

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4377 OF 2012**

Anil Dalmia
v/s.

..Petitioner

The State of Maharashtra & Anr.

..Respondents

Mr. Manish Bohra i/b. A.S.Khan & Associates for the Petitioner.
Mr. Sanjay Bhatia i/b. Mr. Mishra, for the Respondent no.2
Mrs. R.V. Newton, APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : OCTOBER 19, 2015.**

P.C.

1. Heard. The petitioner herein, an accused in C.C.No.229/SS/2003 pending on the file of Metropolitan Magistrate's 12th Court at Bandra, Mumbai, has challenged the order dated 13.8.2012 and 3.9.2012, whereby the learned Metropolitan Magistrate allowed the son of the original complainant to continue the proceeding initiated by the complainant and dismissed the application filed by the petitioner herein, to dismiss the complaint under Section 256 Cr.P.C.in view of the death of the complainant.

2. Brief facts necessary to decide this petition are as under.

Mrs. Kalavatidevi Joshi, the mother of the respondent no.2 herein had lodged a complaint against the aforesaid petitioner for offence under Section 138 of the Negotiable Instruments Act. The said complaint was filed and prosecuted by the respondent no.2 as an attorney of his mother Kalavatidevi Joshi. The respondent no.2 had also deposed before the court as an attorney of the complainant. However, it appears that in the course of the trial, the original complainant expired and the respondent no.2, son of the complainant continued with the proceedings without substituting himself as a complainant in place of the deceased complainant. Subsequently, the Respondent no.2 the son of the complainant filed application to substitute his name in place of his deceased mother and to permit him to continue with the said matter. The applicant-accused also filed an application to dismiss the complaint in view of the death of the complainant.

3. The learned Magistrate, upon hearing the parties held that though the respondent no.2, who was an attorney of the original complainant, had no right to continue with the proceeding upon the

death of the complainant, however the same is only an irregularity which does not initiate the trial. The learned Magistrate therefore permitted the respondent no.2 to be substituted in the place of the original complainant and consequently dismissed the application filed by the accused to dismiss the complaint, in view of the death of the original complainant.

3. It is a settled principle that the death of the complainant would not lead to the dismissal of the complaint and the acquittal of the accused. The heirs of the complainant can be permitted to continue the prosecution, and in proper cases, the Magistrate has discretion to allow the proceedings to be continued..

4. In the present case the respondent no.2 was the power of attorney of the original complainant. He had filed the complaint and deposed as an attorney of the complainant. The complainant had died during the pendency of the trial. However, he had not reported the death of the complainant and had continued with the evidence without seeking substitution or leave to proceed. Nonetheless, he

filed such an application after the death of the complainant.

5. It is well settled that power of attorney comes to an end with the death of the executant. It is to be noted that the respondent no.2 was not only an attorney but was also the son of the complainant and is a legal heir of the complainant, as such he was entitled to seek leave to continue with the proceeding. Though the respondent no.2 had continued with the proceedings without seeking leave, this is nothing but, as rightly held by the learned Magistrate, an irregularity which does not vitiate the trial. The learned trial judge having allowed the application and permitted the respondent no.2 to continue with the proceeding, has rectified the irregularity. Consequently, the learned Magistrate was perfectly justified in dismissing the application under Section 256 of Cr.P.C. Hence, in my view, this is not a case which deserves to be dismissed in view of the death of the complainant. There is no merit in the petition, and the same is dismissed.

(ANUJA PRABHUDESSAI, J.)