

HEMANT
CHANDERSEN
SHIV

Digitally signed
by HEMANT
CHANDERSEN
SHIV
Date:
2023.04.05
10:41:48 +0530

3.a916.07.doc

Shiv

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

CRIMINAL APPEAL NO.916 OF 2007

Eknath Narayan Pathare

...Appellant

vs.

Mohammad Ali Hasham

Memon and Anr.

...Respondents

Mr. Ashok B. Tajane for the Appellant.

Mr. H. J. Dedhia APP for Respondent No.2-State.

CORAM : S. M. MODAK, J.

DATED : 31ST MARCH 2023

P. C. :

1. Heard learned Advocate for the Appellant.
2. It is true that the Appeal is admitted on 12th September 2007.
3. This Court has issued fresh notice, when the matter had come up for final hearing. It is now revealed that Respondent No.1 has expired on 30th May 2021. Though learned Advocate Mr. Tajane for the Appellant took sometime to ascertain legal provisions, he submits that he could not find any judgment thereby interpreting that the Appeal can be continued against LRs, of the deceased Respondent-accused. The provisions of section 394(1) of the Code

of Criminal Procedure are very clear. So now the Appeal no more survives. It is dismissed

4. He submitted that the LRs of deceased Respondent No.1-accused must have inherited certain properties from deceased Respondent No.1-accused. His client can certainly take civil action for recovery of the amount due. He submitted that cause of action for proceeding against LRs of deceased-Respondent No.1 arises on the date of knowledge about death of Respondent No.1.

5. On this background, the Appellant is at liberty to take action against LRs of deceased Respondent No.1-accused, on satisfying the concerned Court about the provisions of relevant law.

6. Appeal is disposed of accordingly.

[S. M. MODAK, J.]