[2025] 4 S.C.R. 2612 : 2025 INSC 804

M/s Celestium Financial
v.
A. Gnanasekaran Etc.

(Criminal Appeal No(s). 1868-70 of 2025)

08 April 2025

[B.V. Nagarathna* and Satish Chandra Sharma, JJ.]

Issue for Consideration

Issue arose as regards the maintainability of an appeal under proviso to s.372 CrPC against order of acquittal in a case instituted upon a private complaint u/s.138 Negotiable Instruments Act, by treating the complainant in such proceeding as a victim within the meaning ascribed to the term u/s.2(wa) CrPC.

Headnotes†

Code of Criminal Procedure, 1973 – ss.2(wa), 372, 378, 200 – Negotiable Instruments Act, 1881 – s.138 – Respondents issued cheques to appellant against the loan facility availed from the appellant – Cheques dishonoured with the endorsement "funds insufficient" on presentation – Statutory demand notices by appellant – Non-compliance by respondents – Criminal complaints by appellant against the respondents, however, the magistrate acquitted them – Appellant filed petitions before the High Court seeking special leave to appeal u/s.378(4) which were dismissed – Correctness:

Held: Victim of an offence has the right to prefer an appeal *inter alia*, against an order of acquittal in terms of the proviso to s.372, irrespective of whether he is a complainant or not – Such victim need not advert to sub-section (4) of s.378, which mandates obtaining special leave to appeal from the High Court – Thus, the person who is a complainant u/s.200 who complains about the offence committed by a person who is charged as an accused u/s.138 of the 1881 Act, thus has the right to prefer an appeal as a victim under the proviso to s.372 – Right to prefer an appeal is a statutory right – 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 – Thus, the statutory rigours for filing of an appeal by

* Author

the State or by complainant against order of acquittal cannot be read into the proviso to s.372 so as to restrict the right of a victim to file an appeal on the grounds mentioned therein, when none exists – Thus, if a victim who is a complainant, proceeds u/s.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 s.372, then the mandate of seeking special leave to appeal would not arise – In the context of offences under NI Act, particularly u/s.138, the complainant is clearly the aggrieved party who has suffered economic loss and injury due to the default in payment by accused owing to the dishonour of cheque which is deemed to be an offence under that provision – It would be just, reasonable and in consonance with the spirit of the CrPC to hold that the complainant under NI Act also qualifies as a victim within the meaning of s.2(wa) – Consequently, such complainant ought to be extended the benefit of the proviso to s.372, thereby enabling him to maintain an appeal against an order of acquittal in his own right without having to seek special leave u/s.378(4) – Symmetrical to a victim of an offence, a victim of a deemed offence u/s.138 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 – Thus, u/s.138 both the complainant as well as the victim are one and the same person – Impugned order set aside – Negotiable Instruments Act, 1881 – ss.139-143. [Paras 7.7, 7.8-11]

Code of Criminal Procedure, 1973 – ss.372, 378 – Appeal to be preferred by the complainant – Complainant also the victim, or complainant only an informant – Difference:

Held: s.378 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 – 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 – However, if the complainant is also a victim, he could proceed under the proviso to s.372, in which case the rigour of sub-section (4) of s.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 u/s.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 s.372, then the mandate of seeking special leave to appeal would not arise. [Para 7.11]

Words and phrases – Victim – Meaning and scope – Discussed. [Para 6.2-6.7.2]

Case Law Cited

Mallikarjun Kodagali (dead) represented through Legal representative v. State of Karnataka **[2018] 13 SCR 1 : (2019) 2 SCC 752;** *Esher Singh v. State A.P.* **[2004] 2 SCR 1180 : (2004) 11 SCC 585;** *Birichh Bhuian v. State of Bihar* **[1963] Supp. 2 SCR 328 : AIR 1963 SC 1120;** *Directorate of Enforcement v. Deepak Mahajan* **[1994] 1 SCR 445 : (1994) 3 SCC 440 – referred to.**

Books and Periodicals Cited

Black's Law Dictionary; Advanced Law Lexicon by P Ramanatha Aiyar, 6th Edition, Volume I **– referred to.**

List of Acts

Constitution of India; Code of Criminal Procedure, 1973; Negotiable Instruments Act, 1881; Code of Criminal Procedure (Amendment) Act, 2008.

List of Keywords

Dishonour of cheque; Funds insufficient; Victim; Complainant; Statutory demand notice; Justice Malimath Committee; Report on 'Reforms of Criminal Justice System'; Victims right to appeal; 154th Report of the Law Commission; Committee on the Draft National Policy on Criminal Justice; Professor Madhava Menon Committee Report; Victim-oriented criminal justice; 221st Report of Law Commission of India; Couched in negative language; Loss; Injury; Criminologist B. Mendelsohn; Four fundamental criteria of a victim; Social character of suffering; Social implications of injurious act; Inferiority complex; Victimology; Charge; Accused of any offence; Deeming fiction; Deemed offence; Special leave to appeal; *Mallikarjun Kodagali's case;* United Nations General Assembly's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 1868-1870 of 2025

From the Judgment and Order dated 12.06.2024 of the High Court of Judicature at Madras in CRLOP Nos. 929, 931 and 1034 of 2024

Appearances for Parties

Adv. for the Appellant:
Danish Zubair Khan.

Advs. for the Respondents:
G. Sivabalamurugan, Selvaraj Mahendran, Ms. Meenakshi Rawat, C. Adhikesavan, Ms. Ratna Priya Pradhan, Harikrishnan P.V.

Judgment / Order of the Supreme Court

Judgment

Nagarathna, J.

Leave granted.

2. These appeals have been preferred by the appellant against the common judgment dated 12.06.2024 passed by the High Court of Judicature at Madras in Crl. O.P. Nos.929, 931 and 1034 of 2024 in Crl. A. SR. Nos.1282, 1300 and 1321 of 2024.

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.

Factual Background:

3. Briefly stated, the facts of the case according to the appellant are as under:

3.1 The appellant herein is the complainant being a registered partnership firm engaged in the business of finance. The appellant had extended financial assistance to the respondents over a period of time. It is the case of the appellant that respondent No.1 was the principal borrower and in order to avail further credit, he obtained additional loans through respondent Nos.2 and 3, who acted at his behest. Respondent No.1 is stated to be carrying on a catering business under the name and style of "R.R. Caterers".

3.2 Respondent No.1 had on earlier occasions availed several loans from the appellant. As on 27.04.2015, an outstanding sum of Rs. 16,00,000/- stood due from him. Seeking further financial accommodation, respondent No.1 along with his spouse entered into a sale agreement dated 15.05.2015 with one Mr. S. Babu, an employee of the appellant. Pursuant thereto, a further sum of Rs. 20,00,000/- was sanctioned to him carrying interest at 18% per annum.

3.3 Thereafter, on 13.05.2016, respondent No.2 availed a loan of Rs. 15,00,000/- from the appellant at an interest of 20% per annum, repayable in twelve equal monthly instalments of Rs. 1,25,000/. Respondent No.2 made partial repayments through cash deposits dated 09.06.2016, 30.09.2016, and 15.07.2017. Subsequently, on 30.11.2016, respondent No.3 availed a loan of Rs. 12,00,000/- from the appellant, carrying interest at the rate of 24% per annum. The loan was repayable over a period of twelve months with EMIs fixed at Rs. 1,00,000/- each.

3.4 Thereafter, on 31.05.2017, respondent No.1 availed a further loan facility from the appellant to the tune of Rs. 21,00,000/-, carrying interest at 24% per annum. The interest component, amounting to Rs. 2,94,000/-, was deducted upfront, and the net sum of Rs. 18,06,000/- was disbursed to respondent No.1. The loan was repayable over a period of seven months in equated monthly instalments of Rs. 3,00,000/- each.

3.5 A few months later, on 17.07.2017, respondent No.1 secured an additional loan from the appellant in a sum of Rs. 15,00,000/-, with interest agreed at 22.5% per annum. From the sanctioned amount, Rs. 1,42,500/- was appropriated towards interest and the net principal of Rs. 13,57,500/- was determined. On the

specific request of respondent No.1, one EMI of Rs. 3,00,000/- pertaining to the earlier loan was deducted and the effective disbursal was Rs. 10,57,500/-. The loan was structured to be repaid in five monthly instalments of Rs. 3,00,000/- each.

3.6 Subsequently, on 11.09.2017, respondent No.1 once again sought financial assistance and was sanctioned a further sum of Rs. 25,00,000/- carrying interest at the rate of 18% per annum. After deducting interest to an extent of Rs. 3,75,000/-, the net amount available stood at Rs. 21,25,000/-. At the instance of respondent No.1, two EMIs of Rs. 3,00,000/- each relating to earlier borrowings were adjusted and a final amount of Rs.15,25,000/- was disbursed. The loan tenure was fixed at ten months with equated monthly instalments of Rs. 2,50,000/-.

3.7 In partial discharge of his liability, respondent No.2 issued a cheque bearing No.145325 dated 29.10.2018 for a sum of Rs. 6,25,000/- in favour of the appellant. However, upon presentation of the said cheque on 30.10.2018, it was dishonoured with the endorsement "Funds Insufficient". Similarly, respondent No.3 issued a cheque bearing no. 491078 dated 24.10.2018 for an amount of Rs. 10,00,000/- and when the same was presented on 30.10.2018, it was returned unpaid on 31.10.2018 for identical reasons.

3.8 Thereafter, the appellant issued separate statutory notices dated 12.11.2018 under Section 138 of the Act, calling upon respondent Nos.2 and 3 to honour the respective amounts. Upon their failure to comply, the appellant instituted criminal complaints before the Fast Track Court at Alandur, which came to be registered as C.C. No. 417 of 2018 and C.C. No. 418 of 2018 respectively.

3.9 In discharge of his liability, respondent No.1 issued three cheques bearing nos. 000150, 000191, and 000192, all dated 28.03.2019, in favour of the appellant. The said cheques were presented for encashment on 21.06.2019 but were returned dishonoured on 24.06.2019 with the endorsement "Funds Insufficient". Consequently, a statutory demand notice dated 08.07.2019 was issued by the appellant to respondent No.1 under Section 138 of the Act. Upon his failure to make good the payment, the appellant instituted a criminal complaint before

the Fast Track Court at Alandur which was registered as C.C. No. 285 of 2019.

3.10 For the sake of clarity and convenience, the particulars of the cheques issued by the respondents said to be towards discharge of their respective liabilities are as follows:

Sl. No	Cheque No.	Issued by:	Amount (Rs.)	Date of Issuance of cheques	Date of Dishonour of cheques	Case No.
1	145325	Respt. No.2	Rs. 6,25,000	29.10.2018	31.10.2018	C.C. No. 417 of 2018
2	491078	Respt. No.3	Rs.10,00,000	24.10.2018	31.10.2018	C.C. No. 418 of 2018
3	000150	Respt. No.1	Rs. 9,00,000	28.03.2019	24.06.2019	C.C. No. 285 of 2019
4	000191		Rs. 12,00,000			
5	000192		Rs. 25,00,000			

3.11 By separate judgments dated 07.11.2023, the learned Judicial Magistrate acquitted respondent Nos.1 to 3 for the offence punishable under Section 138 of the Act in terms of Section 255(1) of the CrPC. The acquittal was premised on the finding that the appellant had failed to discharge the burden of proving the existence of a legally enforceable debt or liability and further, respondent Nos.1 to 3 succeeded in rebutting the statutory presumption available to the complainant under Section 139 of the said Act.

3.12 Being aggrieved by the judgments dated 07.11.2023, the appellant preferred petitions before the High Court seeking special leave to appeal under Section 378(4) of the CrPC in Criminal Appeal SR Nos.1282, 1300 and 1321 of 2024 by assailing the judgments rendered in C.C. Nos. 417 of 2018, 418 of 2018 and 285 of 2019, dated 07.11.2023.

3.13 By the common impugned order dated 12.06.2024, the High Court dismissed the petitions filed by the appellant seeking leave to appeal. The High Court observed that the grant of

leave under Section 378(4) of the CrPC is not a mere formality but a substantive safeguard designed to protect the rights of persons who, having been acquitted of criminal charges, ought not to be subjected to further protracted litigation. It was further held that the grant of leave is contingent upon the petitioner before the Appellate Court to establish a *prima facie* case that warrants interference. Referring to the present case, the High Court held that the appellant could not demonstrate that the conclusions arrived at by the learned Magistrate are so perverse or manifestly erroneous as to result in a miscarriage of justice. In the absence of such compelling grounds, the High Court declined to exercise its discretionary jurisdiction to grant leave to appeal. It is in these circumstances that the appellant has approached this Court by way of the present appeal assailing the legality and correctness of the impugned order of the High Court dated 12.06.2024.

Submissions:

4. We have heard learned counsel for the appellant and learned senior counsel for the respondent at length. We have also perused the material on record and the judgments cited at the Bar.

   4.1 Learned counsel for the appellant contended that the High Court was not right in refusing to grant leave under Section 378(4) of the CrPC on the ground that the appellant had not demonstrated that the conclusions arrived at by the Magistrate were erroneous or contrary to law. The High Court ought to have exercised its discretion by granting leave to the appellant to prosecute his appeal inasmuch as the impugned order has now made the appellant remediless.

   4.2 Alternatively, it was submitted that the appellant could also be construed to be a victim of the offence committed by the accused under Section 138 of the Act. If that is so, then as a victim the appellant has a right to assail the judgment of acquittal as per the proviso to Section 372 of the CrPC. In such an event, the need for obtaining leave to file an appeal would not arise at all. In this regard, proviso to Section 372 was contrasted with sub-section (4) of Section 378 of the CrPC. It was contended that under proviso to Section 372 which has been in force with effect from 31.12.2009, as it

was added by way of an amendment, the victim of an offence has 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. Such an appeal would lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. The right to file an appeal by a victim of an offence under the provision to Section 372 CrPC is not circumscribed by the necessity of obtaining leave to file an appeal. It was contended that under sub-section (4) of Section 378 which deals with an appeal against a judgment of acquittal in any case instituted upon a complaint then on an application made to the High Court by the complainant, it is only when special leave to appeal is granted by the High Court from the order of acquittal, that the complainant may present such an appeal to the High Court. In the present case, the complaint under Section 138 of the Act was no doubt filed by the appellant herein but not merely as a complainant but as a victim of the offence under Section 138 of the Act. It was submitted that in all cases, the victim may not be the complainant and *vice-a-versa* but if the victim is also the complainant, then the victim could always proceed under the proviso to Section 372 of the CrPC rather than as a complainant under sub-section (4) of Section 378 of the CrPC. Therefore, in the instant case, the appellant herein who ought to be considered as a victim of the offence under Section 138 of the Act having been committed by the accused has the right to prefer an appeal under Section 372 of the CrPC. Therefore, it was wholly unnecessary for the appellant to have obtained special leave to appeal from the High Court. For this reason also, the impugned order may be set-aside and the matter may be remanded to the High Court so that the High Court would enable the appellant herein to file his appeal before the competent appellate Court. Learned counsel for the appellant, therefore, sought for setting-aside of the impugned order.

4.3 *Per contra*, learned counsel for the respondent/accused submitted that the order of the High Court was on merits and that the appellant has not proved his case against the respondents herein. Therefore, the learned Magistrate rightly acquitted the respondents herein. The High Court was also

justified in declining to grant the special leave to appeal from the order of acquittal. There is no merit in the submissions made by the learned counsel for the appellant. The appellant is the complainant and, therefore, he sought for special leave to appeal from the High Court against the judgment of acquittal which has rightly been declined. Therefore, there is no merit in this appeal and, therefore, the same may be dismissed.

5. In ***Mallikarjun Kodagali (dead) represented through Legal representative vs. State of Karnataka, (2019) 2 SCC 752 ("Mallikarjun Kodagali"),*** there is a reference to four reports that have dealt with the rights of victims of crime and the remedies available to them. The same may be briefly discussed as under:

   i. The first report is the 154th Report of the Law Commission of India of August, 1996. The said Report touched upon, *inter alia,* compensation to be paid to the victim of crime, their rehabilitation, etc.

   ii. In March 2003, Justice Malimath Committee submitted its report on '*Reforms of Criminal Justice System*'. Paragraph 2.21 in the Chapter on Adversarial Rights under the sub-heading of 'Victims Right to Appeal', states as under:

> "2.21. The victim or his representative who is a party to the trial should have a right to prefer an appeal against any adverse order passed by the trial court. In such an appeal he could challenge the acquittal, or conviction for a lesser offence or inadequacy of sentence, or in regard to compensation payable to the victim. The appellate court should have the same powers as the trial court in regard to assessment of evidence and awarding of sentence."

   There is also discussion on other rights of victims under the Chapter titled, 'Justice to Victims'. In paragraph 6.(14)(v), Justice Malimath Committee made the following recommendations:

> "6. (14)(v) The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting

> inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court."

iii. In July 2007, a Report of the Committee on the *Draft National Policy on Criminal Justice* was submitted which is also known as 'Professor Madhava Menon Committee Report'. Observations with regard to providing victim-oriented criminal justice and a balance between the constitutional rights of an accused and victim of crime have been discussed. One of the suggestions made is that the victim must be impleaded in the trial proceedings so that such a party would have right to file an appeal against an adverse order, particularly an order of acquittal.

iv. In the 221st Report of the Law Commission of India submitted in April, 2009, it has been noted that as the law then stood, an aggrieved person could not file an appeal against an order of acquittal. However, a revision petition could be filed. Noting that the powers of a revisional court are limited and the process involved is cumbersome, a recommendation was made by the Law Commission that as against an order of acquittal passed by a Magistrate, a victim should be entitled to file an appeal before the revisional court. Similarly, in complaint cases, the appeal should be provided to the Sessions Court instead of the High Court. However, it was suggested that the aggrieved person or complainant should have the right to prefer an appeal with the leave of the appellate court.

v. It was further recommended that Section 378 of the CrPC requires an amendment with a view to enable filing of appeals in complaint cases also in the Sessions Court, of course, subject to the grant of special leave by it. Limited scope of powers of a revisional court under Section 401 of the CrPC was taken note of and it was suggested that there is a need to amend the CrPC.

5.1 Taking note of the aforesaid reports an amendment was brought to Section 372 of the CrPC with effect from 31.12.2009 by adding a proviso thereto.

5.2 The decisions of the Full Benches of the High Courts in the matter of interpretation of the proviso to Section 372 of the CrPC are highlighted by this Court in the case of ***Mallikarjun***

Kodagali. There are also Division Bench decisions of the High Courts taking different views.

Mallikarjun Kodagali:

5.3 This Court in ***Mallikarjun Kodagali,*** speaking through Lokur, J. referred to the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly of the United Nations in the 96th Plenary Session on 29.11.1985. It was observed in paragraphs 74, 75 & 76 as under:

> "74. Putting the Declaration to practice, it is quite obvious that the victim of an offence is entitled to a variety of rights. Access to mechanisms of justice and redress through formal procedures as provided for in national legislation, must include the right to file an appeal against an order of acquittal in a case such as the one that we are presently concerned with. Considered in this light, there is no doubt that the proviso to Section 372 CrPC must be given life, to benefit the victim of an offence.
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> 75. Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear to us that a victim as defined in Section 2(wa) CrPC would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction. …
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> 76. … The language of the proviso to Section 372 CrPC is quite clear, particularly when it is contrasted with the language of Section 378(4) CrPC. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word "complaint" has been defined in Section 2(d) CrPC and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR,

> and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 CrPC is concerned."

Consequently, the appeals in the said case were allowed and the judgment and order of the High Court was set aside and the matter was remanded to the High Court to hear and decide the appeal against the judgment and order of acquittal once again.

5.4 In the said judgment, Deepak Gupta, J. was in complete agreement with Lokur, J. on the fact that victims must be permitted to access justice because it is sometimes found that the investigating and prosecuting agency do not follow up cases with zeal which is required and therefore proviso to Section 372 of the CrPC must be given a meaning which is realistic, liberal, progressive and beneficial to the victim of the offences. However, Deepak Gupta, J. was of the opinion that one cannot ignore the rights of the accused and the procedure prescribed by law. Hence, he disagreed with Lokur, J.'s view that a victim can file an appeal in the High Court without seeking leave to appeal in terms of Section 378(3) of the CrPC.

5.5 The only difference of opinion was with regard to whether the victim is required to seek leave of the High Court even in an appeal filed in the High Court. While dealing with this issue, it was observed by Deepak Gupta, J. that prior to the insertion of the proviso to Section 372 of the CrPC, the victim had no right to file an appeal unless he was also a complainant. This was because the State would represent the victim of the crime. Therefore, the question, whether the victim, while filing an appeal against the acquittal of an accused under proviso to Section 372 of the CrPC in the High Court, is required to obtain leave under Section 378(3) of the CrPC was answered in the affirmative. In this regard, reference was made to sub-section (4) of Section 378 which deals with an appeal filed by the complainant. In case the order of acquittal is passed in a case instituted upon a complaint, in such a case, an appeal has to be filed in the High Court. Such an appeal cannot be entertained unless the High Court grants special leave to appeal from the order of acquittal. Sub-section (5) provides the

limitation period for filing the petition for grant of special leave to appeal in terms of sub-section (4). Sub-section (6) lays down that in case the application for special leave to appeal filed by a complainant under sub-section (4) is refused, then, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2). Thus, in a complaint case, complainant can file an appeal only by seeking special leave to appeal in case the appeal lay before the High Court.

5.6 Dealing with the concept of leave to appeal, especially when the appeals are filed in the High Court, it was observed by Deepak Gupta, J. that the presumption of innocence of every accused is fortified and strengthened when the said accused is acquitted by the trial court. Therefore, the High Court, at the initial stage of deciding whether the leave is to be granted or not, can go into the merits of the case and only if there are arguable points involved, would the High Court grant leave to appeal. This preliminary stage is provided to prevent meritless appeals being filed before the High Court and to ensure that innocent persons are not drawn to the High Court at the appellate stage.

5.7 It was further noted that an appeal against an order of acquittal passed by a Magistrate in respect of cognizable and non-bailable offences would lie to the Sessions Court and no leave to appeal is required. However, an appeal with respect to offences which are non-cognizable or bailable would lie to the High Court. In such cases, leave to appeal is a prerequisite. The remaining kinds of appeals are those appeals which lie to the High Court against the judgments of the Sessions Court. These are serious criminal matters relating to graver offences.

5.8 Even appeals against acquittals filed before the High Court must be scrutinized with greater care. As opposed to Section 378(4) of the CrPC, where a complainant would file an appeal against an order of acquittal which would require special leave to appeal being obtained, in the case of an appeal filed by a victim under proviso to Section 372 of the CrPC, no such leave to appeal is required. Then the question raised was, whether, a victim is to be placed on a higher pedestal than

the complainant, although in certain cases, the victim and the complainant may be one and the same person. Deepak Gupta, J. considered a situation where there are two victims in a case and one of the victims files a complaint and sets the wheels of justice moving and the case is tried as a complaint case and the accused is acquitted. In such a case, the complainant would have to seek special leave to appeal whereas the victim who had not even approached the Court at the initial stage would be entitled to file an appeal without seeking leave to appeal. While considering this situation, Deepak Gupta, J. observed that while expanding the rights of the victim to file an appeal, such right must be balanced with the rights of the accused. Hence, it was the view of Deepak Gupta, J. that even in a case when an appeal is filed by a victim, there has to be scrutiny and special leave to appeal must be obtained as the victim cannot be placed on a higher pedestal than the State or the complainant. It was his view that by this condition being imposed, the right of the victim to file an appeal is not taken away or in any way diluted. Thus, according to his view, Sections 378 (3), 378 (4) and 372 of the CrPC have to be read together and the victim is also required to apply for leave to appeal before his appeal can be entertained. Therefore, Deepak Gupta, J. concluded that the right to file an appeal vested in the victim cannot be higher than the right of filing an appeal which inheres in the State and the complainant in a complaint case. Thus, if a victim files an appeal against acquittal in the High Court, he has to seek leave to appeal under Section 378 (3) of the CrPC.

5.9 If the interpretation as suggested by learned senior counsel for the respondent is to be accepted by restricting the right of a complainant in a cheque bounce case to file an appeal under Section 378(3) of the CrPC subject to the conditions mentioned thereto, we find that such a right would not only be illusory but contrary to the intent and purpose of the amendment to Section 372 of the CrPC, whereby the proviso thereto has been added with effect from 31.12.2009 to give a right of an appeal to a victim without there being any condition circumscribing such a right.

5.10 In light of the two opposite views expressed in the above judgment of this Court, it is necessary to discuss certain provisions of the CrPC and arrive at our own conclusions on the point for consideration. We observe that we are inclined to follow the view taken by Lokur, J. insofar as the right of a victim of a crime to file an appeal is concerned.

Analysis of the Relevant Provisions of CrPC:

6. Section 2 is the definition clause under which relevant definitions are extracted as under:

> **"2. Definitions**.—In this Code, unless the context otherwise requires,—
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> xxx
>
> (d) "**complaint**" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.
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> Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;
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> xxx
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> (n) "**offence**" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act, 1871 (1 of 1871);
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> xxx
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> (wa) "**victim**" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;
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> xxx

24. Public Prosecutors.-

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(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

CHAPTER XV

COMPLAINTS TO MAGISTRATES

200. Examination of complainant.—A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

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CHAPTER XXIX

APPEALS

372. 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 Code 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.

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377. Appeal by the State Government against sentence.—(1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be, the High Court shall not enhance the sentence except after giving to the accused a reasonable

opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

378. 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 any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, 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).

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386. Powers of the Appellate Court.—After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction—

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same—

(c) in an appeal for enhancement of sentence—

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal."

6.1 Chapter XXIX of the CrPC deals with appeals. The said Chapter delineates the statutory framework governing appeals. Section 372 unequivocally declares that no appeal shall lie from any judgment or order of a criminal court except as provided for by the CrPC itself or by any other law for the time being in force.

In fact, Section 372 of the CrPC speaks of an embargo on the filing of an appeal from any judgment or order of a criminal court except as provided for by the CrPC or by any other law for the time being in force. Section 372 is couched in a negative language and it states that no appeal shall lie from any judgment or order of a criminal court except as provided for by the CrPC or by any other law for the time being in force. Section 372 is a preface to the chapter on appeals which in substance states that appeal can be filed only in accordance with what has been stated in the provisions to follow Section 372. The proviso was introduced to Section 372 by the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009), which came into effect from 31.12.2009. By virtue of this amendment, a limited right of appeal has been conferred upon the victim of an offence. On a reading of the proviso to Section 372, it is apparent that a victim shall have a right to prefer an appeal against: (i) any order passed by the court acquitting the accused or (ii) convicting for a lesser offence or (iii) imposing inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court. In fact, with effect from 31.12.2009 when clause (wa) to Section 2 was inserted to the definition of victim, proviso to Section 24 was also added which provides that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under the said sub-section.

6.1.1 Further, with effect from 31.12.2009, Section 357A and Section 357B were inserted to the CrPC in the form of victim compensation scheme for providing compensation to the victim or his dependants who have suffered loss or injury as a result of the crime and who require rehabilitation. The compensation payable by the State Government under Section 357A is in addition to the payment of fine to the victim of offences under Section 326A, Section 376AB, Section376D, Section 376DA and Section 376DB of the Indian Penal Code. Also, Section 357C states that all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under the aforesaid Sections.

6.2 While Section 374 of the CrPC deals with appeals from convictions with which we are not concerned in this case, what is of relevance is Section 378 which deals with appeal in case of acquittal. The remedy of an appeal against an acquittal is couched in certain conditions which are evident on a reading of sub-sections (4) and (5) of Section 378 of the CrPC *vis-à-vis* an appeal that could be filed by a complainant. However, the Parliament in its wisdom amended Section 372 of the CrPC by adding a proviso thereto by virtue of the Code of Criminal Procedure (Amendment) Act 2008 (5 of 2009), (with effect from 31.12.2009). It is hence necessary to unravel the definition of victim in clause (wa) of Section 2 of the CrPC which was also introduced along with proviso to Section 372 of the CrPC. A victim is defined to mean a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir;

6.3 The expression injury, as defined in Section 44 of the Indian Penal Code, 1860 includes:

> "Any harm whatever illegally caused to any person, in body, mind, reputation or property."

6.3.1 Similarly, Black's Law Dictionary defines injury to include property damage, bodily harm, or violation of a legal right.

6.3.2 Additionally, the United Nations General Assembly's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) provides a broad and inclusive definition of victim. According to Article 1 of the Declaration:

> "Victim means persons who, individually or collectively, have suffered harm through acts or omissions which involve physical or mental injury, emotional distress, economic loss or substantial impairment of their fundamental rights."

6.3.3 Further, Article 2 extends the definition of victim to include immediate family members, dependents, or those who have intervened to assist a victim in crisis.

6.4 On a reading of the definition of 'victim', it is clear that the said expression is initially exhaustive and thereafter inclusive. The expression 'victim' means a person who has suffered any loss or injury. The loss or injury could be either physical, mental, a financial loss or injury. The expression injury could also be construed as a legal injury in a wider sense and not just a physical or a mental injury. The loss or injury must be caused by reason of an act or omission for which the accused person has been charged. Thus, it can be both by a positive act or negatively by an omission which is at the instance of the accused and for which such accused has been charged. Further, the expression 'victim' also includes his/her guardian or legal heir in the case of demise of the victim.

6.5 Thus, the expression 'victim' has been couched in a broad manner so as to include a person who has suffered any loss or injury. The expressions 'loss' or 'injury' themselves are of a very broad import which expressions also enlarge the scope of the expression 'victim'. Further, the expression 'victim' includes not only the person who has suffered any loss or injury caused by reason of any act or omission for which the accused person has been charged but also includes his or her guardian or legal heir which means that the definition of victim is inclusive in nature.

6.6 Having regard to the insertion of the proviso to Section 372 of the CrPC, we find that in the case of a victim who seeks to file an appeal, he or she could proceed under the proviso to Section 372 of the CrPC in the circumstances mentioned therein and need not prefer an appeal by invoking Section 378(4) of the CrPC which is in respect of appeals to be filed by a complainant. It may be that the complainant is a victim in certain cases and therefore, the victim has the right to file an appeal under the proviso to Section 372 of the CrPC and need not proceed under Section 378(4) of the CrPC. However, if the complainant is not a victim and intends to file an appeal, in such a case a complainant would have to proceed under Section 378 of the CrPC which circumscribes the right to file an appeal by virtue of the conditions which are stipulated under the said Section.

6.6.1 The word 'victim' is derived from the latin word "victima" and originally contained the concept of sacrifice. In

more contemporary times, the term 'victim' has been expanded to imply a victim of war, an accident, a scam, etc. As a scientific concept, according to Criminologist B. Mendelsohn (1976), a victim may be viewed as containing four fundamental criteria which are as follows:

- The nature of the determinant that causes the suffering. The suffering may be physical, psychological, or both depending on the type of injurious act.
- The social character of the suffering. This suffering originates in the victim's and others' reaction to the event.
- The nature of the social factor. The social implications of the injurious act can have a greater impact, sometimes, than the physical or psychological impact.
- The origin of the inferiority complex. This term, suggested by Mendelsohn, manifests itself as a feeling of submission that may be followed by a feeling of revolt. The victim generally attributes his injury to the culpability of another person.

Victimology thus is a social-structural way of viewing crime and the law and the criminal and the victim. Insofar as the injury is concerned apart from there being short time and long time physical injuries, there could also be economic or financial loss which are also injuries within the meaning and definition of victim under clause (wa) of Section 2 of the CrPC.

6.7 While analysing the expression 'victim', it is noted that it is with reference to an accused person who has been charged. Under the CrPC, the expression charge is defined under clause (b) of Section 2 which reads as under:

2. Definitions.—In this Code, unless the context otherwise requires,—

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(b) "charge" includes any head of charge when the charge contains more heads than one;

6.7.1 Besides the omnibus meaning, the CrPC does not define what a charge is. However, judicial pronouncements tell us that a charge is actually a precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. The charge is against a person in respect of an act committed or omitted in violation of penal law forbidding or commanding it. In other words, a charge is an accusation made against a person in respect of offence alleged to have been committed by him, *vide* ***Esher Singh vs. State A.P., (2004) 11 SCC 585***. In ***Birichh Bhuian vs. State of Bihar, AIR 1963 SC 1120,*** this Court observed that a charge is not a mere abstraction but a concrete accusation against a person in respect of an offence and that joinder of charges is permitted under certain circumstances, whether joinder is against one person or different persons.

6.7.2 In ***Advanced Law Lexicon* by *P Ramanatha Aiyar*, *6th Edition, Volume I***, a charge is defined to mean an expression as applied to a crime, sometimes used in a limited sense, intending the accusation of a crime which precedes a formal trial; to mean a person charged with an accusation of a crime. In a fuller and more accurate sense, the expression charge includes the responsibility for the crime. As a formal complaint, a charge signifies an accusation, made in a legal manner of legal conduct, either of omission or commission by the person charged. A person charged with a crime means something more than being suspected or accused of a crime by popular opinion or rumour and implies that the offence has been alleged against the accused parties according to the forms of law. The purpose of a charge is to tell an accused person as precisely and consciously as possible of the matter with which he is charged with. Thus, the expression charge includes the element of offence and also reference to the person who is alleged to have committed the offence.

7. For the purpose of applying the aforesaid discussion to the present case, the following Sections of the Act are relevant and are extracted as under:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.— Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

139. Presumption in favour of holder.— It shall be presumed, unless the contrary is proved, that the holder

of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

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141. Offences by companies.— (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section, —

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

142. Cognizance of offences.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

143. Power of Court to try cases summarily.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

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147. Offences to be compoundable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

7.1 In the context of the present case, a person who fails to satisfy his legal liability to honour a cheque owing to insufficiency of funds, or other reasons concerning his bank account is deemed to have committed an offence under Section 138 of the Act and therefore is charged as an accused for such an offence and can be punished by imprisonment for a term which may extend to two years or a fine which may extend to twice the amount of the cheque or both.

7.2 The expression 'accused' is not defined under the CrPC but it denotes different meanings according to the context in which it is deployed. It, *inter alia*, means, a person against whom there is an accusation, or a person on trial, and so on. The expression 'accused' being used in different context would remind us of what has been cited by this Court in ***Directorate of Enforcement vs. Deepak Mahajan, (1994) 3 SCC 440*** wherein Chapter IV of the book titled *The Loom of Language* by Frederick Bodmer has been cited in the following words:

> "Words are not passive agents meaning the same thing and carrying the same value at all times and in all contexts. They do not come in standard shapes and sizes like coins from the mint, nor do they go forth with a decree to all the world that they shall mean only so much, no more and no less. Through its own particular personality, each word has a penumbra of meaning which no draftsman can entirely cut away. It refuses to be used as a mathematical symbol."

The expression 'accused of any offence' would include within its ambit only a person against whom formal accusation relating to commission of offence has been levelled which in the normal course may result in his prosecution.

7.3 When is an accused charged of an offence under Section 138 of the Act would be relevant. It would be pertinent to refer to Section 200 of CrPC as a proceeding under Section 138 of the Act is commenced not on the basis of a police report but on the basis of a complaint filed under Section 200 of the CrPC. The expression 'complaint' is defined under Section 2(d) of the CrPC to mean an allegation made orally or in writing to a Magistrate with a view to his taking action under the CrPC, that

some person, whether known or unknown, has committed an offence but does not include a police report.

7.4 When a complaint is filed under Section 200 of the CrPC, a Magistrate taking cognizance of an offence on such complaint examines upon oath the complainant and the witnesses present, if any, and the substance of such examination is reduced to writing which is required to be signed by the complainant and the witnesses and also the Magistrate. Section 202 of the CrPC states that any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process, and either inquire into the case himself or direct an investigation for the purpose of deciding whether or not there is sufficient ground for proceeding. However, no such direction for investigation shall be made where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200 of the CrPC.

7.5 Chapter XXI of the CrPC deals with summary trials. The said chapter has to be read in conjunction with Section 143 of the Act which states that all offences under Chapter XVII of the Act, including an offence under Section 138 (dishonour of cheque for insufficiency, etc., of funds in the account) shall be tried by a Judicial Magistrate of First Class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 of the CrPC (both inclusive), shall, as far as may be, apply to such trials. Thus, for an offence committed under Section 138 of the Act, the trial is as per Section 143 of the said Act read with Chapter XXI of the CrPC. The fact that under Section 138 of the Act, a deeming fiction has been introduced, wherein a person who comes within the scope and ambit of the section is a person who is deemed to have committed an offence and could be punished with both imprisonment as well as with fine, would mean that such a person is an accused and is charged for the said offence and tried under Chapter XXI of the CrPC by way of a summary trial.

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 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.

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. 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.

11. In the result, the impugned common order dated 12.06.2024 in Crl. O.P. Nos.929, 931 and 1034 of 2024 in Crl. A. SR. Nos.1282, 1300 and 1321 of 2024 is set aside. Liberty is reserved to the appellant herein to file the appeal(s) having regard to the proviso to Section 372 of the CrPC within four months from today.

12. Should the appeal(s) be filed within the period of four months from today, the issue of limitation may not be raised by the respondents herein or by the appellate court.

These appeals are allowed in the aforesaid terms.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Nidhi Jain