

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 170 OF 2016

Patel Polymers Pvt. Ltd.

....Applicant

V/s

State Of Maharashtra and Anr.

....Respondents

Mr. Yogendra M. Kanchan for the Applicant.

Ms. Manisha R. Tidke for Respondent No.1-State.

Mr. R.P. Joshi for Respondent No. 2.

CORAM : M.M. SATHAYE, J.

DATE : 21st AUGUST, 2026

P.C. :

1. The Applicant is complainant challenging an order of acquittal arising out of proceedings under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act', for short).

2. Learned counsel for the Applicant seeks permission to withdraw the leave application with liberty to file appeal as per proviso to Section 372 of the Criminal Procedure Code, 1973 ('CrPC', for short). He relies upon judgment in **Celestium Financial Vs. A. Gnanasekaran Etc.** 2025 SCC OnLine SC 1320.

3. Learned counsel for Respondent No.2-org. accused has opposed the request contending *inter alia* that both the Magistrate as Civil Court who heard the Applicant's suit for recovery of money arising out of same transaction, have applied their mind and Criminal Court has acquitted Respondent No.2 and Civil Court has dismissed

the suit. He submitted that if permission is granted with leave to file appeal, it will amount to one more round of litigation where Respondent No.2-accused will have to face fresh litigation.

4. Nothing is pointed out either from provisions of law or from the judgment of **Celestium Financial (Supra)** which can be construed as a bar against the Applicant-complainant exercising option of filing appeal. In paragraph No.7.9 of the said judgment, the Hon'ble Supreme Court has clearly held that the complainant under Section 138 of NI Act is a victim who must also have right to prefer an appeal and in paragraph No.9 of the said judgment, it is also clearly held that in such case, an appeal can be preferred 'either under the proviso to Section 372' or '378 of CrPC' by such victim. It is therefore, clear that the Applicant-complainant has an option either to proceed with the present leave application or prefer an appeal.

5. Considering the said legal position, the Applicant is permitted to withdraw the present application with liberty to file appeal.

6. The contentions regarding time spent in prosecuting present leave application on the aspect of delay condonation while filing the proposed appeal, will have to be decided by the Appellate Court in accordance with law. All contentions in that regard are kept open.

7. Subject to above, **the application is disposed of as withdrawn with liberty to file appeal with delay condonation application.**

(M.M. SATHAYE, J.)