

Jaswant Singh vs. Durga Dass and Another

Cr. Appeal No. 18 of 2014

Reserved on 14.09.2026

23.09.2026 Present: Mr Raju Ram Rahi, Advocate for the applicant.
Mr K.R. Kashyap, Advocate for respondent No.1.
Mr Ajit Sharma, Deputy Advocate General for respondent No.2/State.
CrMP No. 1008 of 2026

The applicants/legal representatives of the complainant have filed the present application for their substitution on record. It has been asserted that the original complainant, Jaswant Singh, had filed an appeal against the judgment of acquittal dated 02.08.2013 passed by learned Sessions Judge-II, Mandi, District Mandi. Jaswant Singh died on 13.03.2021, leaving behind the legal representatives mentioned in para 3 of the application. The legal representatives are entitled to continue the proceedings. No prejudice would be caused to the other side by allowing the application. Therefore, it was prayed that the present application be allowed and the legal representatives be brought on record.

2. The application is opposed by filing a reply denying the contents of the application. It is asserted that the application is barred by limitation. The respondent

would be prejudiced by allowing the application. Therefore, it was prayed that the present application be dismissed.

3. I have heard Mr Raju Ram Rahi, learned counsel for the applicants, Mr K.R. Kashyap, learned counsel for respondent No. 1, and Mr Ajit Sharma, learned Deputy Advocate General for respondent No.2/State.

4. Mr Raju Ram Rahi, learned counsel for the applicants, submitted that the original complainant has expired, leaving behind the legal representative mentioned in the application. The legal representatives are entitled to continue with the appeal against acquittal. Therefore, he prayed that the present application be allowed and the legal representatives be brought on record.

5. Mr K.R. Kashyap, learned counsel for respondent No. 1, submitted that the application is barred by limitation. The death had taken place in the year 2021, and the application was filed after the lapse of 5 years. The applicants have no sufficient cause for condonation of the delay. Therefore, he prayed that the present application be dismissed.

6. Mr Ajit Sharma, learned Deputy Advocate General for respondent No.2/State, submitted that the dispute is between the private parties and the State has nothing to say in the matter.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. The present appeal has been filed by the complainant against a judgment acquitting the accused. It was laid down by the Hon'ble Supreme Court in *Khedu Mohton v. State of Bihar*, (1970) 2 SCC 450: 1970 SCC (Cri) 479 that a criminal appeal filed by the complainant does not abate on his death. It was observed at page 453:

“7. In view of our above conclusion, it is unnecessary for us to consider the question of law canvassed by Mr E.C. Aggarwal, learned counsel for the appellant. But as the same has been argued, we shall go into it. The appeal before the High Court was brought after obtaining special leave under sub-section (3) of Section 417 CrPC. It appears that during the pendency of the appeal, the appellant died. It was contended before the High Court, and that contention was repeated before us, that the appeal abated in view of the death of the appellant. This contention was rejected by the High Court. In support of that contention, counsel for the appellant relied on two decisions, one of Allahabad High Court in *Hafiz Nehal Ahmad v. Ramji* [AIR 1925 All 620: 47 All 359: 26 Cr LJ 1008] and the other of Madras High Court in *Thothan v. Murugan* [AIR 1958 Mad 624: 1958 Cr LJ 1488: 1958 Mad 1098: (1958) 2 Mad LJ 353]. The first decision has no application to the facts of the present case. That was an appeal under Section 476-B of the CrPC. It is true that the Madras decision was rendered in an appeal under Section 417(3) of the CrPC. In our opinion, the learned Single Judge of the Madras High Court erred in thinking that the decision of the Allahabad High Court lent any support to his conclusion that an appeal filed under Section 417(3) CrPC abates on the death of the appellant. The question of abatement of criminal appeals is dealt with by

Section 431 of the Criminal Procedure Code. That section reads:

“Every appeal under Section 411-A, sub-section (2) or Section 417 shall finally abate on the death of the accused and every other appeal under this Chapter (except an appeal from a sentence of fine) shall abate on the death of the appellant.”

From this section, it is clear that an appeal under Section 417 can only abate on the death of the accused and not otherwise. Once an appeal against an acquittal is entertained by the High Court, it becomes the duty of the High Court to decide the same, irrespective of the fact that the appellant either does not choose to prosecute it or is unable to prosecute it for one reason or another. The argument that while introducing sub-section (3) to Section 417 CrPC, the Parliament overlooked the provisions contained in Section 431 does not deserve consideration. The language of Section 431 is plain and unambiguous. Therefore, no question of interpretation of that provision arises.”

9. This judgment was followed by the Bombay High Court in *Umesh Kanjibhai Raja v. Nitin Rasiklal Parikh*, 2005 SCC OnLine Bom 9: (2005) 2 Mah LJ 917 and it was observed at page 918:

“4. The learned Counsel appearing on behalf of the respondents invited my attention to the provisions of section 394 of the Code of Criminal Procedure. He submitted that sub-clause (2) of section 394 specifically states that every other appeal under the Chapter shall abate on the death of the appellant. He submitted that in view of the specific provision under the Criminal Procedure Code, on the death of the appellant, the present appeal against acquittal also had abated and, therefore, the applicant had no locus or statutory right to continue the appeal, and therefore, the application is liable to be dismissed.

5. The provision regarding abatement of appeal is made in section 394 of the Code of Criminal Procedure, which reads as under: —

394. Abatement of appeals — (1) Every appeal under section 377 or section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation — In this section, “near relative” means a parent, spouse, lineal descendant, brother or sister.

On perusal of the said provision, it can be seen that the section contemplates that the appeals under section 377 or 378 shall abate on the death of the accused. Sub-clause (2) is a continuation of sub-clause (1) as it starts with the phrase “Every other appeal”, meaning thereby that all appeals under the Chapter except the appeals mentioned in sub-clause (1), viz., section 377 or 378, shall abate on the death of the appellant. Thus, it is clear that in the case of an appeal against acquittal which is filed under the provisions of section 378, it shall abate only in the case of the death of the accused. The submission of the learned Counsel appearing on behalf of the respondents that the provisions of sub-clause (2) would apply in the present case cannot be accepted. The intention of the legislature appears to be quite apparent from the said provision, as it restricts the abatement of appeals only in the case of the death of the accused and not on the death of the complainant. There is no other provision under the Criminal Procedure Code which contemplates a situation of abatement in the case of the death of the complainant. The Apex Court in the case of *Khedu Mohton v. State of Bihar* reported

in (1970) 2 SCC 450: AIR 1971 SC 66, has observed in para 8 of the said judgment as under: —

“8. From this section, it is clear that an appeal under section 417 can only abate on the death of the accused and not otherwise. Once an appeal against an acquittal is entertained by the High Court, it becomes the duty of the High Court to decide the same, irrespective of the fact that the appellant either does not choose to prosecute it or is unable to prosecute it for one reason or another. The argument that while introducing sub-section (3) to section 417, Criminal Procedure Code, the Parliament overlooked the provisions contained in section 431 does not deserve consideration. The language of section 431 is plain and unambiguous. Therefore, no question of interpretation of that provision arises.”

The ratio of the judgment of the Apex Court is squarely applicable to the facts of the present case, and it cannot be said that on the death of the appellant, the appeal against acquittal abates. The Apex Court in the case of *Ashwin Nanubhai Vyas v. The State of Maharashtra* reported in 1967 Mh.L.J. 312: AIR 1967 SC 983 also has observed in para 8 of the said judgment as under: —

“(8) In support of his contention, Mr Keswani has cited some cases of the High Courts in which, on the death of the complainant, the prosecution was held to have abated. Chief among them are *Ishardas v. Emperor* (1908) 7 Cri. L.J. 290 (Lah), *Ramanand v. Emperor*, 40 Ind Cas 1008: AIR 1917 Lah 403 and *Labhuv. Emperor*, 52 Ind Cas 797: AIR 1919 Lah 409. The first of these cases was a prosecution for defamation, and the second a trial for an offence under section 323, Penal Code, 1860. The third followed the second. The first two cases here mentioned were overruled by the Lahore High Court in *Hazara Singh v. Crown*, ILR 2 Lah 27; AIR 1922 Lah 227, wherein it was laid down that such cases do not necessarily abate. Mr Keshwani also relied upon several cases which arose

under section 417(3) and 467-B of the Code of Criminal Procedure in which appeals were held to have abated. We need not refer to these cases because they arose under different circumstances and were certainly not inquiries with a view to committal under Chap. XVIII of the Code. Mr Hathi, who appeared on behalf of the State of Maharashtra, drew our attention to many later cases in which it has been held (dissenting from the cases relied upon by Mr Keswani) that a criminal complaint does not necessarily abate on the death of the complainant even in those cases where the making of the complaint by the person aggrieved is made a condition precedent by the Code. We need not analyse those cases because, in our opinion, unless the Code itself says what is to happen, the power of the Court to substitute another prosecution agency (subject to such restrictions as may be found) under section 495 of the Code of Criminal Procedure is always available. Reference may, however, be made to the following: *Imperator v. Nur-Mahomed*, (1908) 8 Cri. L.J. 190 (Sind), *Emperor v. Mauk Din*, AIR 1924 Lah 72; ILR 4 Lah 7, *U Tin Mating v. The King*, AIR 1941 Rang 202, *Muhammad Azam v. Emperor*, AIR 1926 Bom 178 and *In re Ramasamier* 16 Cri. L.J. 713(1); AIR 1916 Mad 1034 (1). None of the cases cited, either for one side or the other, directly arose under section 198, first part, in a committal proceeding. The latter view is distinctly in favour of allowing the prosecution to continue except in those cases where the Code itself says that, in the absence of the complainant, the accused must be either acquitted or discharged. The present is not one of those cases, and in our judgment, the Presidency Magistrate was right in proceeding with the inquiry by allowing the mother to carry on the prosecution, and under section 495, the mother may continue the Prosecution herself or through a pleader. We see no reason why we should be astute to find a lacuna in the procedural law by which

the trial of such important cases would be stultified by the death of a complainant when all that section 198 requires is the removal of the bar. The appeal fails, and it will be dismissed.”

In this case also, the Apex Court has taken a view that though the Court cannot substitute the complainant, it has a power under section 495 to authorise the conduct of prosecution by any other person. This Court, in the case of *Helen C. Pinheiro v. Kamaxi Steel Products*, reported in 2000 Cri. L.J. 1622, has taken the view that the provisions of section 256 are analogous in principle to a case where the complainant has died after final disposal of the criminal case, after filing leave to appeal, and the same principle will be applicable in such cases. This Court has, after referring to a number of judgments of various High Courts, has held that the appeal against acquittal would not abate on the death of the complainant. The ratio of the said judgment would also be applicable to the facts of the present case. The ratio of the other judgments relied upon by the learned Counsel appearing on behalf of the applicant also squarely covers the issue involved in the present case.”

10. A similar view was taken by the Rajasthan High Court in *Panna Lal Sharma v. Rameshwar Lal Choudhary*, 2008 SCC OnLine Raj 404: (2008) 3 BC 134, and it was observed at page 135:

“7. An appeal under Section 394, Cr. P.C. can only abate on the death of the accused and not otherwise; therefore, in the present case, the death of the complainant after filing of special leave to appeal does not result in abatement of the appeal.

8. We have to bear in mind that the concept of *locus standi* has undergone considerable change, and the well-settled principle in criminal law is that any person can set the law in motion. Section 256, Cr. P.C. confers discretion on the Magistrate to proceed with the trial in the absence of or after the death of the complainant. Where the complainant is represented by a pleader/officer conducting the

prosecution, or where the Magistrate is of the opinion that the personal attendance of the complainant is not necessary, he is empowered to dispense with his attendance and proceed with the case. I fail to understand as to why the same analogy cannot be extended in a case where the complainant has died after the final disposal of the criminal case ending in acquittal, and after filing leave to appeal and where the legal heirs of the complainant, on account of the death of the complainant, wish to prosecute the remedy of leave to appeal against acquittal.”

11. Kerala High Court held in *Ismail v. Samuel*, 1994 SCC OnLine Ker 308: (1995) 1 KLT 1 that an appeal against acquittal does not abate on the death of the appellant and any of the relatives can request the Court to pursue the appeal. It was observed at page 2:

“4. The request for permission to allow petitioners to continue the appeals is opposed by the accused, according to whom petitioners have no right whatsoever to come on record or to prosecute the appeals. Learned counsel for the petitioners draws attention to the provisions contained in S. 394 of the Code of Criminal Procedure and points out that the appeals have not come to an end consequent to the death of the appellant. S. 394(1) of the Code says that every appeal under S. 377 or S. 378 shall finally abate on the death of the accused. That sub-section does not apply since this is not a case where the accused had died. According to counsel, it is sub-section (2) that is applicable, which says that every other appeal under that Chapter, except an appeal from a sentence of fine, shall finally abate on the death of the appellant. This subsection contains a proviso that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the appellate court for leave to continue the appeal, and if leave is granted, the

appeal shall not abate. According to counsel for the accused, the proviso is not attracted since the appeal is not against a conviction and sentence of death or of imprisonment and by virtue of the provision contained in sub-section (2), the appeal has abated on the death of the appellant.

5. There is no provision in the Code for the legal representatives of the appellant being brought on record. But any of the near relatives of the appellant who dies during the pendency of an appeal filed against a conviction and sentence of death or of imprisonment can make a request to the court for the grant of leave to continue the appeal, and on such leave being granted, the appeal shall not abate. A right has now been conferred by the proviso to sub-section (2) of S. 394 on near relations to press the appeal on behalf of the deceased convict, and the appeal can be continued with the leave of the court. Since the proviso is not applicable to the present case, it has only to be seen whether the appeal has abated on the death of the appellant by virtue of the sub-section. (2) of S. 394 of the Code.

6. What is the procedure to be followed when the appellant dies during the pendency of the appeal has been considered by the Supreme Court in *Khedu Mohton v. State of Bihar* (1970) 2 SCC 450: AIR 1971 SC 66. That was also a case where the appeal before the High Court was brought after obtaining special leave under the sub-section. (3) of S. 417 of the Code of Criminal Procedure, 1898. During the pendency of the appeal, the appellant died. It was contended before the High Court that the appeal had abated in view of the death of the appellant; that contention was reiterated before the Supreme Court. While answering that contention, the Supreme Court held that it is clear that an appeal under S. 417 can only abate on the death of the accused and not otherwise. It is observed that once an appeal against an acquittal is entertained by the High Court, it becomes the duty of the High Court to decide the same, irrespective of the fact that the appellant either does not choose to prosecute it or is unable to prosecute it for one reason or the other. It is stated that the argument is that while introducing sub-sec. (3) To S. 417 Cr.P.C., the

Parliament overlooked the provisions contained in S. 431, which do not deserve consideration. S. 431 of the Code of 1898 is in pari materia with S. 394 of the Code of 1973, except for the proviso to sub-sec. (2) of that Section, which is not relevant in the present case. The Supreme Court has therefore held that the appeal has to be decided on merits, whether the appellant chooses to prosecute it or when he is unable to prosecute it for one reason or the other.

7. This is a case where the appeal could not be prosecuted by the appellant, he having died during the pendency of the appeal. In such circumstances, the appeals do not abate, and it is open to this court to permit any person interested to prosecute the appeals. Petitioners are very much interested in the outcome of the litigation, as they are members of the Co-operative Bank. Permitting them to continue the appeals would not amount to the substitution of legal representatives of the deceased complainant. For a proper determination of the appeals, the presence of someone who can place all the relevant facts before this Court is necessary. Petitioners, being members of the Society, are competent to place the relevant facts so that no aspect of the matter escapes the notice of this Court. In these circumstances, the request of the petitioners to permit them to continue the appeals has to be allowed.”

12. It was further held that the application for continuation of the appeal cannot be dismissed because of the delay. It was observed at page 4:

“8. It is then pointed out by counsel for respondents that there has been an inordinate delay in filing the applications seeking permission. When there is no abatement of the appeals consequent to the death of the complainant, the question of delay in moving this Court seeking permission does not arise. Petition filed for condonation of delay is superfluous. Even without explaining the reason for the delay, it is open to petitioners to request this Court to grant permission. The objection that there is an

inordinate delay in moving this Court for getting permission is therefore without substance.”

13. This position was reiterated in *K. Chathukutty v.*

N.K. Sujatha, 2006 SCC OnLine Ker 544: (2007) 1 KLJ 88 and

it was observed at page 92:

“14. Section 394 of Cr. P.C. applies to appeals. The appeal against an order of acquittal and an appeal to the High Court for enhancement of sentence shall finally abate upon the death of the accused. The appeal filed by the accused against the sentence of fine only will not abate upon the death of the accused appellant. An appeal from a composite order of sentence combining the substantive sentence of imprisonment with fine also will not abate on the death of the accused appellant (vide *State of A.P. v. Narasimha Kumar* (2006 (3) KLT 505 (SC)). All other appeals filed by the accused-appellant shall finally abate on the death of the appellant-accused. Provisions of Section 394 of Cr. P.C. apply to an appeal filed under Section 449 but do not refer to the appeal filed under Section 454 of Cr. P.C. A reading of Section 394 of the Criminal Procedure Code shows that once an appeal against acquittal is entertained by this Court, this Court is bound to consider and dispose of the same in accordance with law, and the same will not abate on account of the death of the appellant-complainant. Section 394 of Cr. P.C. corresponds to Section 431 of the Criminal Procedure Code, 1898.

15. In *Khedu Mohton v. State of Bihar* (1970) 2 SCC 450: AIR 1971 SC 66 (V 58 C 13), the Apex Court considered the effect of the death of an appellant in an appeal filed against acquittal and held that the appeal does not abate. It was held as follows:—

“An appeal under Sec. 417 can only abate on the death of the accused and not otherwise. Once an appeal against an acquittal is entertained by the High Court, it becomes the duty of the High Court to decide the same irrespective of the fact that the appellant either does not choose to prosecute it or is

unable to prosecute it for one reason or the other.”

16. So, the position is no more *res integra*. The death of an appellant complainant in an appeal filed against acquittal will not terminate the proceedings. The appellate court cannot close or dismiss the appeal as abated. In *Bhageerathi Amma v. Jeevankumar* (1982 *Crl. L.J.* 91), a learned Single Judge of this Court considered the effect of the death of appellant-complainant during the pendency of the appeal and held that the appeal does not abate. It was held as follows:—

“There is not much difference between S. 431 of the Code of 1898 and S. 394 of the present Code, which would warrant a different interpretation. Evidently, Section 394(1) has no application to cases of death of the complainant in an appeal presented under S. 378(4). The words “every other appeal under this Chapter” exclude appeals filed under Ss. 377 and 378 of the Code. The result is that an appeal filed under S. 378(4) does not abate on the death of the complainant.”

17. So this Court cannot dismiss a criminal appeal as abated. The appeal is to be heard and disposed of on its merits.

18. The next question arising for consideration is whether the legal heirs of the deceased appellant-complainant can be impleaded as additional appellants in an appeal filed against acquittal. In *Laloo Prasad v. Kedamath* (1963 (2) *Crl. L.J.* 543), a learned Single Judge of the Allahabad High Court, held that an appeal is a continuation of the proceedings started in the trial court. It was held thus: —

“In order to get assistance for the proper determination of the case on merits, the appellate court can permit anyone, whom it deems fit, to place before it all the relevant facts and the evidence in the case so that no aspect of the matter escapes the Court's notice.”

19. It was further held thus: —

“The appearance of such a person is analogous to that of an amicus curiae to assist the Court.”

20. In *Siba v. Kailash Chandra Jena* (1965 *Cutt. L.T.* 37) it was held as follows: —

“There is no provision that the appeal shall abate on the death of the complainant. The appeal would be properly constituted despite the death of the complainant. But it would be better by way of abundant caution to add the legal representatives of the deceased complainant as parties to the criminal appeal so that in their presence the appeal can be effectively heard and determined, though no substitution is necessary in law.”

21. In *Bhageerathi Amma's case* (supra), it was held as follows: —

“There is, however, no provision in the Code for impleading or substituting a person in place of the appellant or the complainant. But S. 302, which corresponds to S. 495 of the old Code, provides for permission to conduct prosecution. It is therefore within the power of the Court to permit any person to prosecute an appeal which is not liable to abatement on the death of the appellant.”

22. We are of the considered opinion that the principle laid down in *Bhageerathi Amma's case* (supra) is correct and confirm the same. So, petitioners who are widows and children of the deceased appellant are to be permitted to come on record as additional appellants and prosecute the proceedings. But the petition for setting aside the abatement and condoning the delay is unnecessary. We dismiss *Crl. M. Appln. Nos. 6983/2006 and 6985/2006* as unnecessary and allow *Crl. M. Appln. 6984/2006* to the extent of permitting the appellants to come on record as additional appellants and prosecute the appeal.

14. Orissa High Court held in *Sashi Rout v.*

Gopabandhu Sarangi, 1983 *SCC OnLine Ori* 122: (1983) 55 *CLT*

200 that an appeal against acquittal will not abate on the death of the appellant. It was observed at page 202:

“5. Though an appeal was filed against both the accused persons, the Court granted leave to appeal only against Gopabandhu Sarangi. Now, a memo has been filed that appellant Sashi Rout is dead, and the appeal has abated in view of Section 394, Cr.P.C.

6. Section 394, Cr. P.C. reads as follows: —

“394. *Abatement of appeals*— (1) Every appeal under Section 377 or Section 378 shall finally abate on the death of the accused. (2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

“Explanation—In this section, “near relative” means a parent, spouse, lineal descendant, brother or sister.”

7. This section corresponds to Section 431 of the old Code. The old section is split into sub-sections (1) and (2) of the present section 394. The words and figures “Section 377 or Section 378” are substituted in sub-section (1) of the present section in place of the words and figures “Sec 411-A sub-section (2) or Section 417” in the old Section. The proviso to sub-section (2) and the explanation are newly added. On a plain reading of the section, it appears that an appeal abates only on the death of the accused. It does not state that such an appeal will abate on the death of the complainant. In a decision reported in *Khedu Mohton v. State of Bihar* [(1970) 2 SCC 450: A.I.R. 1971 S.C. 66], it has been held: —

“An appeal under Sec. 417 can only abate on the death of the accused and not otherwise. Once an appeal against an acquittal is entertained by the High Court, it becomes the duty of the High Court to decide the same irrespective of the fact that the appellant either does not choose to prosecute it or is unable to prosecute it for one reason or the other.”

8. The same view has also been taken by the Rajasthan High Court in the case of *Murari Lal v. Ram Swaroop* [1974 Cri. L.J. 120. As already indicated, “Section 377 or Section 378” has been substituted in sub-section (1) of Section 394, Cr. P.C. (new) in place of “Section 411-A sub-section (2) or Section 417” in Section 431, Cr. P.C. (old), and the proviso to sub-section (2) and the explanation have been newly added. So, I am of the view that this appeal will not abate.”

15. It was laid down by the Hon’ble Supreme Court in *Chand Devi Daga v. Manju K. Humatani*, (2018) 1 SCC 71: (2018) 1 SCC (Cri) 264; 2017 SCC OnLine SC 1282 that the Court can permit the legal heirs to continue with the prosecution. It was observed at page 74:

“9. An analogous provision to Section 256 of the 1973 Code was contained in Section 247 of the Criminal Procedure Code, 1898. In Section 247, the proviso was added in 1955, saying that “where the Magistrate is of the opinion that personal attendance is not necessary, he may dispense with such attendance”. The said proviso took out the rigour of the original rule, and the whole thing was left to the discretion of the court. Sub-section (1) of Section 256 contains the above proviso in a similar manner. Thus, even in the case of a trial of a summons case, it is not necessary or mandatory that, after the death of the complainant, the complaint is to be rejected; in exercise of the power under the proviso to Section 256(1), the Magistrate can proceed with the complaint. More so, the present is a case where

offence was alleged under Sections 420, 467, 468, 471, 120-B and 201 read with Section 34 IPC, for which the procedure for trial of a summons case was not applicable, and there is no provision in Chapter XIX, "Trial of warrant cases by Magistrates", containing a provision that, in the event of death of the complainant, the complaint is to be rejected. The Magistrate, under Section 249, has the power to discharge a case where the complainant is absent. The discharge under Section 249, however, is hedged with the condition that "the offence may be lawfully compounded or is not a cognizable offence". Had the 1973 Code intended that in case of the death of the complainant in a warrant case, the complaint is to be rejected, the provision would have indicated any such intention, which is clearly absent."

16. It was laid down by the Kerala High Court in *Bhageerathi Amma v. Jeevankumar*, 1981 SCC OnLine Ker 203: 1981 KLT 875, that any person, including the brother of the complainant, could be permitted to continue the prosecution. It was observed at page 877:

"6. Though it was argued on behalf of the respondent that there is a difference between S. 431 of the old Code and S. 494 of the present Code, I do not see much of a difference that would warrant a different interpretation. Evidently, S. 394(1) has no application to cases of death of the complainant in an appeal presented under S. 378(4). The words "every other appeal under this Chapter" exclude appeals filed under Ss. 377 and 378 of the Code. The result is that an appeal filed under S. 378(4) does not abate on the death of the complainant.

9. S. 199 of the new Code is therefore not a law for the continuance of the case. On the question of abatement, the Supreme Court held as follows:

"What the Presidency Magistrate has done is to allow the mother to act as the complainant to continue the prosecution.

This power was undoubtedly possessed by the Presidency Magistrate, because of S. 495 of the Code by which Courts are empowered (with some exceptions) to authorise the conduct of the prosecution by any person. The words 'any person' would indubitably include the mother of the complainant in a case like this. S. 198 itself contemplates that a complaint may be made by a person other than the person aggrieved, and there seems to us no valid reason why in such a serious case we should hold that the death of the complainant puts an end to the prosecution."

10. In *C.M. Stephen v. John Manjuran*, 1970 KLT. 545, this Court had occasion to consider the question whether, in a private complaint alleging an offence of defamation, if the complainant dies pending trial, his brother could continue the prosecution. Moidu J., after a review of the case law, pointed out that there was no specific provision (in the old Code) to the effect that a complaint would abate on the death of the complainant, and therefore the brother of the deceased was entitled to continue the prosecution.

11. It is to be noted in this connection that an offence under S. 500 is triable as a summons case. S. 256 of the Code of Criminal Procedure provides for cases of non-appearance of or death of the complainant. Under sub-section (1), if the complainant does not appear, the Magistrate may either acquit the accused or adjourn the hearing of the case to some other day. Sub-section (2) states that the said provision would apply to cases where the non-appearance of the complainant is due to his death. In the absence of a specific provision in the case of appeals under S. 378(4), there is no reason why the said principle should not be extended to a case of the death of the appellant pending disposal of the appeal. What the petitioners want is to have them impleaded as appellants in the appeal. There is, however, no provision in the Code for impleading or substituting a person in the place of the appellant or the complainant. But S. 302, which corresponds to S. 495 of the old Code, provides for permission to

conduct prosecution. It is therefore within the power of the Court to permit any person to prosecute an appeal which is not liable to abatement on the death of the appellant.”

17. It was laid down by the Hon’ble Supreme Court in *Ashwin Nanubhai Vyas v. State of Maharashtra*, 1966 SCC OnLine SC 253: (1967) 1 SCR 807: (1967) 2 SCJ 419: 1967 CRI LJ 943: AIR 1967 SC 983 that a criminal proceeding does not abate on the death of the complainant and the Court has the power to substitute another prosecution agency in the place of the deceased. It was observed:

“9. In support of his contention, Mr Keswani has cited some cases of the High Courts in which, on the death of the complainant, the prosecution was held to have abated. Chief among them are *Ishwardas v. Emperor* [7 CrLJ 290], *Ramanand v. Crown* [40 IC 1008] and *Labhu v. Crown* [52 IC 797]. The first of these cases was a prosecution for defamation, and the second was a trial for an offence under Section 323 of the Indian Penal Code. The third followed the second. The first two cases here mentioned were overruled by the Lahore High Court in *Hazara Singh v. Crown* [ILR 2 Lah 27], wherein it was laid down that such cases do not necessarily abate. Mr Keswani also relied upon several cases which arose under Section 417(3) and 476-B of the Code of Criminal Procedure in which appeals were held to have abated. We need not refer to these cases because they arose under different circumstances and were certainly not inquiries with a view to committal under Chapter XVIII of the Code. Mr Hathi, who appeared on behalf of the State of Maharashtra, drew our attention to many later cases in which it has been held (dissenting from the cases relied upon by Mr Keswani) that a criminal complaint does not necessarily abate on the death of the complainant even in those cases where the making of the complaint by the person

aggrieved is made a condition precedent by the Code. We need not analyse those cases because, in our opinion, unless the Code itself says what is to happen, the power of the court to substitute another prosecution agency (subject to such restrictions as may be found) under Section 495 of the Code of Criminal Procedure is always available. Reference may, however, be made to the following: *Emperor v. Nurmohammed* [8 CrLJ 190], *Emperor v. Mauj Din* [AIR 1924 Lah 72: 4 Lah 7], *U Tin Maung v. King* [AIR 1941 Rang 202], *Mohammed Azam v. Emperor* [AIR 1926 Bom 178] and *In re Ramasamier* [AIR 16 Cr LJ 713]. None of the cases cited, either for one side or the other, directly arose under Section 198, first part, in a committal proceeding. The latter view is distinctly in favour of allowing the prosecution to continue except in those cases where the Code itself says that in the absence of the complainant, the accused must be either acquitted or discharged. The present case is not one of those cases, and in our judgment, the Presidency Magistrate was right in proceeding with the inquiry by allowing the mother to carry on the prosecution, and under Section 495, the mother may continue the prosecution herself or through a pleader. We see no reason why we should be astute to find a lacuna in the procedural law by which the trial of such important cases would be stultified by the death of a complainant when all that Section 198 requires is the removal of the bar. The appeal fails, and it will be dismissed.”

18. This position was reiterated in *Chand Devi Daga* (supra), wherein it was observed at page 76:

“13. This Court had the occasion to consider Sections 256 and 302 in *Balasaheb K. Thackeray v. Venkat* [Balasaheb K. Thackeray v. Venkat, (2006) 5 SCC 530: (2006) 2 SCC (Cri) 630]. In the above case, the complaint was filed under Section 500 read with Section 34 IPC. A petition was filed under Section 482 of the 1973 Code 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 [Balasaheb K. Thackeray v. Venkat,

SLP (Cri) No. 4367 of 2003, order dated 31-10-2003 (SC), wherein it was directed: “Issue notice. Mr Ravindra Keshavrao Adsure, learned counsel, takes notice on behalf of Respondent 1 and seeks two weeks for filing a counter-affidavit. Time prayed for is granted. One week thereafter is granted for rejoinder-affidavit. Stay of further proceedings.”] And during the pendency of the appeal, it was noted that the complainant had died. It was contended that the complaint be dismissed on the ground that the complainant is dead. This Court, in the above context, referred to Sections 256 and 302. This Court repelled the argument of the appellant that the complaint be dismissed on the ground that the complainant had died. The following was held in paras 3 to 6: (SCC pp. 531-32)

“3. The learned counsel for the appellants, with reference to Section 256 of the Code, submitted that the complaint was to be dismissed on the ground of the death of the complainant. As noted above, the 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* [*Ashwin Nanubhai Vyas v. State of Maharashtra*, AIR 1967 SC 983: 1967 Cri LJ 943], 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* [*Jimmy Jahangir Madan v. Bolly Cariyappa Hindley*, (2004) 12 SCC 509: 2004 SCC (Cri) Supp 317] after referring to *Ashwin case* [*Ashwin Nanubhai Vyas v. State of Maharashtra*, AIR 1967 SC 983: 1967 Cri LJ 943] 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 follows:

‘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 an 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.”

14. Two-Judge Bench in *Jimmy Jahangir Madan v. Bolly Cariyappa Hindley* [*Jimmy Jahangir Madan v. Bolly Cariyappa Hindley*, (2004) 12 SCC 509: 2004 SCC (Cri) Supp 317] referring to this Court's judgment in *Ashwin Nanubhai Vyas v. State of Maharashtra*, AIR 1967 SC 983: 1967 Cri LJ 943] had held that heirs of the complainant can continue the prosecution. The following was held in para 5: (SCC p. 512)

“5. The question as to whether the heirs of the complainant can be allowed to file an application under Section 302 of the Code to continue the prosecution is no longer res integra as the same has been concluded by a decision of this Court in *Ashwin Nanubhai Vyas v. State of Maharashtra* [*Ashwin Nanubhai Vyas v. State of Maharashtra*, AIR 1967 SC 983: 1967 Cri LJ

943] in which case the Court was dealing with a case under Section 495 of the Code of Criminal Procedure, 1898, which is corresponding to Section 302 of the Code. In that case, it was laid down that upon the death of the complainant, under the provisions of Section 495 of the said Code, the mother of the complainant could be allowed to continue the prosecution. It was further laid down that she could make the application either herself or through a pleader. Undisputedly, in the present case, the heirs themselves have not filed the applications to continue the prosecution; the same have been filed by their power-of-attorney holders. ...”

19. Thus, the legal representatives of the complainant are entitled to continue with the complaint and the objection taken by the respondent/accused that the application is barred by limitation cannot be accepted. The plea taken by the applicants that they are the legal representatives of the complainant is duly supported by an affidavit, and there is no reason to disbelieve it. Therefore, the present application is allowed, and the name of Jaswant Singh is ordered to be substituted by the legal representatives mentioned in para 3 of the application.

20. Necessary amendments be made in the memo of parties, and the amended memo of parties be filed within a week.

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22. Since it has been found out that there is no limitation for substituting the legal representative;

therefore, this application has become infructuous and is disposed of as such.

(Rakesh Kainthla)
Judge

23rd September, 2026
(Nikita)