

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D No.245-DB of 2015

Date of decision:12.5.2015

Avtar Singh Dhesi

....Appellant

VERSUS

Ajaib Singh @ Jabba and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Sachin Sharma, Advocate for the appellant.

HEMANT GUPTA, J.(Oral)

The present appeal against the judgment dated 11.11.2014 was preferred by the complainant on whose complaint a First Information Report No.20 dated 05.03.2008 for the offences under Section 364, 342, 384, 506, 323, 148, 149 of Indian Penal Code was lodged. After the filing of appeal, the complainant died even before the appeal came up for motion hearing. Admittedly, no legal heir has come forward to continue with the present appeal.

Learned counsel for the appellant argues that even in the absence of any legal heir, this Court is bound to decide appeal on merits as the provisions of Section 394 of Criminal Procedure Code 1973 (for short 'Code'), deals with abatement of appeals only on account of death of accused. Since there is no provision for abatement of appeal filed on behalf of the complainant, therefore, the appeal is bound to be heard and decided on merits. He relies upon an order passed by the Hon'ble Supreme Court in a judgment reported as AIR 1971 SC 66 titled Khedu Mohton and others v. State of Bihar and

order passed by a Division Bench of this Court reported as 1963 PLR 191 titled Dr. Megh Raj v. Shri Joginder Singh and others.

We have heard learned counsel for the appellant and find no merit in the said argument. Section 394 of the Code 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.”

Sub-Section (1) of Section 394 of the Code deals with an appeal filed under Section 377 and 378 of Code i.e. appeal by the State against conviction and sentence and appeal in the case of acquittal. Such appeal would abate on the death of the accused. Whereas sub-Section (2) contemplates that all other appeals shall abate on the death of the appellant. Since the State has continuous existence, it is bound to prosecute an appeal filed. Thus, such an appeal would abate only on death of the accused.

But all other appeals i.e. other than the appeals preferred by the State under Section 377 or 378 of the Code would abate on the death of appellant in terms of sub-Section (2) of Section 394 of Code.

The judgments referred to by learned counsel for the appellant are not applicable to the facts of the present case. In Khedu Mohton’s case (supra), the appeal was preferred by the State against the acquittal; therefore, while interpreting Section 431 of Criminal

Procedure Code, 1898 corresponding to Section 394 of the Code, it has been observed that the appeal would abate only on account of death of accused.

Similarly, in Dr. Megh Raj's case (supra), the complaint was filed by the appellant and resulted into acquittal of the respondents. During the pendency of the appeal, Dr. Megh Raj died. Considering Section 431 of Criminal Procedure Code, 1898, it was held that all appeals preferred by an accused person must abate on his death. So far as the appeals against acquittals are concerned, it is laid down that they must also abate if the accused dies but death of the appellant in an appeal against acquittal, however, would not affect the continuation of the appeal. The Court held that the appeal by the complainant is saved from abatement under Section 431 of Criminal Procedure Code, 1898.

We do not find that such judgment advances the argument raised by the appellant in view of sub-Section (2) of Section 394 of Code which provides that all other appeals shall abate on the death of the appellant

Thus, the death of the appellant during the pendency of appeal will entail abatement of appeal.

Consequently, the present appeal stands abated.

(HEMANT GUPTA)
JUDGE

MAY 12, 2015
‘D. Gulati’

(DARSHAN SINGH)
JUDGE