

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.6524 OF 2015 IN
CRIMINAL APPEAL NO.331 OF 2009

Dr. Ravindra Rangrao Mistry ... APPLICANT

VERSUS

Sheetal Subhash Jain, Died L.Rs.
Smt. Sarika Sheetalkumar Jain & ors. ... RESPONDENTS

.....
Mrs. S.T. Kazi, Advocate for applicant
Shri A.M. Phule, A.P.P. for State
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CORAM: A.I.S. CHEEMA, J.

DATED: 4th April, 2016.

ORAL ORDER :

1. Heard learned counsel for the applicant. Perused the application. The application seeks to bring on record legal representatives of the deceased respondent, who was accused in matter under Section 138 of the Negotiable Instruments Act. The learned counsel for the applicant is unable to show any provision or ruling which permits bringing of legal

representatives of a deceased - accused on record at the behest of the complainant.

2. Perused Section 394 of the Code of Criminal Procedure. The same 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."

3. The above provision is quite clear. This appeal is not against any conviction and the application is not by the near relatives of the accused. Looking to the purport of sub-section

(1) of Section 394, the application cannot be granted. The application is rejected.

(A.I.S. CHEEMA, J.)

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