IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 2800 of 2025

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HASMUKHBHAI AMBALAL PATEL & ORS.

Versus

STATE OF GUJARAT & ORS.

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Appearance:
MR VIRAL VYAS on behalf of MR ASHISH M DAGLI(2203) for the Appellant(s) No. 1
NIYANT R BHIMANI(8000) for the Opponent(s)/Respondent(s) No. 2,5
MR LB DABHI, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 12/10/2026

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. The present appeal has been preferred by the appellant – original complainant (now through legal heirs) under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 378 of the Code of Criminal Procedure, 1973) against the judgment and order of acquittal dated 28.11.2024 passed by the learned 8th Additional Chief Judicial Magistrate, Vadodara, in Criminal Case No. 19857 of 2017, arising out of a private complaint for the offences punishable under Sections 417, 419, 420, 465, 466, 467, 468, 471 and 120B of the Indian Penal Code.

2. We have heard the learned Advocates for the respective parties and learned APP for the State.

3. The provisions of Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 419 of the BNSS fall for consideration. Section 413 of the BNSS, which is couched in the negative and prohibits any appeal to lie from any judgment or order of a Criminal Court except as provided by the Sanhita, reads as under:

> *"413. No appeal to lie unless otherwise provided.—*
>
> *No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Sanhita or by any other law for the time being in force:*
>
> *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."*

4. The sum and substance of the aforesaid provision is that the victim has a right to prefer an appeal against an order of acquittal, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

5. Section 419 of the BNSS provides for an appeal in case of acquittal. The said provision would not be applicable when the proviso to Section 413 of the BNSS is attracted. Section 419 reads as under:

> *"419. Appeal in case of acquittal.*
>
> *(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),-(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;(b) the State Government may, in any*

case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in a case in which the offence has been investigated by any agency empowered to make investigation into an offence under any Central Act other than this Sanhita, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal-(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the 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).”

6. In so far as an appeal from the conviction is concerned, the substance which is required to be looked upon is Section 415 of the BNSS, wherein sub-section (3) provides as under:

"415. Appeals from convictions.—

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by Magistrate of the first class, or of the second class; or

(b) sentenced under section 364; or

(c) in respect of whom an order has been made or a sentence has been passed under section 401 by any Magistrate,

may appeal to the Court of Session."

7. The conjoint reading of the aforesaid provisions makes it abundantly clear that when there is a conviction in a trial held by the Magistrate of the First Class, the appeal would lie to the Sessions Court. As per Section 413 of the BNSS, an appeal filed by the complainant claiming to be a victim against the order of acquittal also lies before the Court to which an appeal ordinarily lies against the order of conviction of such Court. Thus, the order of acquittal passed by the learned Magistrate has to be appealed before the Court of Session.

8. In view of the aforesaid, the present appeal, preferred under Section 419 of the BNSS against the judgment and order of acquittal dated 28.11.2024 passed by the learned 8th Additional Chief Judicial Magistrate, Vadodara, in Criminal Case No. 19857 of 2017, would not lie before this Court. Instead, as per the provision of Section 413 of the BNSS, the appeal would lie to the Court of Session.

9. The learned Advocate for the appellant has fairly conceded the aforesaid proposition and has sought to withdraw the present appeal so as

to enable the appellant to approach the Sessions Court concerned.

10. Hence, in view of the aforesaid, since the appellant is desirous of filing an appeal, the appellant is at liberty to approach the jurisdictional Sessions Court.

11. We make it clear that if an appeal is filed within a period of one month from the date of this order and, if the learned Sessions Court finds that there is a delay in filing such appeal, the same is to be dealt with sympathetically, while considering the proceedings initiated before this Court bona fide.

12. We make it clear that we have not made any observation regarding the merits of the matter or the order of acquittal passed by the learned Additional Chief Judicial Magistrate. The appeal shall be dealt with in accordance with law.

13. The present Criminal Appeal is disposed of as withdrawn, with the aforesaid observations and with liberty as indicated hereinabove.

14. Pending application(s), if any, shall stand disposed of.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MITESH VIJAYBHAI PANCHAL(HCD0065), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 13/10/2026 15:48:22