

Complainant in a cheque dishonour case, being a 'victim' as per Section 2(wa) of the CrPC, can file an appeal against acquittal under the proviso to Section 372 of the CrPC

The Supreme Court in the case of **M/s Celestium Financial vs. A Gnanasekaran [2025 INSC 804]** dated April 08, 2025, has held that a complainant in a cheque dishonour case for the offence u/s 138 of the Negotiable Instruments Act, 1881 (NI Act), is a person who has suffered economic loss, and can be regarded as a 'victim' within the meaning of Section 2(wa) of the Code of Criminal Procedure (CrPC) [Section 2(y) of Bharatiya Nagarik Suraksha Sanhita], who can file an appeal against acquittal under the proviso to Section 372 of the CrPC [Section 413 of the BNSS].

The Apex Court highlighted that the proviso to Section 372 was inserted in the CrPC by the 2009 amendment, giving victims the right to file an appeal against an order of acquittal. As the definition of 'victim' is an inclusive one, it includes a person who has suffered any loss or injury. In such circumstances, it would be just, reasonable and in consonance with the spirit of the CrPC to hold that the complainant under the NI 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.

While addressing the question as to whether an accused in a complaint u/s 138 of the NI Act can be regarded as a "person who has been charged", the Court noted that the CrPC does not define the term 'charge'. In terms of judicial pronouncements, a charge is a precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. A person charged with a crime means something more than being suspected or accused of a crime by popular opinion or rumour, and implies that the offence has been alleged against the accused parties according to the forms of law.

The Apex Court emphasized that the fact that under Section 138 of the Act, a deeming fiction has been introduced, wherein a person who comes within the scope and ambit of the section is a person who is deemed to have committed an offence and could be punished with both imprisonment as well as with fine, would mean that such a person is an accused and is charged for the said offence and tried under Chapter XXI of the CrPC by way of a summary trial.

The Court also noted that the proviso to Section 372 does not make a distinction between an accused who is charged with an offence under the penal law or a person who is deemed to have committed an offence under Section 138 of the NI Act.