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wp5069-24

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5069 OF 2024

Mrs. Shabana Sarfaraz Qureshi

Age: 33 years, Occ.: Housewife
R/o: Arhan Mansion, Room No. 10,
Second Floor, Near Good Luck Dairy, .. **Petitioner**
Kurla (W), Mumbai 400070.

Versus

Sarfaraz Imtiyaz Qureshi

Age: Adult, Occ: Business,
R/o: 98, Sayyed Manzil, 3rd floor,
Room NO. 65, S.V.P. Road,
Null Bazar, Mumbai 400003. .. **Respondent**

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Mr. Ashif Husain, a/w Mr. Huzer Qureshi and Ms. Shamsunnisa Khan, for the Petitioner

Mr. Vikas A. Tiwari for the Respondent.

Mr. Tanveer Khan APP for the State.

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CORAM : ASHISH S. CHAVAN, J.

RESERVED : 18th SEPTEMBER 2026

PRONOUNCED: 24th SEPTEMBER 2026

JUDGMENT :-

1. Rule. The Rule is issued by the consent of both parties and the Petition is taken up for final disposal at the stage of

admission. The Ld. Counsel for the Respondent waives service on behalf of the Respondent.

2. The Petitioner (Original Accused) has challenged an Order dated 31.08.2023 passed by Ld. Metropolitan Magistrate 69th Court, Mazgaon (“**Ld. Trial Court**”) arising out of an Application filed by the Respondent for bringing on record legal heir of the Original Complainant on account of his death.

3. The Original Complainant, one Imtiaz Zahur Ahmed Qureshi had filed a private complaint before the Ld. Trial Court against the Petitioner (Original Accused) for offences punishable u/s 499 r/w 500 of the Indian Penal Code, 1860 (“**IPC**”). The gist of the allegations in the Complaint was that the Petitioner had implicated the Original Complainant allegedly in a false case and addressed a communication to the Police Authority containing several averments which, by the contention of the Respondent were *ex-facie* defamatory. This defamatory matter was also part of Complaint filed by the Petitioner to various authorities, thereby, defaming the Original Complainant and

lowering his esteem in the eyes of society. Ld. Trial Court issued process to the Petitioner (Accused) for offences punishable u/s 499 r/w 500 of IPC. During the course of the trial, Original Complainant Mr. Imtiaz Zahur Ahmed Qureshi expired and his son, the Respondent herein moved an Application before the Ld. Trial Court seeking to be substituted in the place of his father as the Complainant.

Ld. Trial Court allowed the Application vide the Order impugned dated 31.08.2023. The Petitioner has invoked the Writ Jurisdiction of this Court to quash and set aside the impugned order.

4. Heard Mr. Husain for the Petitioner, Mr. Tiwari for the Respondent and Mr. Khan, APP for the State. Perused the record.

5. The short point that arises for my consideration is whether the legal heir of the Complainant in a private complaint for offences punishable under the IPC can, upon the death of the Complainant be substituted in his place and stead and can

continue to prosecute the Complaint. With the assistance of the Ld. Counsels for the respective parties, I have perused the Application preferred by the Respondent, son of the Original Complainant dated 29.11.2022 making a prayer to be substituted in the name and stead of his late father. I have also perused the impugned order dated 31.08.2023. The application for substitution of the Complainant is premised on the contention that death of the Complainant does not *ipso facto* terminate the prosecution. The legal heir is as much aggrieved as his father by the imputations made by the Accused because by those imputations the reputation of the family is at stake, his close relations who are directly or indirectly affected would be covered by the expression “aggrieved person” as set out in Section 199 of Code of Criminal Procedure, 1973 (“CrPC”). The impugned order relies on the settled position of law as enunciated in *Chand Devi Daga & Ors. vs. Manju K Humatani & Ors.*¹ which holds that in the event of the death of the Complainant in a private Complaint, the Complaint need not be

1. 2018 (1) SCC 71

rejected and a joint reading of Sections 256 (2) and Section 302 of the CrPC certainly empowers the Ld. Trial Court to continue with the prosecution through legal heir of the Complainant.

6. The position of law as set out herein above is no longer *res integra*. In the case of ***Chand Devi Daga (supra)***, the Hon'ble Apex Court, relying upon another judgment in the case of ***Balasaheb K Thackeray & Anr. vs. Venkat @ Babru***², while dealing with the issue of whether legal heirs of Complainant can continue the prosecution, has observed in the conspectus of Section 256 and 302 of CrPC as under :

“13. This Court had occasion to consider Sections 256 and 302 in Balasaheb K. Thackeray & Anr. Vs. Venkat @ Babru, (2006) 5 SCC 530. In the above case complaint was filed under Section 500 read with Section 34 IPC. A petition was filed under Section 482 of the Code 1973 against the order of issue of process in the High Court which was dismissed. SLP was filed in this Court in which notice was issued and during the pendency of the appeal it was noted that complainant had died. It was contended that the complaint be dismissed on the ground that complainant is dead. This Court in the above context referred to Sections 256 and 302. This Court repelled the argument of the appellant that complaint

2. 2006 5 SCC 530

be dismissed on the ground that complainant had died. Following was held in paragraphs 3 to 6:

"3. Learned counsel for the appellants with reference to Section 256 submitted that the complaint was to be dismissed on the ground of the death of the complainant. As noted above learned counsel for Respondent 1's legal heirs submitted that the legal heirs of the complainant shall file an application for permission to prosecute and, therefore, the complaint still survives consideration.

4. At this juncture it is relevant to take note of what has been stated by this Court earlier on the principles applicable. In Ashwin Nanubhai Vyas v. State of Maharashtra with reference to Section 495 of the Code of Criminal Procedure, 1898 (hereinafter referred to as "the old Code") it was held that the Magistrate had the power to permit a relative to act as the complainant to continue the prosecution. In Jimmy Jahangir Madan v. Bolly Cariyappa Hindley after referring to Ashwin case it was held that heir of the complainant can be allowed to file a petition under Section 302 of the Code to continue the prosecution.

5. Section 302 of the Code reads as under:

"302. Permission to conduct prosecution.-(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be

conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader."

6. To bring in application of Section 302 of the Code, permission to conduct the prosecution has to be obtained from the Magistrate inquiring into or trying a case. The Magistrate is empowered to permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person other than the Advocate General or the Government Advocate or a Public Prosecutor or Assistant Public Prosecutor shall be entitled to do so without such permission."

7. Although, the Ld. Counsel for the Petitioner contended that the Application does not disclose under which provision of

law it was filed, a perusal of the Application clearly reveals that it is filed to seek leave of the Court to bring on record the legal heir of the Original Complainant. It also sets out the date of death of the Complainant, accompanied by a copy of the death certificate along with proof of identity of the proposed Complainant. In form and substance, the Application can be construed as an Application u/s 302 of the CrPC. In any event, whether the substituted Complainant answers the definition of “aggrieved person” as required by Section 199 as a pre-cursor to initiate the prosecution for defamation, is a triable issue which the Petitioner is at liberty to agitate, however, no fault can be found with the order impugned by the Petitioner. Consequently, the challenge to the impugned order fails and resultantly, the Writ Petition is dismissed. Rule stands discharged.

(ASHISH S. CHAVAN, J.)