IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 3398 of 2022

In R/CRIMINAL APPEAL/362/2022

With
R/CRIMINAL APPEAL NO. 362 of 2022

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MANSUKHLAL JADURAM JOGIYA
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR HARDIK H DAVE(6295) for the Applicant(s) No. 1
HCLS COMMITTEE(4998) for the Respondent(s) No. 2,4
MS URMILA N DESAI(5609) for the Respondent(s) No. 2,4
MR KRUTIK PARIKH ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s) No. 1
RULE UNSERVED for the Respondent(s) No. 3

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CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

Date : 12/10/2026

ORAL ORDER

1. This application is filed under Section 378(4) of the Code of Criminal Procedure, 1973 (“Code or CrPC”) / Section 419(4) of the Bharatiya Nagrik Suraksha Sanhita, 2023 (‘BNSS’ for short) by the complainant seeking leave to appeal to challenge the judgment and order impugned dated 06.01.2022 passed by the learned Judicial Magistrate First Class, Mandvi-Kutch (hereinafter referred to as “trial Court”), whereby the trial Court had acquitted the respondents - accused of the charge under Sections 499 and 500 of the Indian Penal Code.

2. This matter is required to be transferred in view of the decision of the High Court of Chhattisgarh rendered in the case of State of

Chhattisgarh, Through Its Station House Officer Vs. Mohanlal Bagde, reported in [2019] SCC OnLine Chh 102 wherein, the Court has referred the earlier decision of the Hon'ble Supreme Court rendered in case of of Subhash Chand vs State (Delhi Administration), reported in (2013) 2 SCC 17, wherein, the Hon'ble Supreme Court has observed and held in para-18 as under :

> *"18. If we analyse Section 378(1)(a) & (b), it is clear that the State Government cannot direct the Public Prosecutor to file an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non- bailable offence because of the categorical bar created by Section 378(1)(b). Such appeals, that is appeals against orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence can only be filed in the Sessions Court at the instance of the Public Prosecutor as directed by the District Magistrate. Section 378(1)(b) uses the words "in any case" but leaves out orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence from the control of the State Government. Therefore, in all other cases where orders of acquittal are passed appeals can be filed by the Public Prosecutor as directed by the State Government to the High Court."*

3. It would also be appropriate to refer to the decision of the High Court of Punjab & Haryana rendered in case of Mohanlal Vs. Gaurav Kumar and Anr., reported in 2025 PHHC 162308, wherein the Court has observed and held in para-3 as under :

> *"3. The Hon'ble Supreme Court in M/s. Celestium Financial vs. A.Gnanasekaran Etc., 2025(3) RCR (Criminal) 208, after considerable discussion and comparative interpretation of Sections 372 and 378(4) of Cr.P.C., concluded that the victim has a right to file an appeal under Section 372 of Cr.P.C. before the Court of Sessions."*

4. In the decision in case of M/s. Everest Automobiles Vs. M/s. Rajit Enterprises dated 12.02.2026 passed in Special Leave to Appeal No.12350 of 2024 the Hon'ble Apex Court observed as under:-

> *"Reliance is placed by the learned counsel for the petitioner on the recent judgment of this Court in "Celestium Financial vs. A. Gnanasekaran1". By way of the said judgment, a co-ordinate Bench of this Court held that a complainant in a case arising under Section 138 of the Negotiable Instruments Act, 1881, is a 'victim' who would be entitled to file an appeal under the proviso to Section 372 of the Code of Criminal Procedure, 1973. It was further held that such appeal could be filed against an order of acquittal under the proviso to Section 372 of the Code without seeking special leave to appeal under Section 378(4) of the Code.*
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> *However, this judgment did not take into account the earlier decisions of this Court in Satya Pal Singh vs. State of M.P. and Subhash Chand vs. State (Delhi Administration), which have a bearing on both the aspects that were considered in the aforestated judgment, as they held to the contrary."*

5. In view of the aforesaid facts and the settled principles, learned counsel for the applicant seeks permission to withdraw this application. Permission as prayed for is granted. The present application/s as well as the connected appeal are disposed of as withdrawn, with a liberty to file appropriate appeal before the concerned Court, within a period of four months from the date of this order. Record and proceedings, if lying with this Court, be remitted back to the concerned Court forthwith.

6. It is clarified that the period that may be consumed in filing the

present appeal may not be counted as delay in filing such appeal before the concerned Court. Moreover, the certified copy of the impugned judgment, be handed over to the applicant/appellant, as per Rules, if asked for. It is open for the parties to agitate all the grievance before the concerned Court afresh.

7. Considering that the matter has been pending for considerable time, the learned lower Appellate Court is required to make endeavour to dispose of the matter, if so filed, as expeditiously as possible.

8. It is clarified that this Court has not gone into the merits of the matter at this stage.

(HEMANT M. PRACHCHHAK,J)

ANUSRI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ANUSRI VASU(HC02352), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 14/10/2026 11:08:29