
(2025) 08 CAL CK 0642
In the Calcutta High Court, Appellate Side
Case No : CRR Of 3048 Of 2016

Court On Its Own Motion

APPELLANT

Vs

Sampa Kabiraj

RESPONDENT

Date of Decision : 14-08-2025

Acts Referred:

Constitution Of India, 1950 — Article 14, 21
Code Of Criminal Procedure, 1973 — Section 372

Citation : (2025) 08 CAL CK 0642

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Siddharth Sharma, Danish Taslim, Rishav Dutt, Indradeep Basu, Priyanka Yadav, Debasish Roy, Anasuya Sinha

Final Decision : Disposed Of

Judgement

Debangsu Basak, J

1. The present reference arises out of a judgment and order dated March 14, 2017 passed in CRR No. 3048 of 2016 arising out of CRMSPL No 3 of 2016 [Mrinal Kanti Sil vs. Smt. Sampa Kabiraj] with CRR 3049 of 2016 arising out of CRMSPL No. 29 of 2015 [Babulal Murmu vs. Singharay Murmu & Ors.] with CRMSPL No. 101 of 2016 with CRAN No. 3895 of 2016 [Ms. MK. Products vs. M/ s. Blue Ocean Exports Pvt. Ltd. & Ors.] with CRR 3433 of 2016 Azimuddin Mia @ Azimuddin vs. Asraf Hossain] with CRR 3108 of 2016 [Sankar Sarkar vs. Smt. Subharaj].

2. The questions framed by the judgment and order of reference dated July 14, 2017 are as follows :-

“(a) Whether a victim in a complaint case can avail of the right to appeal under proviso to Section 372 Cr.P.C ?

(b) If so, what is the form and manner of availing of such remedy ?”

3. Learned advocate appearing for the petitioner in CRMSPL 101 of 2016 submits that, the two questions now stand answered by the Hon'ble Supreme Court in two decisions. He relies upon 2025 SCC OnLine SC 1320 [Celestium Financial vs. A. Gnanasekaran Etc.] and 2025 SCC OnLine SC 1427 [Asian Paints Limited vs. Ram Babu & Anr.] in support of his contentions.

4. Learned Public Prosecutor appearing for the State submits that, the two questions stand answered by the Celestium Financial (supra).

5. In Celestium Financial(supra), the issue considered is as follows :-

"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 Criminal Procedure Code, 1973 (for short, CrPC") against an order of acquittal passed in a case instituted upon a private complainant 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."

6. Such issue is answered by Celestium Financial (supra) as follows :-

"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 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.”

7. Asian Paints Limited (supra) considers the issue as to whether the High Court rightly dismissed a victim’s appeal under the proviso to Section 372 of the Criminal Procedure Code, 1973 as not maintainable or not.

8. Asian Paints Limited (supra), after reviewing various authorities and the provisions of law on the subject, is of the following view :-

“43. We are constrained to observe that the finding of the High Court that the Appellant could not have maintained the appeal before it would amount to completely negating the proviso to Section 372 of the CrPC. In our considered opinion, Section 372 of the CrPC is a self-contained and independent Section; in other words, it is a stand-alone Section. Section 372 of the CrPC is not regulated by other provisions of Chapter XXIX of the CrPC. The proviso to Section 372 of the CrPC operates independently of and shall not be read conjointly with any other provision in the CrPC, much less Section 378 of the CrPC.

.....

47. From the aforesaid elucidation, it is clear that the right to appeal accrues on the ‘victim’ from the instance of a Court acquitting the accused. The proviso to Section 372 of the CrPC is agnostic to the factum of such acquittal being by the Trial Court or the First Appellate Court. We can see the situation through another lens also. In the facts at hand, acquittal was by the First Appellate Court and not by the Trial Court. Therefore, since, in the present case, for the first time, the acquittal comes in at the stage of the First Appellate Court (being a Sessions Court), in law, the right of appeal by the victim would be to the next higher level in the judicial hierarchy, which would be the High Court, However, for that purpose, the High Court could also have been the First Appellate Court, if the Trial Court, being a Court of Sessions, had acquitted the accused. Thus, the reasoning of the High Court that if the Appellant was allowed to maintain the appeal, it would amount to an appeal as envisaged under Section 378 of the CrPC, is factually and legally erroneous, which proposition we negate”.

9. In view of the binding authority of Celestium Financial(supra), the first question to the reference is answered by holding that, a victim in a complaint case can avail of the right to appeal under the proviso to Section 372 of the Criminal Procedure Code, 1973.

10. The second question of the reference is answered by holding that the form and manner of availing of remedy of appeal under Section 372 of the Criminal Procedure Code, 1973 for a victim will be the same form and manner as that of any of the appeal under Section 372 of the Criminal Procedure Code, 1973.

11. Reference stands disposed of accordingly.

12. I agree