Case Citation: (2026) ibclaw.in 5761 HC

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ALOK AWASTHI

ON THE 22nd OF SEPTEMBER, 2026

CRIMINAL APPEAL No. 12487 of 2024

PRAHALAD SINGH

Versus

BHARAT SINGH

Appearance:

Shri Anendra Singh Parihar - Advocate for the appellant.

WITH

CRIMINAL APPEAL No. 12488 of 2024

PRAHALAD SINGH

Versus

BHARAT SINGH

Appearance:

Shri Anendra Singh Parihar - Advocate for the appellant.

Shri Nilesh Sharma - Advocate for the respondent .

ORDER

1) Heard on I.A. No. 19261/2024 (Criminal Appeal No. 12487/2024) which is the application filed under Section 5 of the Limitation Act for condonation of delay. As per Registry's report, the appeal is barred by 12 days.

2) For the reasons mentioned in the application, I.A. No. 19261/2024 is allowed and delay of 12 days in filing the appeal is hereby condoned.

3) Also heard on I.A. No. 19259/2024 (Criminal Appeal No. 12488/2024) which is the application filed under Section 5 of the Limitation

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Act for condonation of delay. As per Registry's report, the appeal is barred by 12 days.

4) Keeping in view the reasons assigned in the application, I.A. No. 19259/2024 is allowed and delay of 12 days in filing the appeal is hereby condoned.

5) This order shall govern the final disposal of these Criminal Appeal Nos. 12487/2024 and 12488/2024.

Criminal Appeal No. 12487/2024

6) The present appeal has been filed under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 378 of the Code of Criminal Procedure, 1973. The appellant is aggrieved by the judgment dated 12.08.2024 passed by the learned Judicial Magistrate First Class, District - Indore (M.P.) in SCNIA No. 2933/2023, whereby the learned Judge acquitted the respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881.

Criminal Appeal No. 12488/2024

7) The present appeal has been filed under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity "BNSS") (Section 378 of the Code of Criminal Procedure, 1973) (in short "Cr.P.C."). The appellant is aggrieved by the judgment dated 12.08.2024 passed by the learned Judicial Magistrate First Class, District - Indore (M.P.) in SCNIA No. 2932/2023, whereby the learned Judge acquitted the respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881.

8) The Supreme Court in the matter of ***M/s. Celestium Financial vs. A.***

Gnanasekaran Etc. (Reported in 2025 INSC 804) held that the complainant in a complaint filed under Section 138 of the Act of 1881 is also a victim as defined in Section 2(wa) of Cr.P.C. corresponding to Section 2(y) of the Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023. The Supreme Court has further held that the complainant in a complaint under Section 138 of the N.I. Act of 1881 can also be entitled to file an appeal under the proviso to Section 372 of the Cr.P.C. corresponding to Section 413 of the BNSS.

9) The relevant portion of the aforesaid judgment is reproduced as under:-

"7. xxx xxx xxx

7.1 xxx xxx xxx

7.2 xxx xxx xxx

7.3 xxx xxx xxx

7.4 xxx xxx xxx

7.5 xxx xxx xxx

7.6 xxx xxx xxx

7.7 In the context of offences under the Act, particularly under Section 138 of the said Act, the complainant is clearly the aggrieved party who has suffered economic loss and injury due to the default in payment by the accused owing to the dishonour of the cheque which is deemed to be an offence under that provision. In such circumstances, it would be just, reasonable and in consonance with the spirit of the CrPC to hold that the complainant under the Act also qualifies as a victim within the

meaning of Section 2(wa) of the CrPC. Consequently, such a complainant ought to be extended the benefit of the proviso to Section 372, thereby enabling him to maintain an appeal against an order of acquittal in his own right without having to seek special leave under Section 378(4) of Cr.P.C.

7.8 In the case of an offence alleged against an accused under Section 138 of the Act, we are of the view that the complainant is indeed the victim owing to the alleged dishonour of a cheque. In the circumstances, the complainant can proceed as per the proviso to Section 372 of the CrPC and he may exercise such an option and he need not then elect to proceed under Section 378 of the Cr.P.C.

7.9 In this context, we wish to state that the proviso to Section 372 does not make a distinction between an accused who is charged of an offence under the penal law or a person who is deemed to have committed an offence under Section 138 of the Act. Symmetrical to a victim of an offence, a victim of a deemed offence. under Section 138 of the Act also has the right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing an inadequate compensation. When viewed from the perspective of an offence under any penal law or a deemed offence under Section 138 of the Act, the right to file an appeal is not circumscribed by any condition as such, so long as the appeal can be premised in

accordance with proviso to Section 372 which is the right to file an appeal by a victim, provided the circumstances which enable such a victim to file an appeal are met. The complainant under Section 138 is the victim who must also have the right to prefer an appeal under the said provision. Merely because the proceeding under Section 138 of the Act commences with the filing of a complaint under Section 200 of the Cr.P.C. by a complainant, he does not cease to be a victim inasmuch as it is only a victim of a dishonour of cheque who can file a complaint. Thus, under Section 138 of the Act both the complainant as well as the victim are one and the same person.

7.10 Section 378 of the CrPC is a specific provision dealing with appeals. Sub-section (3) of Section 378 states that no appeal to the High Court under subsection (1) or sub-section (2) shall be entertained except with the leave of the Court, with which we are not concerned in the instant case. However, subsection (4) of Section 378 is pertinent. It states that if an order of acquittal is passed in any case instituted upon a complaint and the High Court, on an application made to it by the complainant in that behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court. The limitation period for seeking special leave to appeal is six months where the complainant is a public servant and sixty days in every other case, computed from the date of the order of acquittal. Sub-

Section (6) states that if, in any case, the application under sub-section (4) for 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 sub-section (2) of Section 378.

7.11 A reading of section 378 would clearly indicate that in case the complainant intends to file an appeal against the order of acquittal, his right is circumscribed by certain conditions precedent. When an appeal is to be preferred by a complainant, the first question is, whether, the complainant is also the victim or only an informant. If the complainant is not a victim and the case is instituted upon a complaint, then sub-section (4) requires that the complainant must seek special leave to appeal from an order of acquittal from the High Court. As noted under subsection (6), if the application under sub-section (4) for grant of special leave to appeal from the order of acquittal is refused, no appeal from that order of acquittal would lie, inter alia, under subsection (1) of Section 378. However, if the complainant is also a victim, he could proceed under the proviso to Section 372, in which case the rigour of sub-section (4) of Section 378, which mandates obtaining special leave to appeal, would not arise at all, as he can prefer an appeal as a victim and as a matter of right. Thus, if a victim who is a complainant, proceeds under Section 378, the necessity of seeking special leave to appeal would arise but if a victim whether he is a complainant or not, files an appeal in terms of proviso to

Section 372, then the mandate of seeking special leave to appeal would not arise.

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.

xxx xxx xxx

9. In the circumstances, we find that Section 138 of the Act being in the nature of a penal provision by a deeming fiction against an accused who is said to have committed an offence under the said provision, if acquitted, can be proceeded against by a victim of the said offence, namely, the person who is entitled to the proceeds of a cheque which has been dishonoured, in terms of the proviso to Section 372 of the CrPC, as a victim. As already noted, a victim of an offence could also be a complainant. In such a case, an appeal can be preferred either under the proviso to Section 372 or under Section 378 by such a victim. In the absence of the proviso to Section 372, a victim of an offence could not have filed an appeal as such, unless he was also a complainant, in which event he could maintain an appeal if special leave to appeal had been granted by the High Court and if no such special leave was granted then his appeal would not be maintainable at all. On the other hand, if the victim of an offence, who may or may not be the complainant, proceeds under the proviso to Section 372 of the CrPC, then in our view, such a victim need not seek special leave to appeal from the High Court. In other words, the victim of an offence would have the right to prefer an appeal, inter alia, against an order of acquittal nterms of the proviso to Section 372 without seeking any special leave to appeal from the High Court only on

the grounds mentioned therein. A person who is a complainant under Section 200 of the CrPC who complains about the offence committed by a person who is charged as an accused under Section 138 of the Act, thus has the right to prefer an appeal as a victim under the proviso to Section 372 of the CrPC.

10. As already noted, the proviso to Section 372 of the CrPC 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 CrPC, 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 subsection (4) of Section 378 of the CrPC."

10) In the light of the judgment passed by the Apex Court in the case of ***M/s. Celestium Financial (supra)***, the complainant under Section 138 of the N.I. Act, 1881 is not required to seek leave to appeal from the High Court under Section 419(4) of the B.N.S.S, 2023; he may prefer an appeal under the proviso to Section 372 of the Cr.P.C.

11) The appellants are at liberty to prefer the appeals against the impugned judgment before the concerned Sessions Judge within a period of 60 days from the date of receipt of a copy of this order.

12) It is clarified that if such an appeal is filed before the concerned

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Sessions Judge within the time prescribed by this Court, it would not insist upon the limitation while deciding the same and will proceed to decide the same in accordance with law.

13) In view of the above, Registry is directed to return the certified copy of the impugned judgment after obtaining an attested photocopy of the same.

14) The record of the case be sent back to the concerned trial Court forthwith.

15) In view of the above, the present appeal is disposed of.

(ALOK AWASTHI)
JUDGE

Vindesh

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