



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Crml Leave To Appeal No. 334/2023

Ashraj Stone Private Limited, C/o Aradhya Stone, Fatehnagar,  
Post Naya Nagar, Tehsil Bijoliya Through Its Director-Rajesh  
Kumar Dhakad S/o Sh. Shambhu Lal Dhakad, R/o Fatehnagar,  
Post Naya Nagar, Tehsil Bijoliya, District Bhilwara.

----Appellant

Versus

Karav International, Through Proprietor Anitaraj W/o Lokesh  
Kumar Yadav, R/o Bagdi Sadan, Near Arya Samaj Temple, Sector  
No. 3, House No. 367, Rewari, Haryana.

----Respondent

---

For Appellant(s) : Mr. Ravindra Singh for  
Mr. Sudhir Saruparia.  
For Respondent(s) : Mr. Urja Ram Kalbi, PP.

---

**HON'BLE MR. JUSTICE BIRENDRA KUMAR**

**Order**

**01/10/2024**

This application for grant of leave to file appeal has been filed by complainant-Ashraj Stone Pvt. Ltd. against the order dated 13.09.2022 passed in Case No.251/2018, where-under the sole respondent has been acquitted of the charge under Section 138 of the Negotiable Instruments Act.

It is not disputed that the cheque was issued in favour of the applicant. Therefore, the applicant was victim of the crime as defined under Section 2(y) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which reads as follows :

Section 2(y) "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission of the accused person and



includes the guardian or legal heir of such victim.”

Section 413 BNSS is corresponding provision of Section 372 Cr.P.C., wherein, proviso was inserted by amendment with effect from 31.12.2009. The said provision under Section 413 BNSS reads as follows :

**“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 his 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.

Evidently, the victim shall have right to prefer an appeal before the appellate forum and for preferring appeal no leave is needed. Therefore, the present appeal should have been filed before the concerned District and Sessions Judge.

In ***Mallikarjun Kodagali Vs. State of Karnataka & Ors.,*** reported in ***(2019) SCC 752 as well as Joseph Stephen & Ors. Vs. Santhanasamy & Ors.,*** reported in ***(2022) 13 SCC 115***, the Hon’ble Supreme Court held that so far as the victim is concerned, the victim has not to pray for grant of special leave to appeal, as the victim has a statutory right of appeal under Section 372 proviso and the proviso to Section 372 does not stipulate any



condition of obtaining special leave to appeal like sub-Section (4) of Section 378 Cr.P.C. in the case of a complainant and in a case where an order of acquittal is passed in any case instituted upon complaint.

Learned counsel for the applicant has referred to the provisions of sub-Section 4 of Section 419 of the BNSS, which is reproduction of Section 378(4) Cr.P.C. The said provision reads as follows:

“378(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.”

Evidently, a leave to appeal is required by the complainant of such cases, who is not a victim as defined above. The law is well-settled that any person can set the criminal proceedings in motion, if he has knowledge of commission of any cognizable offences, such step may be taken by filing an F.I.R. with the police or a complaint petition before a Magistrate.

If such complainant, is not a victim as defined above then, he would be required to prefer leave application before the High Court for preferring appeal against acquittal. However, if the complainant is a victim of the crime, he/she shall have right under Proviso to Section 413 BNSS to prefer appeal against acquittal, conviction for a lesser offence or imposing inadequate compensation.



The appellant would be at liberty to present an appeal against acquittal before concerned Sessions Judge within a period of 15 days from the date of this order. The learned Appellate Court while considering the period of limitation shall consider that the appellant was bona-fidely prosecuting the same matter before wrong forum (herein) from 21.11.2023 till today.

Accordingly, this leave to appeal stands disposed of.

**(BIRENDRA KUMAR),J**

124-sumer/-