

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.660 OF 2016
AND
CRIMINAL APPLICATION NO.662 OF 2016**

Smt. Kalpana Tarun Vasa

... Applicant

V/s.

Shri. Anil Anand Naik

... Respondent

Mr. Kuldeep Nikam for the Applicant.

Mr. Anand Patil for Respondent No.1.

Mr. A.R. Kapadnis, APP for the Respondent State.

CORAM : A.S.GADKARI, J.

DATE : 28th MARCH 2018

P.C.:

1. These are the applications by the legal heir/wife of the original complainant namely Shri. Tarun Vasa (deceased) in Summary Criminal Case No.1637 of 2012.

2. That, the original complainant Shri. Tarun Vasa was the husband of the applicant, who had instituted the said case under Section 138 of the Negotiable Instruments Act, 1881, which resulted into dismissal of

the complaint and acquittal of Respondent No.1 by the Judgment and Order dated 29.06.2016 passed by the learned Judicial Magistrate First Class, Kolhapur.

The record indicates that, after dismissal of the said complaint and before filing the present appeal, the original complainant Shri. Tarun Vasa expired on 27.09.2016. The applicant being legal heir of the deceased intends to pursue the present appeal. In the premise, the present applications are filed.

3. Mr. Patil, learned counsel appearing for Respondent No.1 vehemently opposed the application on the ground that, the applicant did not produce on record her Heirship or Succession certificate to prove the fact that, she is the real legal heir of the deceased. In support of his contention, he relied on the decision of this Court in the case of *Vishnupant Chaburao Khaire Vs. Kailash Balbhir Madan reported in 2010(3) Bom.C.R.644*.

4. At out outset, it is to be noted here that, though an objection about the bonafide claim of the applicant about her being legal heir of deceased is raised by the respondent, it appears to me that, the same has been raised only for the sake of argument and without having any

substance in it. No reply to the present application is filed thereby raising any doubt about the fact and/or disproving the fact that, the applicant is not the legal heir of the deceased rather the legally wedded wife of the deceased and in the absence of any cogent material on record to support the contention of the respondent to raise even on iota of doubt about the bonafide of the applicant and in the circumstances, the said objection has to be discarded at its threshold.

5. The documents produced on record by the applicant are sufficient to draw a safe and proper inference and/or conclusion that, the applicant was the legally wedded wife of the deceased Shri. Tarun Vasa and in view thereof, she has legal right to pursue the appeal.

6. In view of the above, the applications are allowed in terms of prayer clause (a).

(A.S.GADKARI, J.)