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MCRC-15336-2012

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE B. P. SHARMA

ON THE 23<sup>rd</sup> OF JANUARY, 2026MISC. CRIMINAL CASE No. 15336 of 2012*M/S SOM DISTILLERIES & BRAWERIES LTD.**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Shri Maradul K. Vishwakarma - Advocate for the applicant.*

*Shri Aatmaram Ben - Dy. Government Advocate for the State.*

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ORDER

This application/petition has been filed by the complainant/victim (applicant herein) against the judgment dated 23.07.2012 passed by Judicial Magistrate First Class, Fast Track Court, Bhopal, District-Bhopal (MP) in Case No.6916/2006, whereby learned trial Court has dismissed the case for want of prosecution, in consequence thereof, the accused/respondent (herein) was acquitted from the charge under Section 138 of the Negotiable Instruments Act.

2. Aforesaid criminal case was instituted on the basis of private complaint filed by the victim/applicant(s).

3. The question before this Court is whether instant application/petition is covered under proviso to Section 413 of BNSS (Section 372 of Cr.P.C.).

4. The aforesaid issue is no longer *res integra* in light of the judgment of Hon'ble Apex Court in the case of Celestium Financial Vs. A. Gnanasekaran Etc., 2025 SCC Online SC 1320. The issue arose in said adjudication was whether an appeal would be maintainable under the proviso to Section 372 of the Code of Criminal Procedure, 1973 against an order of acquittal passed in a case instituted



upon a private complaint under Section 138 of the Negotiable Instruments Act, 1881 by treating the complainant as a victim within the meaning prescribed under Section 2(wa) of the Cr.P.C.

5. It is observed by Hon'ble Apex Court in para 9 and 10 of Celestium Financial (supra) case as under:-

*“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.”*

6. Having regard to the law laid down in the aforesaid case as well as the factual matrix of the instant case, this Court is of the considered view that in the present application/petition, applicant(s) as a victim has a right to prefer an appeal under the proviso to Section 413 of BNSS, 2023 (Section 372 of Cr.P.C., 1973) and he may proceed with accordingly and it is not at all needed to advert to sub section 4 of Section 419 of BNSS, 2023 [378(4) of Cr.P.C., 1973]. Hence, liberty



is reserved to the victim/applicant(s) herein to file an appeal before the competent Court, having regard to the proviso to Section 413 of BNSS, 2023 (372 of Cr.P.C., 1973) within four months from today.

7. However, it is made clear that if appeal was filed before this Court within limitation or if appeal was not filed within limitation before this Court but issue of limitation has already been decided by this Court and the delay in filing the appeal has been condoned and appeal before concerned Sessions Court is filed within the period of four months from today, then, issue of limitation shall not be raised by respondent(s) or by the Appellate Court, but if appeal was not filed before this Court within limitation as prescribed in the Limitation Act or any application for condonation of delay is pending today, then, the issue of limitation/the same shall be decided by the Appellate Court in accordance with provisions of law.

8. Certified copy of documents, if any, filed by the victim/applicant(s)/complainant in the instant application/petition, shall be returned back to victim/applicant after substituting photocopy of the same.

9. Record of the trial Court, if available, shall be sent back immediately to the concerned Court.

10. Present application/petition filed by the applicant(s)/victim is disposed of in term as above.

**(B. P. SHARMA)**  
**JUDGE**