



IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLLP No.114 of 2007

Sunil Jhunjhunwala

.....

Petitioner

Represented By Adv. –
None

-versus-

Rabinarayan Singh

.....

Opposite Party

Represented By Adv. –

Mr. H.N.Mohapatra

CORAM:
THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
09.10.2025

Order No.

07.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. No one appears on behalf of the Petitioner-Complainant. However, learned counsel for the Opposite Party is present. Perused the application as well as the prayer made therein.
3. The present application has been filed under Section 378(4) of the Cr.P.C. by the Petitioner-Complainant against the judgment of acquittal dated 13.12.2006 passed by the learned Adhoc Additional Sessions Judge, F.T.C. No.II, Cuttack in CrI. Appeal No.45/06, thereby setting aside the judgment of conviction, sentence and order of compensation passed by the learned S.D.J.M.(S), Cuttack in I.C.C. No.449 of 2005.
4. The above noted I.C.C. case was registered on the basis of



a complaint alleging commission of an offence punishable under Section 138 of the N.I. Act. During the trial the accused person was summoned and he faced trial. The learned trial court after conclusion of trial, found the Opposite Party guilty for the offence under Section 138 of N.I. Act and convicted him thereunder and sentenced the Opposite Party to undergo S.I. for six months and further directed under Section 357(3) of Cr.P.C. to pay a compensation of Rs.21,500/- to the Petitioner-Complainant within three months from the date of judgment. As against the said judgment of conviction, the Opposite Party preferred an appeal before the learned Sessions Judge, Cuttack which was transferred to the file of the learned Adhoc Additional Sessions Judge, Fast Track Court No.II, Cuttack. The learned Adhoc Additional Sessions Judge, Fast Track Court No.II, Cuttack after hearing the parties was pleased to acquit the Opposite Party from the offence under Section 138 of N.I. Act thereby setting aside the judgment of conviction, sentence and order of compensation passed by the learned trial court. Being aggrieved by such judgment, the Complainant has approached this Court by filing the present application under the provision of Section 378(4) of the Cr.P.C. seeking leave to prefer an appeal.

5. While analysing the law regarding the right of a Complainant to prefer an appeal, the Hon'ble Supreme Court in ***Celestium Financial vs. Gnanasekaran Etc.*** reported in (2025) ***SCC Online SC 1320***, has observed that the Complainant in a



case under Section 138 of N.I. Act is a ‘victim’ and, as such, has the right to prefer an appeal under the proviso to Section 372 of the Cr.P.C.

6. On perusal of the judgment of the Hon’ble Supreme Court in ***Celestium Financial’s case*** (*Supra*), this Court observes that the Hon’ble Supreme Court has equated the complainant with the victim as has been described in the proviso to Section 372 of Cr.P.C. Accordingly, the right of the Complainant to prefer an appeal under the proviso to Section 372 has been recognised by the Hon’ble Supreme Court and the Complainant was granted liberty to prefer an appeal against the judgment of acquittal under the proviso to Section 372 of the Cr.P.C. In the aforesaid context, it would be profitable to refer to the relevant portion of the judgment. Para-9 & Para-10 of the judgment are quoted herein below:-

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 Cr.P.C., 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 Cr.P.C., 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 Cr.P.C. 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 Cr.P.C.

10. As already noted, the proviso to Section 372 of the Cr.P.C. 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 Cr.P.C., 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 Cr.P.C.”

7. In view of the aforesaid conclusion of the Hon’ble Supreme Court in ***Celestium Financial’s case*** (*supra*), this



Court is of the view that the complainant can very well prefer an appeal under the proviso to Section 372 Cr.P.C. before the Appellate Court instead of seeking leave of this Court under Section 378(4) of the Cr.P.C. Learned counsel appearing for the opposite party does not dispute the aforesaid legal position. However, learned counsel for the Opposite party-accused raised a question with regard to the limitation.

8. Considering such submissions made by learned counsels appearing for both sides, keeping in view the law laid down by the Hon'ble Supreme Court in *Celestium Financial's case* (*supra*), this Court disposes of the leave application by granting liberty to the Petitioner to prefer an appeal under the proviso to Section 372 Cr.P.C. within a period of four weeks from today along with an application for condonation of delay. In such eventuality, the learned Appellate Court shall consider the application for condonation of delay by taking a lenient view.

9. With the aforesaid observations and directions, the CRLLP stands disposed of.

(*A.K. Mohapatra*)
Judge

Debasis

Signature Not Verified

Digitally Signed
Signed by: DEBASIS AECH
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 14-Oct-2025 10:53:27

