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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.L.P. 298/2025

JAI KHERA .....Petitioner

Through: Ms. Anshul Garg, Adv.

versus

SURESH KUMAR JAIN .....Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% 06.11.2025

1. The present petition has been filed under Section 378(4) Cr.P.C. by the petitioner/complainant seeking leave to appeal against the judgement dated 01.03.2025 passed by learned JMFC, NI Digital Court No. 01, West District, Tis Hazari Courts Complex, Delhi, in the case bearing CC No. 3274/2021 titled as 'Jai Khera Vs. Suresh Kumar Jain', vide which the respondent herein was acquitted of the offence under Section 138 NI Act.

2. The attention of this Court is drawn to the recent decision of the Supreme Court in Celestium Financial vs A. Gnanasekaran etc., reported as **2025 SCC OnLine SC 1320**, wherein it has been held that the complainant under Section 138 NI Act, who suffers financial loss and injury on account of the dishonour of cheque, would qualify as a victim within the meaning of Section 2(wa) Cr.P.C.

It was further held that such a complainant could maintain an appeal under proviso to Section 372 Cr.P.C. in his own right, without complying with the rigours of Section 378(4) Cr.P.C. The relevant portion is extracted

hereunder:-

> "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 the CrPC**.
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> 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 offenceunder 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 CrPC 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."**

3. Normally, a complainant who seeks to challenge a judgement of acquittal has to meet the rigours of Section 378(4) Cr.P.C. The aggrieved

complainant has to apply before the High Court for a special leave to appeal. If the High Court grants it, the complainant can present such appeal before the High Court.

4. However, if the complainant under the NI Act is also held to be a 'victim', then all the rights available to the victim by the Code would also be extended to such complainant, including a separate right to appeal provided under the proviso to Section 372 Cr.P.C. The proviso reads as follows:-

> *"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."*

A careful reading of the above proviso would show that the victim can appeal from three types of orders- a) an order of acquittal, b) a conviction for a lesser offence or c) imposing inadequate compensation. It also states that such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court. Section 372 is a self-contained and independent provision which is not to be read conjointly with any other provision, including Section 378 Cr.P.C.

5. Effect of the proviso of Section 372 Cr.P.C. is twofold. Firstly, it provides the victim an individual right to appeal against an order of acquittal which is distinct from the right provided to the complainant under Section 378(4) Cr.P.C. as in this case, no special leave to appeal needs to be obtained from the High Court. Secondly, it provides an additional forum of challenge as in case of an appeal preferred by the victim under Section 372 Cr.P.C., the same lies before the Court to which an appeal ordinarily lies against the order of conviction of such Court. Section 143 of the NI Act

states that all offences under Chapter XVII of the Act, including an offence under Section 138 shall be tried by a Judicial Magistrate of First Class or by a Metropolitan Magistrate. An appeal against conviction, and thus an appeal preferred by the victim, would lie before the Sessions Court.

6. In light of the Supreme Court's recent clarification of the legal position, it is now evident that the petitioner, being the complainant under Section 138 of NI Act, is also entitled to file an appeal against the impugned judgment of acquittal before the Sessions Court, since he is considered to be a victim. If this Court were to proceed to hear and decide the appeal at this stage, it could deprive the parties of an available forum i.e., this Court, for further challenge.

7. Co-ordinate Benches of this Court in Yogesh Kataria v. State (Govt of NCT of Delhi) & Anr.[1], Abdul Malik v State (Govt of NCT of Delhi) & Anr[2], Promila Lekhi v. Safe Hands Chits Pvt. Ltd. & Anr[3], Shri Ujjawal Arora v. State and Ors.[4], taking note of the decision in Celestium Financial (supra), have allowed the withdrawal of leave petitions filed before this Court with liberty to the petitioners/complainants to approach the concerned Sessions Court.

8. Similarly, the High Court of Bombay in Gunjan w/o Alok Khandelwal v. Parvaiz Hussain[5] and Dnyaneshwar Dinkar Badve v. The State of Maharashtra & Anr[6]; the High Court of Karnataka in Sidagondappa

[1] decided on 16.07.2025 in CRL.LP. 367/2025
[2] decided on 22.07.2025 in CRL.LP. 378/2025
[3] decided on 14.07.2025 in CRL.LP. 360/2025
[4] decided on 15.07.2025 in CRL.LP./2025
[5] decided on 21.07.2025 in Criminal Application (APPA) No. 150/2023 in Criminal Appeal ST. No. 10465/2022
[6] decided on 24.07.2025 in Criminal Writ Petition No. 793/2025

vs Shafi Ahammad[7] and Sri T H Lenkappa vs Sri Sanjay[8]; the High Court of Chhattisgarh in Nemnath Yogi vs. Yashwant Chandravanshi[9], Neelam Sahu v. Narad Nagwanshi[10], and Smt. Kirti Kurian v. Ajay Singh; the High Court of Madhya Pradesh in Urmila Madrah v. Samarpan Jain[11]; the High Court of Gujarat in Baroda Cricket Association v. State of Gujarat & Anr[12]; the Gauhati High Court in Bhargab Kaushik v. Dilip Kumar Bhagabati[13]; the Allahabad High Court in Indian Farm Forestry Development Cooperative Ltd v. Mangala Trading Company[14]; and the Himachal Pradesh High Court in Roshan Chauhan vs . Mohan Lal[15] have also relied on Celestium Financial (supra) to relegate the parties to contest their case before the Sessions Court.

9. In view of the above, learned counsel for the appellant, on instructions, seeks leave to withdraw this petition, with liberty to approach the concerned Sessions Court.

10. Considering the above noted legal position, the present petition is dismissed as withdrawn with the direction that the accompanying appeal be transferred to the concerned Appellate Court of Sessions and be considered as an appeal under the proviso to Section 413 of BNSS (formerly Section 372 of Cr.P.C.) and numbered accordingly.

11. The Registry is directed to transfer the entire record of the case, including the requisitioned copy of the TCR, to the concerned Principal

[7] decided on 31.07.2025 in CRL.A No. 200021 of 2018
[8] decided on 23.07.2025 in CRL.A No. 146 OF 2015
[9] decided on 07.08.2025 in CRMP No. 579 of 2021
[10] decided on 16.07.2025 in ACQA No. 340 of 2018
[11] decided on 21.07.2025 in CRL.A. No. 11872 of 2022
[12] decided on 17.06.2025 in R/CR.MA/3473/2025
[13] decided on 04.08.2025 in Crl.L.P./34/2025
[14] decided on 28.07.2025 in APPLICATION U/S 378 No. - 56 of 2025

District & Sessions Judge, who may assign it to the concerned Appellate Court/learned ASJ having jurisdiction and for which purpose, the matter would be listed before the concerned Principal District & Sessions Judge at the first instance on 29.11.2025, for directions.

12. In case there are applications pending for condonation of delay, the same shall also be transferred to be considered by the learned ASJ in accordance with law.

13. Dates fixed before this Court, if any, stand cancelled.

14. It is made clear that this Court has not made any observations as to the merits of the case and all rights and contentions of the parties are left open to be agitated before the concerned Court.

15. A copy of the order be sent to the concerned Principal District and Sessions Judge for necessary information and compliance.

MANOJ KUMAR OHRI, J

NOVEMBER 6, 2025
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[15] decided on 21.07.2025 in Cr. MP(M) No. 1629 of 2025