



2026:KER:1470

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 8<sup>TH</sup> DAY OF JANUARY 2026 / 18TH POUSHA, 1947

CRA(V) NO. 2 OF 2026

CRIME NO.1422/2018 OF ERNAKULAM CENTRAL POLICE STATION, ERNAKULAM

AGAINST THE JUDGMENT DATED 13.08.2025 IN C.C. NO.655 OF 2019 OF

JUDICIAL MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

APPELLANT/VICTIM:

SOUMYA GOPAL  
AGED 41 YEARS  
W/O SANVAL S V, ELAVUMKUDY HOUSE, VENGOLA, PERUMBAVOOR.,  
PIN - 683556

BY ADVS.  
SHRI.T.R.KRISHNADAS  
SRI.S.ABHILASH (A-1937)  
SHRI.RAHUL R.PAI

RESPONDENTS/COMPLAINANTS/ACCUSED:

- 1 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM, COCHIN, PIN - 682031
- 2 STATION HOUSE OFFICER  
CENTRAL POLICE STATION, ERNAKULAM, PIN - 682031
- 3 UNNIKRISHNAN  
AGED 51 YEARS, S/O NARAYANA MENON, ATHIR KANDATHIL VEEDU,  
THEKUMBAGAM KARA, THEKUMBAGAM P.O, THRIPIUNITHURA,  
ERNAKULAM, PIN - 682301

SR PP - NOUSHAD.A

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING COME UP FOR  
ADMISSION ON 08.01.2026, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**“C.R”****JUDGMENT****Dated this the 8<sup>th</sup> day of January, 2026**

This appeal has been filed under Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023, at the instance of the victim, who is the complainant in C.C. No.655/2019 on the files of the Judicial First Class Magistrate Court-II, Ernakulam, without seeking leave of this Court, challenging the judgment of acquittal dated 13.08.2025, whereby the learned Judicial First Class Magistrate acquitted the accused in the above case, where the prosecution alleged commission of the offences punishable under Sections 354 and 354D of the Indian Penal Code, by the accused. The 1<sup>st</sup> and 2<sup>nd</sup> respondents herein are the the State of Kerala and Station House Officer, represented by the learned Public Prosecutor and the accused before the trial court got arrayed as the 3<sup>rd</sup> respondent herein.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor, in detail. Perused the verdict under challenge and the records of the trial court.



3. On perusal of the impugned judgment, it could be seen that the Judicial First Class Magistrate-II, Ernakulam, tried the accused in the above said case, alleging commission of offence punishable under Sections 354 and 354D of the IPC. On appreciation of evidence, the accused was acquitted by the learned Magistrate. Now, the victim has filed this appeal challenging the judgment of acquittal.

4. When the maintainability of this appeal before this Court was doubted and the question was heard, it is brought out that, the case emanated from a private complaint. In this connection, Section 413 of the BNSS assumes significance. On perusal of proviso to Section 413 of BNSS, it has been provided as under:

***413. 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 Sanhita or 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.*

5. In a decision of the Apex Court reported in **[(2025) 4 KHC 189] M/S. Celestium Financial V. A. Gnanasekaran Etc.**, the Apex Court considered the word 'victim' contemplated in the proviso to Section 372 of the Code of Criminal Procedure [hereinafter referred as 'Cr.P.C.' for short] and held in paragraph Nos.7.3, 7.4, 7.6 to 7.11 are as under:

*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.*

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*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.*

6. Thus, regarding the forum of appeal, as far as the complainant, who occupies the status of the victim is concerned, the legal position well settled. That is to say, 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 Cr.P.C. 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. Section 378 of the Cr.P.C. 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. Even though, sub-section (4) of Section 378 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.

8. 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 in a complaint case, 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 of Cr.P.C. or under Section 413 of BNSS, then the mandate of seeking special leave to appeal would not arise.

9. Proviso to Section 372 of Cr.P.C. stipulates as under:-

***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.]*

Proviso to Section 413 of BNSS is *pari materia* with proviso to Section 372 of Cr.P.C.

10. Thus, the legal position emerges is that complainants, whose status are as that of victims in relation to cases instituted upon private complaints of all stature, including one alleging commission of offence under Section 138 of the Negotiable Instruments Act, have a remedy to file an appeal, in view of the proviso to Section 372 of Cr.P.C. as well as under Section 413 of the BNSS and the same is a statutory remedy, for which leave of the Court is not at all necessary. It is true that, an appeal with leave of the Court also is provided under Section 378(4) of Cr.P.C. as well as under Section 419(4) of BNSS.

11. When the right of appeal, without leave of the Court



and with leave of the Court is available to an appellant as complainant, who occupies the status of a victim, the appellant has to exercise the remedy available as of right, without seeking leave of the High Court to file an appeal, since such grant of leave to file an appeal does not arise, as the grievance of the appellant is much efficaciously remedied by right of appeal, provided without obtaining leave.

12. In view of the above legal position, a complainant, who filed a private complaint and his status is as that of 'victim', when suffers judgment of acquittal, his remedy is to file an appeal before the Court, where an appeal would lie ordinarily against the judgment of conviction of such Court. Then, grant of leave to file an appeal to the same appellant with the aid of Section 378(4) of Cr.P.C. analogous to Section 419(4) of BNSS is an unwanted procedure and the same need not be allowed.

13. In view of the above, this appeal memorandum requires to be returned to the appellant for re-presenting before the competent Sessions Court.

It is noticed that, even after the judgment in ***M/S. Celestium Financial's*** case (supra), repeated appeals have been filed by the complainants, who would occupy the status



as that of the victims, seeking leave of the Court and in fact, such leave is not necessary, as the appellant has an absolute right to file an appeal before the Sessions Court itself, without obtaining leave of this Court. Thus, the Registry is directed to ensure that such appeals need not be numbered, hereafter and the same are to be returned citing this judgment, to file before the competent Sessions Courts.

**Sd/-**  
**A. BADHARUDEEN**  
**JUDGE**

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