

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

950 CRIMINAL APPLICATION NO. 2854 OF 2021
IN APEAL/265/2011 WITH APEAL/262/2011 WITH
APEAL/265/2011 WITH APEAL/366/2011

DEVIDAS @ BHAU S/O VISHVANATH INDORE DECEASED
THROUGH HIS LEGAL HEIRS VARSHA WD/O. DEVIDAS INDORE
AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Langhe Vijay R. Mrs. Langhe Pooja V.
APP for Respondent-State : Mrs. P. V. Diggikar

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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 02nd FEBRUARY, 2022

PER COURT:-

1. Leave to correct the title of the application by mentioning that the criminal application is filed "In Criminal Application No. 265 of 2011" in instead "In Criminal Application No. 366 of 2011" and also to correct the prayer clause "C" to the same extent and effect.
2. Learned counsel for the applicants submits that the appellant Devidas @ Bhau Vishwanath Indore-original accused no.2 in Sessions Case No. 224 of 2006 died during pendency of the criminal appeal. The appellant-accused Devidas came to be convicted by the trial court under Sections 324 and 452 of IPC and sentenced to suffer rigorous

imprisonment for six months and to pay fine of rupees five thousand and in default, to undergo simple imprisonment for one month.

3. Learned counsel for the applicants submits that the appellant-accused Devidas was serving as a Police Constable. Learned counsel submits that the applicants are the legal heirs. Applicant no.1 is the widow and applicant nos. 2 and 3 and the children of appellant-accused Devidas. The retiral benefits of deceased Devidas are yet to be released and in view of the same, it is necessary to bring the legal representatives on record. Learned counsel submits that in terms of the provisions of Section 394 of Cr.P.C., this application is filed. However, due to the pandemic situation, the delay has occurred in filing the present application.

4. We have also heard learned counsel for respondent no.2-original complainant and the learned APP for the respondent State.

5. Both of them have stated that appropriate order may be passed.

6. Section 394 of Cr.P.C. is reproduced herein below:

"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.

7. In terms of the proviso to Sub-section (2) of Section 394 of Cr.P.C., if the appellant dies during pendency of the appeal preferred against conviction and sentence of imprisonment, 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. In view of the same and since the applicants before us are the widow and children of appellant deceased Devidas, we think that this is appropriate case to grant leave to continue with the appeal since the retiral benefits of the appellant

deceased Devidas are yet to be released because of pendency of the appeal preferred against the judgment and order of conviction. So far as the delay is concerned, since this application is filed during the pandemic, we are inclined to condone the delay. Hence, the following order:

ORDER

I. The criminal application is allowed in terms of payer clauses "B" and "C".

II. The criminal application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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