

(2025) 12 P&H CK 0071

Punjab And Haryana HC

Case No: Criminal Appeal (AS) No. 173 Of 2017 (O&M)

Gursharan Singh

APPELLANT

Vs

Jasvir Singh

RESPONDENT

Date of Decision: Dec. 8, 2025

Acts Referred:

- Negotiable Instruments Act, 1881-Section 138, 143
- Code Of Criminal Procedure, 1973-Section 2(wa), 200, 372, 374, 378(4)
- Bharatiya Nagarik Suraksha Sanhita, 2023-Section 413

Hon'ble Judges: Sukhvinder Kaur, J

Bench: Single Bench

Advocate: Anoop Singla, N.S. Dandiwal

Final Decision: Disposed Of

Judgement

Sukhvinder Kaur, J

1. Appellant had filed an application seeking grant of leave to appeal against the judgment of acquittal dated 03.12.2016, passed by learned Judicial Magistrate Ist Class, Moga, in Complaint case bearing No. 53 dated 17.08.2015, instituted on 17.08.2015, under Section 138 of the Negotiable Instruments Act, 1881, titled as 'Gursharan Singh Vs. Jasvir Singh', whereby the complaint filed by the Appellant herein was dismissed by acquitting the accused. The said application was allowed by the Co-ordinate Bench of this Court, vide order dated 03.10.2017. Accordingly, appeal No. CRA-AS-173-2017, has been assigned to the present case.

2. Today, the case was fixed for addressing arguments on the present case. Learned counsel for the parties, while relying upon a judgment passed by Hon'ble Supreme Court in M/s. Celestium Financial submission that the present appeal filed under Sections 372 of Cr.P.C. (which is pari materia with Section 413 of Bharatiya Nagarik Suraksha Sanhita, 2023), be sent to appropriate Court for its disposal.

3. Prior to judgment of Hon'ble Supreme Court in M/s. Celestium Financial's case (supra), as per judgment in case M/s Tata Steel Limited Vs. M/s Atma Tube Produced Limited, 2013(2), R.C.R (Criminal), 1005, rendered by Full Bench of this Court, a victim in a private complaint case can challenge the judgment of acquittal by filing an appeal only before the High Court, after seeking special leave to appeal under Section 378(4) of Cr.P.C. The Hon'ble Supreme Court in M/s. Celestium Financial's case (supra) after comparative interpretation of under Section 372 of Cr.P.C. and Section 378(4) of Cr.P.C. observed that the victim has a right to file an appeal under Section 372 of Cr.P.C. before the Court of Sessions. The Hon'ble Supreme Court has observed as follows:

"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 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C."

4. A Co-ordinate Bench of this Court in Raj Kumar Vs. Rajender in CRM-A-826 of 2025, decided on 07.07.2025 and Satish Kumar vs.# Jugal Kishore, CRM-A-2700-MA-2018, while relying upon

M/s. Celestium Financial's case (supra), has ordered to treat the application seeking leave to file appeal as an appeal filed under Section 372 of Cr.P.C.

5. In the present case, in view of the judgment of Hon'ble Supreme Court in M/s. Celestium Financial's case (supra), a direction is given to learned Sessions Judge, Moga to treat this appeal as filed under Section 372 of Cr.P.C. He/she shall either decide the appeal himself/herself or entrust the same to appropriate Court for its disposal.

6. It is clarified that nothing has been observed regarding merits of the case and it has been left open for the consideration of the Sessions Court concerned to consider the merits of the appeal.

7. Learned counsel for the appellant, present in Court, directed to inform the appellant for appearance before the Sessions Court, Moga. The parties are also directed to appear before the learned Sessions Judge, Moga in person or through his counsel on 14.01.2026.

8. The Registry is directed to send the complete paper-book and record of the case to learned Sessions Judge, Moga forthwith.

9. Disposed of.

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