

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1437-2006 (O&M)
Date of Decision: August 19, 2015

Darbara Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: None for the petitioner.

Mr. P.S. Paul, DAG, Punjab,
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment?* **YES**
2. *To be referred to the Reporters or not?* **YES**
3. *Whether the judgment should be reported in the Digest?* **YES**

NARESH KUMAR SANGHI, J.

Since no one had put in appearance for the petitioner despite the fact that case was called twice, it appears that neither the counsel nor legal heirs of the petitioner are interested in prosecuting the present criminal revision petition.

I have heard learned counsel for the State and with his able assistance gone through the material available on record.

The petitioner, Darbara Singh, was held guilty for having committed the offence punishable under Section 13-A of the Public

Gambling Act, 1867, and ordered to undergo rigorous imprisonment for three months besides payment of fine of ₹200/- (Rupees two hundred only) and in default thereof to undergo further rigorous imprisonment for fifteen days by learned Chief Judicial Magistrate, Fatehgarh Sahib. The petitioner preferred an appeal which was dismissed by learned Sessions Judge, Fatehgarh Sahib, vide judgment dated 8.7.2006. Dissatisfied with both the judgments of learned Courts below, present revision petition was preferred before this Court.

After taking instructions from HC Surinder Singh of Police Station, Bassi Pathana, District Fatehgarh Sahib, learned counsel for the State has pointed out that during pendency of the present revision petition, Darbara Singh (petitioner) has since died. In support of his contention, learned counsel for the State has produced photostat copy of the death certificate of Darbara Singh, which is taken on record.

The question for consideration before this Court is – whether in the absence of any express provision regarding 'abatement of revision petition', like the one under Section 394 of the Code of Criminal Procedure, 1973 (for brevity, 'the Code'), which provides for 'abatement of appeal', the present revision petition would also abate by applying the said principle?

Section 394 of the Code provides thus:

“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.”

Section 401 of the Code deals with the High Court's powers of revision. Sub-section (1) thereof provides that the High Court, while exercising revisional jurisdiction may also exercise powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 of the Code. Thus, provisions contained under Section 394 of the Code concerning abatement of appeals have not been made applicable to the Court exercising power under Chapter XXX (Sections 397 to 401) of the Code. Thus, there is no express provision in the Code for dismissal of the revision application as abated on the death of the applicant.

In **Bondada Gajapathi Rao v. State of Andhra**

Pradesh, AIR 1964 SC 1645, Hon'ble the Supreme Court after referring its earlier judgment rendered in **Pranab Kumar Mitra v. State of West Bengal and another**, AIR 1959 SC 144, has held that revision petitions and some appeals from sentences of fine might be continued by his legal representatives on the death of the accused pending the proceeding. It was further held that the provisions of Section 431 of the old Code (which is now contained under Section 394 of the Code) would also be applicable to special leave to appeal under Article 136 of the Constitution of India. Although on the facts of that case, Hon'ble the Supreme Court declined to permit the legal representatives to continue the SLP, in paras 2 & 6 it has held thus:

*“(2) There would seem to be authority for the proposition that revision petitions and some appeals from sentences of fine might be continued by his legal representatives on the death of the accused pending the proceeding: see S. 431 of the Code of Criminal Procedure and **Pranab Kumar Mitra v. State of West Bengal, (1959) Supp. (1) SCR 63 : (AIR 1959 SC 144)**. It appears that in England appeals from similar sentences are permitted to be continued by the executors of the deceased appellant: see **Hodgson v. Lakeman, 1943-1 KB 15**. It is true that neither S. 431 nor the cases mentioned can be said to apply to the present case proprio vigore, for the present is not an appeal under the Code which is dealt with by S. 431 nor is it a revisional application like the one which*

came up for consideration in Pranab Kumar Mitra's case (1959) Supp. (1) SCR 63 : (AIR 1959 SC 144), while as for the English case, it is only of persuasive value. All the same however I think it must now be held that appeals from sentences of fine may be permitted to be continued by the legal representatives of the deceased appellant. First, I find no provision making such appeals abate. If they can be continued when arising under the Code, there is no reason why they should not be continued when arising under the Constitution. If revision petitions may be allowed to be continued after the death of the accused so should appeals for between them no distinction in principle is possible for the purpose of continuance. It is true that the Code of Criminal Procedure which creates the revisional powers of a Court provides that such powers may be exercised suo motu but it does not seem to me that Pranab Kumar Mitra's case (1959) Supp. (1) SCR 63 : (AIR 1959 SC 144) was based on this for on that ground all revision cases should have been permitted to be continued and the permission should not have been confined to cases of fine. Indeed in that case this Court proceeded on the basis that there was no statutory provision applying to the case. It observed,

'even in the absence of any statutory provisions, we have held.....that the High Court has the power to determine the case even after the death of the convicted person, if there was a sentence of fine also imposed on him, because that sentence affects the property of the deceased in the hands of his legal representative'.

A sentence of fine affects property equally when the case is taken further up in appeal or in revision. If it is just and proper to continue the hearing in one case after the death of the accused, it would be equally so in the other case.

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(6) In my view, for those reasons the legal representatives are not entitled to continue the appeal. That being so and as the sentence was one of imprisonment which would not affect anyone after the death of the accused, it cannot be said that there is anyone interested in the appeal. There is no question, therefore, in such a case for proceeding further with the appeal”

In the matter of **Suresh Tiwari v. State of Chhattisgarh**, **2015 Criminal Law Journal 818**, it was held that if the legal representatives of the revisionist, who has since died, are not coming forward to prosecute the revision petition, the same would stand abated.

In the present case also, no one is coming forward from the legal heirs of the petitioner to prosecute the present revision petition, therefore, this Court holds that present revision has abated on account of death of the petitioner, Darbara Singh.

Disposed of.

August 19, 2015
P Kapoor

(NARESH KUMAR SANGHI)
JUDGE