

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

**WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937**

**CRL.A.No. 990 of 2003 ( )**

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Crl.L.P. 82/2003 of HIGH COURT OF KERALA  
CC 490/1999 of J.M.F.C., KUNNAMANGALAM DATED 21-03-2003  
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**APPELLANT/COMPLAINANT :**

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K.K.KHATOR,  
S/O JAYADEVJI KHATOR,  
AGE 51/00, GRASIM FIBRE S.E. 8,  
GRASIM INDUSTRIES LTD.,  
BIRLAKOOTAM,  
MAVOOR AMSOM AND DESOM,  
KOZHIKODE TALUK**

**BY ADV. SRI.SUNNY MATHEW**

**RESPONDENTS/ACCUSED AND STATE :**

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- 1. P.K.MOHAMMED ALI,  
S/O ALI, AGE 48/99,  
PAZHAMPALLY MEETHAL HOUSE,  
P.O.MAVOOR,  
MAVOOR AMSOM AND DESOM,  
KOZHIKODE TALUK**
  - 2. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM**

**R,R1 BY ADV. SRI.K.M.FIROZ  
BY ADV. SMT.M.SHAJNA  
R2 BY PUBLIT PROSECUTOR SRI.JIBU P.THOMAS**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07-10-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**VS**

**K.RAMAKRISHNAN, J.**

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**Criminal Appeal No.990 of 2003**  
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Dated this the 7<sup>th</sup> day of October, 2015

**JUDGMENT**

There is no representation for the appellant today. On the last hearing date, it was reported that the appellant is no more and an application has been filed by the first respondent as Crl.M.A.No.7228/2014 to record this fact and dismiss the appeal as abated. But counsel for the appellant wanted time to take step. But no steps were taken and it was posted as last chance for that purpose today.

2. In view of the death of the appellant, the appeal will not abate, as there is no provision in the Code of Criminal Procedure(hereinafter called 'the Code') for abatement of an appeal on the death of the complainant. Section 394 of the Code only deals with the situation where, the accused died during the pendency of the appeal and not in respect of the death of the appellant. So the prayer in Crl.M.A.No.7228/2014 cannot be allowed. So the petition is dismissed.

3. Since no steps was taken on the death of the appellant, who is a complainant in this case, the principles under Section 256 of the Code which deals with death of the complainant or non-prosecution of the complaint by the complainant can be extended to the appeal also as appeal is a continuation of the proceedings in the lower court. When the complainant is dead and no persons come on record to prosecute the complaint, then, the accused is entitled to get acquittal under Section 256 of the Code. In this case, after evidence, court below had acquitted the accused under Section 255(1) of the Code and the appeal has been preferred by the complainant against such order of acquittal. Since no legal representative has come on record to prosecute the appeal, it can only be treated as the complainant or his legal representative are not interested in prosecuting the case. Further on going through the order passed by the court below, this Court is satisfied that the view taken by the court below on the basis of the evidence is also possible and the court below had come to the conclusion that there was no possibility for the accused executing a

cheque and handing over the cheque to the complainant as claimed by him and that benefit was given to the accused and acquitted him, giving him the benefit of doubt. In the case of an appeal against acquittal even if a different view is possible, if the view taken by the lower court is also one of the views possible, then, the appellate court will be slow in interfering with the order of acquittal passed by the court below, unless the appellate court is satisfied that the appreciation made by the court below is perverse and no such findings could be possible on the base of the evidence.

So under the circumstances, the order of acquittal passed by the court below is also not liable to be interfered with. So the appeal is dismissed and order of acquittal passed by the court below is hereby confirmed. Office is directed to communicate the order to the concerned courts immediately.

Sd/-  
**K.RAMAKRISHNAN**  
**JUDGE**

VS