IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 2591 of 2009

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CHIEF OFFICER

Versus

STATE OF GUJARAT & ORS.

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Appearance:
MR KAMLESH S KOTAI(6150) for the Appellant(s) No. 1
MR VILAV K BHATIA(5338) for the Opponent(s)/Respondent(s) No. 2,3
MS JIRGA JHAVERI, ADDL. PUBLIC PROSECUTOR for the Opponent(s)/Respondent(s) No. 1

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

Date : 23/09/2026

ORDER

1. The present appeal is filed by the appellant – original complainant under Section 378(4) of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the Code' for short) against the judgment and order dated 23.04.2008 passed by the learned Chief Judicial Magistrate, Mehsana (hereinafter be referred to as "the Trial Court) in Criminal Case No.3814 of 2004, whereby the learned Trial Court has acquitted the respondents - accused for the offences under Sections 406, 420, 408 and 114 of the Indian Penal Code (hereinafter referred to as "the IPC" for short).

2. The appellant - original complainant had filed the complainant against the respondents accused under Sections 406, 420, 408 and 114 of the IPC. During the course of investigation and after considering the documents, the police found sufficient material and filed charge-sheet in the Trial Court. The Trial Court recorded the plea

and as the accused pleaded not guilty to the offence, therefore, as the offence was triable by the Trial Court, the trial was proceeded and the impugned judgment and order was delivered by the trial Court on 23.04.2008 acquitting the respondents accused from the charges levelled against them.

3. Heard learned counsel appearing for the respective parties.

4. 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."*

5. 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."*

6. In the case of **Celestium Financial Vs. A.Gnanasekaran Etc**. reported in **2025 (3) GLH 747**, the Hon'ble Supreme Court has held and observed in para – 7.12 as under:-

> *"7.12 The reasons for the above distinction are not far to see and can be elaborated as follows:*
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> *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.*
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> *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.*
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> *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."

7. 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, 19732. 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.

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."

8. Learned Additional Public Prosecutor has pointed out that the matter in the case of **Celestium Financial Vs. A. Gyanasekaran** (supra) is now pending at large before the Hon'ble Supreme Court in case of M/s. Everest Automobiles Vs. M/s. Ranjit Enterprises in Special

Leave to Appeal (Crl.) No. 12350/2024 wherein the Hon'ble Supreme Court has observed that it is desirable that a larger Bench gives an authoritative pronouncement on this issue as it has far-reaching consequences.

9. In view of the said submissions and the decisions of different Courts as well as the Hon'ble Supreme Court as aforesaid, this appeal is disposed of with a direction to the Registry to transfer the appeal to the concerned Sessions Court. After it is transferred to the concerned Sessions Court, it has to be treated as an Appeal under the proviso under Section 372 of the Code / Section 413 of BNSS and numbered accordingly and issue notice to the parties. The Registry is directed to transfer the entire record of the case, including the certified copies of the order impugned and record & proceedings, if lying with this Court, to the concerned lower Appellate Court, forthwith.

10. 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 as expeditiously as possible. It is clarified that this Court has not gone into the merits of the matter at this stage.

(HEMANT M. PRACHCHHAK,J)

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Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: DOLLYBEN CHETANBHAI VADUKAR(HC01392), PRIVATE SECRETARY, at High Court of Gujarat on 23/09/2026 17:18:18