatisgarh High Court.

(iii) Order dated 13.8.2025 passed in CRA-AS 431-2023 in the case of Dinesh V/s Balwan Singh & anr. Of the Punjab &

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Haryana High Court.

(iv) Order dated 13.8.2025 passed in CRM-A 126-2023 (O & M) in the case of The Kaithal D.P.A.R.D. Branch Cheeka V/s Sukhdev Singh of the Punjab & Haryana High Court.

(v) Order dated 13.8.2025 passed in CRM-A 2792-2019 in the case of M/s BBC Agro Seeds Loharhera (Sanga) V/s Jawant Singh of the Punjab & Haryana High Court.

(vi) Order dated 4.8.2025 passed in CRM-A No.2289-MA-2017 in the case of Sanjeev V/s Anil Kumar of the Punjab & Haryana High Court.

(vii) Order dated 4.8.2025 passed in CRM-A No.1810-MA-2014 (and connected CRM-A 1887-MA-2014) in the case of Satbir V/s Kapil Dev of the Punjab & Haryana High Court.

(viii) Order dated 12.11.2025 passed in Criminal Appeal No.25 of 2022 (Nagpur Bench) in the case of The Washim Urban Co-operative Bank Ltd. V.Jaiprakash s/o Rambilas Kothari of the Bombay High Court (Nagpur Bench).

(ix) Order dated 30.6.2025 passed in Crl.OP.Nos.27089 & 27094 of 2024 in Crl.A. SR Nos.49576 & 59577 of 2024 in the case of SPAC Tapioca Products (I) Ltd. V/s Arun Casuals India Ltd. & Ors. of the Madras High Court.

(x) Order dated 21.7.2025 passed in Criminal Appeal

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No.11872 of 2022 in the case of Urmila Madrah V/s Samarpan Jain of the Madhya Pradesh High Court.

(xi) Order dated 13.08.2025 passed in ACQA No.113 of 2025 in the case of Prakash Mishra S/o Shri L.N.Mishra V/s Abhinav Pathak S/o Shri M.Pathak of the High Court of Chhattisgarh at Bilaspur.

(xii) Order dated 18.8.2025 passed in Cri.L.P.No.146 of 2024 and Cri.M.A.8793 of 2024 in the case of Shyam Sunder alias Shyam Sundar V/s Sikandar Singh of the Delhi High Court.

(xiii) Order dated 20.9.2025 passed in Criminal Appeal No.697 of 2024 in the case of Ganga Om Steel V/s Parinita Chandramani Meshram with Criminal Appeal No.422 of 2019 in the case of Maharashtra State Cooperative Mkt. Federation V/s Kuhi Taluka Shetki Sahakari with Criminal Appeal No.306 of 2025 in the case of Pidilite Industrial Ltd. V/s M/s Ezzy Hardware with Criminal Appeal No.312 of 2019 in the case of Sandesh Kamalkishore Randad V/s Ramesh Fulchand Baheti with Criminal Appeal No.208 of 2010 in the case of Siddharth Mahadev Borkar V/s Mohammad Aslam Abdul Razak with Criminal Appeal No.46 of 2021 in the case of Kavita Pankaj Sharma V/s Dheeraj Textiles and another and Criminal Application No.456 of 2024 in Criminal Appeal No.3729 of 2024 in the case of Gurudeo Traders V/s Manoj Traders, of the Bombay High

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Court, Nagpur Bench.

(xiv) Order dated 8.10.2025 passed in Criminal Appeal No.8693 of 2023 in the case of Smt.Firoza V/s Smt.Mumtaj of the High Court of Madhya Pradesh at Indora.

(xv) Order dated 7.7.2025 passed in Cr.M.A.826-2025 (O & M) in the the case of Raj Kumar V/s Rajender of the Punjab & Haryana High Court at Chandigarh.

(xvi) Order dated 4.8.2025 passed in Cr.M.A.201-MA-2016 (O & M) in the case of Yashpal Singh V/s Sanjeev Anand of the Punjab & Haryana High Court at Chandigarh.

6. In the present case also, given the position of law as now settled and since the Complainant in the present case is also a *Victim*, there is no reason for this Court to take any view different from that taken in ***Shivsinh Ganpatsinh*** (supra).

7. Learned advocate for the appellant has tried to rely on the judgment in the case of ***M/s Everest Automobiles V/s M/s Rajit enterprises*** **dated 12.02.2026 passed in** ***Special Leave to Appeal (Crl.) No.12350 of 2024,*** by which the issue is referred to the larger Bench.

8. The fact remains that the Apex Court in the case of ***Union Territory of Ladakh V/s Jammu and Kashmir National Conference reported in 2024(18) SCC 643,*** wherein it is held in paragraph 35 as under:

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> *"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending.* ***We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts****, as held by a 5-Judge Bench in* ***National Insurance Company Limited v. Pranay Sethi (2017) 16 SCC 680[5].*** *The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."*

9. In view of the above, as the matter is referred to the larger Bench, this Court will have to rely on the judgment in the case of ***M/s Celestium Financial (supra).***

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10. Accordingly, this Appeal is disposed of with a direction to the Registry to transfer the appeal to the concerned Sessions Court. After it is transferred to the concerned Sessions Court, it has to be treated as an Appeal under the proviso under Section 372 of the Code (Section 413 of BNSS) and numbered accordingly and issue notice to the parties. The Registry is directed to transfer the entire record of the case, including the certified copies of the order impugned and Record and Proceedings, if lying with this Court, to the concerned lower Appellate Court, forthwith. It is open for the parties to agitate all the grievances before the concerned Court afresh. It is clarified that this Court has not gone into the merits of the matter at this stage.

11. Learned advocate for the appellant has requested this Court that in view of the fact that the present matter is pending before this Court since the year 2013, as and when the matter is transferred, the matter be expedited and the learned Sessions Court be directed to dispose of the said appeal within a period of six or eight months.

12. Considering the said request and considering the fact that the matter is pending before this Court since the year 2013, as and when the said matter is transferred before the learned Sessions Court, the learned Sessions Court is required to make endeavour to dispose of the matter as expeditiously as possible, preferably within a period of one year from the date of receipt of the matter.

(SANJEEV J.THAKER,J)

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