

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.228 of 2009

JUDGMENT:

This appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973, questioning the judgment dated 17.02.2009 passed in SC.No.515 of 2007 by the Special Judge for Economic Offences cum VIII Additional Metropolitan Sessions Judge, Hyderabad.

2. The Sub-Inspector of Police, Chandrayanagutta Police Station, Hyderabad, filed a Memo dated 31.01.2018, along with the death certificate issued by the Registrar of Births and Deaths, Charminar, Greater Hyderabad Municipal Corporation, stating that the appellant herein died on 14.01.2013

3. The Public Prosecutor after taking instructions reports that the contents of the said Memo are true and hence, the appeal stands abated.

4. The sentence imposed against the appellant comprises of not only imprisonment but also fine. However, the High Court of Kerala in *Raveendran @ Ravi vs. State of Kerala* in CrI.A.No.2343 of 2010, observed and held "If none of the near relatives apply for leave as provided in the proviso to Section 394(2) Cr.P.C, the Appellate Court would be justified in dismissing the appeal filed by the appellant on the ground that it has abated. Even an appeal from a sentence of fine would abate, if no near relative comes forward to continue to prosecute the

appeal. There is no principle that an appeal from a sentence of fine should be heard in the absence of anybody and the Appellate Court should pass a judgment on the merits and only then the State could recover the fine, by proceeding against the property of the deceased appellant/accused. If the appeal abates, it would have the effect of the judgment and conviction and sentence thereunder passed by the trial court being in force. So long as the sentence of fine is not set aside, the right of the State to realise the fine amount in the manner provided in Section 70 of the Indian Penal Code would not be defeated. For that purpose, the Appellate Court need not *suo motu* consider the appeal on merits and arrive at a finding on the question whether the appellant was guilty of the offence alleged against him, only for the purpose of considering whether his near relatives or legal representatives will be bound to discharge the liability of the appellant". Having observed so, it held that, in the case dealt with by the said Court, no other relatives have come forward to prosecute the appeal and thereby the appeal stands dismissed as abated.

5. Going by the above reasoning, the instant appeal also stands dismissed as abated.

Accordingly, the Criminal Appeal is dismissed as abated. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

February 6, 2018
LMV