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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-A-826-2025 (O&M)

Date of decision:07.07.2025

Raj Kumar

....Appellant/applicant

V/s

Rajender

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. S.K. Yadav, Advocate for the appellant/applicant.

SUMEET GOEL, J. (Oral)

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

"It is therefore, respectfully prayed that the appeal of the appellant may kindly be allowed by setting aside the impugned judgment dated 05.03.2025 passed by the ld. JMIC, Mohindergarh, District Mahendergarh in Case No.NACT/90/2020, vide which the respondent has been acquitted of the charges levelled against him in a complaint filed by the appellant u/s138 of the Negotiable Instruments Act, in the interest of justice and fair play."

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 hear the application (for grant of special leave to appeal)/appeal, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in a case titled as ***M/s Celestium Financial vs. A. Gnanasekaran Etc. 2025 INSC 804 : 2025(3) RCR (Criminal) 208***, relevant whereof reads, thus:

"2.1 The central issue arising for adjudication in the instant appeals is, whether an appeal would be maintainable under the proviso to Section



372 of the Code of Criminal Procedure, 1973 (for short, “CrPC”) against an order of acquittal passed in a case instituted upon a private complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the Act”), by treating the complainant in such a proceeding as a victim within the meaning ascribed to the term under Section 2(wa) of the CrPC.

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7.6 As already noted, the Act does not have a provision for filing of an appeal. The Act is a special enactment. In the circumstances, the CrPC, which is general in nature would have to be resorted to. The proviso to Section 372 of the CrPC considers the right of filing of an appeal from the point of view of a victim, which expression not only includes an injured victim but even the legal representatives of a deceased victim. The inclusion of the proviso to Section 372 of the CrPC has to be read in the context of the definition of victim in clause (wa) of Section 2 of the CrPC. The expression ‘victim’ as defined under the said provision, includes not only the person who has suffered any loss or injury caused by the reason of the act or omission for which the accused person has been charged but the said expression also includes his or her guardian or legal heir.

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.

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 CrPC.

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



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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 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.

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 sub-section (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, sub-section (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 sub-section (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 sub-section (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.

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8. The right to prefer an appeal is no doubt a statutory right and the right to prefer an appeal by an accused against a conviction is not merely a statutory right but can also be construed to be a fundamental right under Articles 14 and 21 of the Constitution. If that is so, then the right of a victim of an offence to prefer an appeal cannot be equated with the right of the State or the complainant to prefer an appeal. Hence, the statutory rigours for filing of an appeal by the State or by a complainant against an order of acquittal cannot be read into the proviso to Section 372 of the CrPC so as to restrict the right of a victim to file an appeal on the grounds mentioned therein, when none exists.

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 in terms 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 sub-section (4) of Section 378 of the CrPC.

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xxx	xxx	xxx	xxx”

4. It is irrefutably established by the authoritative pronouncement of the Hon'ble Supreme Court in **Celestium Financial** (supra) that an appeal against an order of acquittal in a proceeding under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act'), preferred by the complainant, falls squarely within the ambit of the proviso to Section 372 of the Cr.P.C/ Section 413 BNSS. This legal position is predicated upon the undeniable fact that a ‘complainant’ in a Section 138 NI Act case unquestionably satisfies the statutory definition of a ‘victim’ as contemplated under the Cr.P.C., thereby vesting in such complainant the unequivocal right to prefer an appeal under the aforesaid proviso to Section 372 Cr.P.C.

Consequently, the instant appeal, having been erroneously preferred under Section 378 of the Cr.P.C., accompanied by an application for leave to appeal under Section 378(4) thereof, is, in light of the *Celestium Financial* (supra) dictum, rendered fundamentally unsustainable and not maintainable in its current procedural posture.

5. An attempt has been made at the bar to contend that the applicability of the precedent laid down in *Celestium Financial* (supra) stands excluded, owing to the fact that the factual matrix pertains to a period anterior to the pronouncement in *Celestium Financial* (supra). This Court does not find any weight in the said contention as, the jurisprudential landscape is unequivocally settled on the distinct operational modalities of legislative enactments and judicial pronouncements. It is a well-established canon of statutory construction that the force and effect of a legislative enactment are, as a general rule, deemed prospective in their application, unless a clear and unequivocal legislative intent for retroactivity is expressly articulated within its provisions. This principle safeguards against the unsettling of vested rights and the imposition of unforeseen liabilities. Conversely, a definitive pronouncement emanating from the Apex court, by its very nature, operates retrospectively, unless specifically directed otherwise. This fundamental distinction inheres in the very essence of judicial review: a judgment serves not as an act of legislative creation, but rather as an authoritative exposition and clarification of the existing law. It merely illuminates the true import and construction of a statute or provision, declaring its inherent meaning as it ought to have been understood and applied *ab initio*, from the precise moment of its legislative genesis.



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Consequently, its retrospective application becomes a jurisprudential imperative.

5.1. The logical corollary of this doctrine is that a judicial decision, particularly one articulating a seminal principle of law, extends its pervasive influence to all matters, irrespective of their stage of pendency across various adjudicatory *fora*. This is predicated upon the profound understanding that what has been authoritatively enunciated is not a novel legal precept, but rather the intrinsic meaning of the law which has subsisted ex-ante, from the very inception of the concerned statute or provision. Indeed, that which has been authoritatively declared to constitute the *lex terrae* must, by jurisprudential necessity, be deemed to have always been the *lex terrae*. This profound conclusion is further buttressed by the venerable rationale that the *raison d'être* of the judiciary is not to "pronounce a new law but to maintain and expound the old one." The judicial function, therefore, is inherently one of discovery, not of creation; the judge acts not as a legislator *proprio motu*, but as an expositor, meticulously unearthing the latent meaning of the law. The court's declaration is thus a recognition of an enduring truth, not the genesis of a novel legal reality.

At this juncture it would be germane to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Directorate of Revenue Intelligence Vs. Raj Kumar Arora: 2025 INSC 498***; wherein while reiterating the *ratio decidendi* of an earlier pronouncement of the Apex Court in a case titled as ***Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Limited: 2008 (14) SCC 171***, it was observed thus:



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“94. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. According to this theory, it is not the function of the court to pronounce a “new rule” but to maintain and expound the “old one”. Therefore, if the subsequent decision alters or overrules the earlier one, it cannot be said to have made a new law. The correct principle of law is just discovered and applied retrospectively. In other words, if in a given situation an earlier decision of the court operated for quite some time and it is overruled by a subsequent decision, the decision rendered subsequently would have retrospective effect and would serve to clarify the legal position which was not clearly understood earlier. Any transaction would then be covered by the law declared by the overruling decision. The overruling is generally retrospective with the only caveat being that matters that are *res judicatae* or accounts that have been settled in the meantime would not be disturbed. The relevant observations made by this Court are reproduced hereinbelow:

“35. In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a “new rule” but to maintain and expound the “old one”. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

36. Salmond in his well-known work states:

“[T]he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are *res judicatae* or accounts that have been settled in the meantime.”

6. It is imperative to acknowledge that the parameters governing the consideration of an appeal under the proviso to Section 372 Cr.P.C./

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Section 413 BNSS and those applicable to an appeal under Section 378(4) Cr.P.C./419(4) BNSS are distinctly dissimilar, with the former possessing a markedly wider amplitude in scope as compared to the latter. Notwithstanding the procedural non-maintainability of the instant appeal, this Court is of the considered view that a summary dismissal solely on a procedural technicality would constitute an unwarranted wastage of precious judicial time and resources already expended in the initiation of these proceedings. Embracing the cardinal jurisprudential principle that the cause of substantive justice must unequivocally prevail over procedural technicalities, this Court is firmly convinced that the ends of justice would be more adequately served by adopting a pragmatic approach. Rather than dismissing the appeal in limine on a mere procedural infirmity, this Court deems it appropriate to relegate the matter to the concerned Sessions Court, with a clear direction that the present filing, along with all appended applications, be treated and adjudicated as an appeal validly preferred under the proviso to Section 372 Cr.P.C. This approach is consistent with the fundamental objective of any judicial system, which is to deliver real and substantive justice, and not to become entangled in the labyrinthine complexities of procedural intricacies that may, on occasion, obscure the chariot of justice rather than facilitate its motion.

7. *Ergo*; in view of the prevenient ratiocination; the present appeal, along with accompanying application(s), is disposed of as hereunder:

(i) The present appeal, along with accompanying application(s), is remitted to the learned Sessions Judge, Mahindergarh at Narnaul with a direction to treat the same as having been filed under Section 372 of Cr.P.C.,

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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

July 07, 2025

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No