IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 20360 of 2024

In F/CRIMINAL APPEAL/38175/2024

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LALCHAND RAMLOTER MOURYA
Versus
VIRENDRA LOCHANBHAI YADAV & ANR.

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Appearance:
MR DHARMESH R PATEL(5592) for the Applicant(s) No. 1
MR DIPESH D SONI(9996) for the Respondent(s) No. 1
MS JIRGA JHAVERI ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s) No. 2

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

Date : 16/10/2026

ORAL ORDER

1. This application is filed under Section 419 of the Bharatiya Nagrik Suraksha Sanhita, 2023 ('BNSS' for short) by the complainant seeking leave to appeal to challenge the impugned judgment and order dated 05.09.2024 passed by the learned Judicial Magistrate First Class (Third Court), Surat (hereinafter referred to as "trial Court") whereby the learned trial Court had acquitted the Respondent - Accused of the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act' for short).

2. Heard learned counsel appearing for the respective parties.

3. This matter is required to be transferred in view of the recent decision of the Hon'ble Supreme Court in the case of **Celestium**

Financial Vs. A.Gnanasekaran Etc. reported in **2025 (3) GLH 747** wherein the Hon'ble Supreme Court has held that the original complainant to be considered as a victim of the offence under Section 138 of the Act and, therefore, the complainant has right to file an appeal under Section 372 of the Code before the lower Appellate Court i.e. immediate Sessions Court before the District and the judgment dated 22.12.2025 rendered in Criminal Misc. Application No.12753 of 2019 with Criminal Misc. Application No. 12908 of 2019.

4. Before entering into the merits of this case, this Court deems it proper to refer to the decision rendered by this Court in the case of Shivsinh Ganpatsinh Solanki Vs. State of Gujarat being Criminal Miscellaneous Application Nos. 12753 of 2019 with 12908 of 2019 and the decision of the Hon'ble Supreme Court in the case of **Celestium Financial Vs. A. Gyanasekaran** (supra) wherein the Hon'ble Supreme Court has observed and held that the complainant, in a complaint under Section 138 of the N.I. Act, considered to be a victim, has a specific right to file an appeal against the order of acquittal under Section 372 of the Code / Section 413 of the BNSS to the Court which is immediately superior in hierarchy i.e. the Sessions Court.

5. In view of the above, let the matter be remanded back to the concerned Sessions Court.

6. 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 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. Therefore, the matter is to be decided subject to the final outcome of the reference Court.

7. In the case of **Celestium Financial Vs. A. Gyanasekaran** (supra), the Hon'ble Supreme Court has held and observed in paras – 7.8, 7.9 and 7.12 as under:-

> *"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.*
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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 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.*

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

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.

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.

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."*

8. 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.*
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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."*

9. 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 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.

10. 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.

11. 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.

12. 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 16/10/2026 15:48:14