

INTERIM APPLICATION NO.3314 OF 2021  
WITH  
INTERIM APPLICATION NO.3316 OF 2021  
IN  
CRIMINAL APPEAL NO.885 OF 2009

Ms.Mrunmai Kulkarni i/by Mr.Girish Kulkarni & M.G.Shukla,  
Advocate for applicant-appellant.  
Mr.S.V.Gavand, APP, for State.  
H.C.Vijay Niwate, ACB, BMU, present.

PC :

1. The applicant is seeking permission to pursue Criminal Appeal No.885 of 2009 being legal heir of the appellant. The appellant has expired on 31<sup>st</sup> December 2010. The applicant is wife of appellant.
2. Learned counsel for applicant seeks permission to delete prayer clause (b) in Interim Application No.3316 of 2021. Leave granted. Applicant is permitted to carry out amendment forthwith.
3. The appellant Subhash Satam was convicted vide judgment and order dated 7<sup>th</sup> July 2009 passed by learned Special Judge, Greater Bombay in ACB Special Case No.24 of 2007, for the offences under Sections 7, 13(1)(d), 13(2) of Prevention of Corruption Act,

and sentenced to undergo imprisonment for two years and pay fine of Rs.5,000/-.

4. The appellant had challenged the impugned judgment of conviction by preferring Criminal Appeal No.885 of 2009. The appeal was admitted and sentence of imprisonment has been suspended.

5. During pendency of Criminal Appeal No.885 of 2009, the appellant has expired on 31<sup>st</sup> December 2010. Death certificate of appellant has been annexed to this application.

6. Learned counsel for the applicant submit that the applicant is the wife of appellant. She may be permitted to pursue the appeal. In the event judgment of conviction is set aside, the applicant being wife of the deceased appellant, would be entitled for pension and other related benefits. Interim Application No.3314 of 2014 is preferred for condonation of delay in preferring the application and seeking leave to continue the appeal challenging conviction. It is submitted that applicant is legal heir of appellant (deceased). Due to conviction the appellant has not received from the government gratuity returns, complete pension and other remuneration which is even otherwise due from the government. The appellant has expired. The applicant being the wife of appellant, would peruse the appeal to enable her to redeem these returns in the event conviction is set aside by this Court. The applicant is senior citizen. She could not come to terms with loss of her husband. She was not aware of provisions and remedies available to her after untimely demise of her husband. When She approached the Advocate for taking legal

recourse available to her, she was informed that there has been enormous delay in preferring this application.

7. During the course of arguments learned advocate for applicant relied on the decision of Supreme Court in the case of **Ramesan (dead) through L.R. Girija Vs. State of Kerala**<sup>1</sup> and submitted that the appeal of the appellant would not get abated due to death of appellant, since appellant was sentenced to suffer imprisonment and fine. Learned advocate also relied upon another decision of Supreme Court in the case of **State of Andhra Pradesh Vs. S.Narsimha Kumar**<sup>2</sup>.

8. Learned APP submitted that the appellant has expired. The fine amount has already been deposited by the appellant. Thus, the applicant is not affected in any manner. There is substantial delay in filing this application. This application is preferred after about period of ten years. Delay has not been explained. The appeal stands abated. Learned APP relied upon decisions of Supreme Court in the case of **S.V.Kameshwar Rao Vs. State (ACB Police Karnool District, A.P)**<sup>3</sup> and **Shankar Prasad Ghosh (Dead) Vs. State of Bihar and another**<sup>4</sup>.

9. The respondents were directed to verify the fact of death of appellant. Assistant Commissioner of Police, ACB, submitted report dated 2<sup>nd</sup> February 2022 along with death certificate and confirmation letter issued by Medical Officer, Municipal Corporation indicating that the appellant has died on 31<sup>st</sup> December 2010.

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1 2020-AIR(SC)-559

2 Criminal Appeal Nos.1446-1450 of 2004, decided on 13-7-2006

3 1991-AIR (SC)-2085

4 2008 (Supp)-AIR (SC)-447

10. The contention of the applicant is that she is the legal heir of appellant. The appellant did not receive his gratuity, complete pension and other remuneration which is otherwise due from Government. Since the appellant is no more, the applicant being legal heir, would pursue the appeal to enable her to get the returns from the Government, in the event appeal is allowed and conviction is set aside. Leave may be granted to the applicant to pursue the appeal.

11. The appellant-accused was working as Rationing Inspector under the Controller of Rationing and Director of Civil Supply, Mumbai. He was 'public servant' as defined under Section 2(c) of the Prevention of Corruption Act, 1988. He was convicted by Special Judge, Greater Bombay by judgment and order dated 7<sup>th</sup> July 2009. The judgment is subject matter of challenge in Criminal Appeal No.885 of 2009.

12. Section 394 of Code of Criminal Procedure reads as follows :

**“S.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.”

13. In the case of *Ramesan Vs. State of Kerala (supra)*, the Hon'ble Supreme Court has held that if accused is convicted and sentenced to imprisonment and fine, the appeal would not abate in toto as recovery of fine can only be ordered after giving proper opportunity to the legal representative of deceased. The factual aspects before the Hon'ble Supreme Court would indicate that the accused therein was convicted and sentenced to suffer imprisonment of two years and fine of Rs.1,00,000/-. He preferred appeal before High Court. The appellant died during pendency of the appeal. High Court proceeded to decide the appeal on merits. The High Court after considering the evidence on record upheld the conviction. The High Court took the view that since the appellant died pending appeal, sentence of imprisonment has become unworkable. However, regarding the imposition of fine, there is no reason to hold that the Trial Court has committed any mistake and the appeal was dismissed. The legal heir of the appellant filed appeal before Supreme Court. The legal representative, in the appeal before Supreme Court, contended that in view of death of the accused, the High Court ought to have abated the entire appeal. Section 394 of Cr.P.C saves appeal, which arises against sentence of fine only. When there was composite sentence of imprisonment as well as fine, the appeal has to abate both against the sentence of imprisonment as well as fine. The High Court committed error in proceeding to decide the appeal on merits. High Court ought to have abated the appeal in toto. Referring to provision of Section 394 of Cr.P.C and the provisions relating to recovery of fine stipulated u/s.431 of Cr.P.C, it was observed that even if there is composite sentence of imprisonment and fine, the appeal would not abate. The view of High Court was confirmed. However, it was observed that although

the view of High Court is upheld, it does not appear that after death of appellant-accused, his legal heirs were given opportunity to proceed with the appeal against the sentence of fine. The judgment of High Court does not mention that any counsel has appeared for the legal heirs. The High Court ought to have given an opportunity to legal heirs of accused to make their submissions against sentence of fine. In the case of State of Andhra Pradesh Vs. Narsimha Kumar and others (supra), the conviction was set aside by High Court. The appeal was preferred before Supreme Court by State of Andhra Pradesh. One of the accused who was original accused no.3, who was also respondent before Supreme Court, had expired. Petition was filed by his wife. It was contended that appeal would abate as far as the said accused is concerned. The logic of Section 394 of Cr.P.C was pressed into service. It was contended by parties that neither in the Cr.P.C nor in the Supreme Court Rules there is any provision dealing with such situation. The Supreme Court referred to two previous decisions of same Court viz Bandada Gajapathi Rao Vs. State of Andhra Pradesh (AIR-1964-SC-1645) and Harnam Singh Vs. State of Himachal Pradesh (1975)3-SCC-343. It was held that an appeal from a composite order of sentence is ordinarily directed against both the substantive imprisonment and fine. But such an appeal does not for that reason cease to be an appeal from a sentence of fine. Sentence of fine operates directly against estate of deceased and therefore legal representatives are entitled to clear the estate from that liability. Whether or not the sentence of fine is combined with any other sentence can make no difference to the application of that principle.

14. The submission of learned advocate for applicant is that in the

event appeal does not abate, this application may not be rejected on the ground of limitation prescribed under Section 394 of Cr.PC to move such application. Even otherwise the applicant has explained reasons for preferring this application after lapse of substantial period.

15. In *S.Vkameshwar Rao Vs. State* (supra), the legal representative of accused sought leave to continue appeal. Application was filed after ten years. The Supreme Court held that no sufficient cause for condonation of delay is shown except stating that petitioner would be deprived of securing consequential benefits to which he would be entitled to in case his application is allowed and his deceased father is acquitted. By relying upon this decision the Supreme Court in the case of *Shankar Prasad Ghosh* (supra) took a similar view. The legal heir of deceased appellant therein had preferred application for substituting appellant. There was delay of five years. It was held that period of 30 days has been statutorily fixed for making application by legal heirs. No explanation is offered for the delayed presentation.

16. In both these decisions, the Supreme Court was not considering the issue whether appeal against conviction abated in the event of death of accused-appellant when the sentence of imprisonment and fine were imposed while convicting the accused. The Court proceeded on the basis that the appeal has abated and in accordance with Section 394 of Cr.PC, there was inordinate delay of ten years and five years respectively in seeking leave to pursue appeal by legal representatives.

17. The Supreme Court in the decision of *Ramesan Vs. State of*

Kerala (supra) has dealt with the issue about abatement of appeal in the event of sentence being imprisonment and fine.

18. Apart from the above principle, it can be seen that this application is preferred by widow of appellant/accused. She is a senior citizen. Explanation has been given for belated filing of such application. Even if there is delay in moving such application, it has to be condoned in the interest of justice. The deposit of fine would not make any difference. Opportunity is required to be given to applicant being legal heir of appellant to pursue and contest appeal on merits. Taking into consideration the factual aspects of the matter, hearing of appeal can be expedited.

#### **ORDER**

- (i) Interim Application No.3314 of 2021 and Interim Application No.3316 of 2021 are allowed and disposed of;
- (ii) Applicant is allowed to pursue Criminal Appeal No.885 of 2009 as legal representative of appellant;
- (iii) Hearing of the appeal is expedited;
- (iv) Appropriate amendment shall be carried out in the appeal within three weeks from the date of uploading of this order;
- (v) Criminal Appeal No.885 of 2009 be listed for hearing in the category of senior citizens.

(PRAKASH D. NAIK, J.)

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