

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 60 OF 2019

IN

CRIMINAL REVISION APPLICATION NO. 7 OF 2015

ADITYA ARUN NAIK.

... Applicant

Versus

MELROSE TRADING., THR. PROP.

VIJAY KUMAR SAXENA.

... Respondent

Shri Ryan Da Piedade Menezes, Advocate for the applicant.
None for the respondents.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 9th April 2019

ORAL ORDER:

Shri Ryan Menezes, learned Advocate submits that in view of the proviso to Section 394 CrPC, the applicant was to be granted leave to continue the hearing of the revision. There has been no resistance on behalf of the respondents to the application under consideration. It was otherwise the contention of Shri Ryan Menezes, learned Advocate that the proviso of Section 394 CrPC dealing with the abatement of the appeals applied with equal force to the revision applications challenging the conviction and sentence by placing reliance in **State of Kerala v/s. Y. Narayani Amma Kamala Devi** [1962 AIR (SC)

1530] and **Pranab Kumar Mitra v/s. State of West Bengal** [1959 AIR (SC) 144].

2. In **Y. Narayani Amma Kamala Devi** (supra), the Hon'ble Apex Court held that the revisional jurisdiction can be exercised even after the death of the convict contrary to the express stipulation which provides abatement of appeals on the death of the convict. The question at large before the Three Judge bench of the Hon'ble Apex Court was whether an application for revision under Section 439 of the Cr.P.C. could be entertained by the High Court after the death of the accused person against whom the order was made? In the brief facts of that case G. Nair, a Cashier of the Trivandrum Branch of the State Bank of India was convicted by the Sub-Divisional Magistrate, Trivandrum, for an offence under Section 381 IPC on a charge of theft of an amount of ₹10,000/- belonging to the Bank. A Fiat Car which was purchased by the accused was seized by the police during the investigation of the case and it was alleged that this had been purchased with the money stolen by the accused. The car was sold under the orders of the Court and the sale proceeds deposited in Court. The Magistrate sentenced the accused to rigorous imprisonment for one year

and also ordered that the sale proceeds of the car would be withdrawn by the Head Cashier of the Bank for appropriation towards the amount proved to have been stolen by the accused.

3. In **Y. Narayani Amma Kamala Devi** (supra), the appeal of the accused to the Sessions Court was unsuccessful. Though no separate order was made by the Sessions Court in respect of the Magistrate's order for withdrawal of the sale proceeds of the car by the Head Cashier, that order was by implication affirmed by him. The Sessions Court delivered the judgment on 13/08/1959, and on that very date within a few hours of the pronouncement of judgment the accused G. Nair died. On 11/11/1959, his widow and two minor sons presented an application under Section 439 in the High Court of Judicature of Kerala against this judgment of the Sessions Court and prayed that the order of conviction and sentence passed against the accused and also the order as regards the sale proceeds of the car should be set aside. The High Court rejected the preliminary contention raised on behalf of the State that the accused G. Nair having died, this application for revision was not maintainable. It then considered the application on its merits and set aside the conviction of the accused and also the order

directing the payment of the sale proceeds of the motor car to the Head Cashier but however granted a certificate under Article 134(1) of the Constitution being a fit case for appeal to this Court.

4. In **Y. Narayani Amma Kamala Devi** (supra), the principal point urged in support of the appeal was that after the death of the accused no revision application lay to the High Court against the order of the Sessions Court maintaining his conviction. The learned Counsel for the appellant had based his arguments in support of his contention on the principle embodied in the maxim *actio personalis moritur cum persona* and urged that except where the statute had stepped into making any special provisions, no proceedings either against the accused or on behalf of the accused could be entertained or continued in the Court in respect of any crime said to have been committed by a person after the death of such person. It considered the fact that the Criminal Procedure Code gives a right of appeal to the convicted person in certain cases. If, after the conviction and before an appeal has been filed the convicted person dies, there is no provision for any appeal on his behalf. What will happen when after an appeal has been filed by the

convicted person, he dies, is provided for in Section 431 of the Cr.PC. That Section provides that every appeal against acquittal and every other appeal under Chapter XXXI except an appeal from a sentence of fine shall finally abate on the death of the appellant.

5. In **Y. Narayani Amma Kamala Devi** (supra), the Apex Court held that the High Court or the Court of Sessions cannot therefore exercise its appellate jurisdiction in favour of a dead person even if an appeal has been filed by him. As regards the revisional jurisdiction of the High Court, there is no provision similar to Section 431 nor is there any provision whether a revisional application can be or cannot be made in respect of an order of conviction when the convicted person is dead. The Apex Court observed at para 6 " It appears to us therefore that in a proper case the High Court can exercise its power of revision of an order made against an accused person even after his death." and taking benefit of the view expressed by the Bombay High Court in *Imperatrix v/s. Dongaji Andaji*. The direct question in that case was whether the appeal lodged by a convicted person abates on his death. One of the Judges was of the opinion that on the death of the appellant the appeal

abated while the other came to a contrary conclusion. The Chief Justice to whom the case was referred agreed with one of them that the appeal be abated. All the three learned Judges appeared to have however been of opinion that the death of convicted person would be no impediment in the way of the Court's exercising its power of revision. Ultimately, the Apex Court held that there was no reason to interfere with the order made by the High Court in exercise of the power of revision and dismissed the State's appeal.

6. In **Pranab Kumar Mitra**(supra), the five Judge Bench of the Hon'ble Apex Court held that the death of convict seeking revision does not abate the proceedings. It has to deal with the pending matters with the requirement of justice. In the absence of statutory provisions and in terms applying to an application in revision, as there are those in Section 431 in respect of criminal appeals, the High Court has the power to pass such orders as to it may seem fit and proper, in exercise of its revisional jurisdiction vested in it by Section 439 of the Code. Indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend

upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by Section 439 of the Code, read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of Criminal Jurisprudence and that subordinate Criminal Courts do not exceed their jurisdiction or abuse their powers vested in them by the Code. The High Court is not bound to entertain an application in revision or having entertained one to order substitution in every case. It is not bound the other way, namely, to treat a pending application in revision as having abated by reason of the fact that there was a composite sentence of imprisonment and fine. The High Court has been left complete discretion to deal with a pending matter on the death of the petitioner in accordance with the requirements of justice.

7. Having heard Shri Menezes, learned Advocate and on a consideration of the proviso to Section 394 CrPC as well as the judgments in **Y. Narayani Amma Kamala Devi** and **Pranab Kumar Mitra**(supra) and as the application under consideration is filed by the son of the original applicant convicted of the

offence under Section 138 of Negotiable Instruments Act and since deceased, leave granted to continue the hearing.

8. The application accordingly stands disposed off.

NUTAN D. SARDESSAI, J.

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