



CrI.O.P.(MD)No.4572 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/12/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

CrI.OP(MD)No.4572 of 2023

and

CrI.MP(MD)No.4011 of 2023

1.S.Subburaj
2.R.Kesavan
3.N.Baskaran
4.V.Perumalsamy
5.K.Venkatesh
6.S.Jaganathan
7.N.Seenivasan

: Petitioners/Respondents/
A1, A4, A5, A6, A7,A15
and A16

Vs.

The State rep. by
Inspector of Police,
CB-CID,
Virudhunagar District,
Virudhunagar.
(Crime No.15 of 2008)

: Respondent/Complainant/
Complainant

K.Gopalsamy (Deceased)

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the order, dated 30/01/2023 made in the memo in CrI.A No.66 of 2017 filed by the petitioners on the file of the Additional District Judge, Virudhu Nagar and to set aside the same as illegal and to direct the Additional District Judge, Virudhu Nagar to dismiss the Appeal in CrI.A No.66 of 2017 as the same stands finally abated under section 394(2) of Cr.P.C and pass such further or other orders.



WEB COPY



Crl.O.P.(MD)No.4572 of 2023

For Petitioners : Mr.M.Ajmal Khan
Senior Counsel for
M/s.M.Ajmal Associates

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

O R D E R

This criminal original petition has been filed seeking to set aside the order, dated 30/01/2023 made in the memo in Crl.A No.66 of 2017 filed by the petitioners on the file of the Additional District Judge, Virudhu Nagar and to direct the Additional District Judge, Virudhu Nagar to dismiss the Appeal in Crl.A No.66 of 2017 as the same stands finally abated under section 394(2) of Cr.P.C.

2.The facts in brief:-

(i)The accused persons are the residents of Sithurajapuram, Virudhu Nagar district and also the members of Melur Kammavar Uravin Murai Podhu Paribalana Sabha, Sithurajapuram Village. With regard to the allegation of convening a General Body Meeting, on 09/09/2007 and election of the Office-Bearers, the de-facto complainant (since deceased) preferred a complaint under section 200 of Cr.P.C before the trial court namely the Judicial Magistrate No.II, Virudu Nagar.



Crl.O.P.(MD)No.4572 of 2023

(ii)An order was passed by the Judicial Magistrate directing the respondent police to register FIR and investigate the matter. Upon which, a case in Crime No.15 of 2008 was registered against 17 persons including the petitioners for the offences under sections 120(B), 419, 463, 465, 468 and 471 of IPC. After completing the investigation, final report was filed and it was taken cognizance in CC No.75 of 2013 by the Judicial Magistrate No.II, Virudhu Nagar, for the offences under sections 120(B), 419, 465, 468 and 471 of IPC.

(iii)Pending trial, A11, A12, A13 and A17 died. So the case against them was declared to be abated. After conducting trial, the Judicial Magistrate No.II, Virudhu Nagar found the accused persons not guilty, acquitted them from all the charges, by its judgment, dated 19/04/2017. Against the judgement of acquittal, the de-facto complainant (since deceased) filed appeal in Crl.A No.66 of 2017 on the file of the Additional District Judge, Virudhu Nagar. During pendency of the appeal, the de-facto complainant died, on 27/09/2019. So the accused persons filed a memo stating that the appellant died, on 27/09/2019. The appellate Court recorded same. Later, the appeal was adjourned for taking steps for the deceased. Though the appellant died as early on 27/09/2019, he was



Crl.O.P.(MD)No.4572 of 2023

neither substituted by his representative. So the appeal shall stand abated as provided under section 394(2) of Cr.P.C. The petitioners filed a memo stating that since the appellant died, the appeal has to be dismissed as abated. But the Appellate Court passed an order in the memo stating that as per section 394(1) of Cr.P.C the appeal will not abate and posted the case for argument.

3. Aggrieved over the above said order, this criminal original petition has been filed by the petitioners.

4. Heard both sides.

5. A point of law is raised by the petitioner herein, in view of section 394(2) of Cr.P.C, which reads as under:-

"...(2) Every other appeal under this Chapter (except an appeal from an 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 relative may, within thirty days of the death of the appellant, apply to the Appellate



WEB COPY



CrI.O.P.(MD)No.4572 of 2023

*Court for leave to continue the appeal;
and if leave is granted, the appeal
shall not abate."*

6.By relying upon this, it was contended by the learned Senior Counsel appearing for the petitioners that if the appellant is reported to be dead and the legal heirs of the appellant did not come forward to implead themselves as appellants, automatically the appeal got abated. To that effect, he filed a memo before the Appellate Court. But the Appellate Court was of the view that section 394(1) Cr.P.C will apply only on the death of the accused. Since the accused is alive, the appeal will not abate. So, it was posted for argument.

7.The legality of that order is called in question in this petition.

8.The matter was repeatedly adjourned to verify the position. In the last hearing, the learned Additional Public Prosecutor would submit that the legal heirs of the appellant did not come forward to implead themselves. So the present status.

9.So the question, which arises for consideration is whether the opinion or the order passed by the appellate



Crl.O.P.(MD)No.4572 of 2023

Court is legally sustainable or not. For that purpose, we have to go to the evidence alleged and the nature of the prosecution proceedings.

10.The deceased appellant/de-facto complainant filed a complaint stating that fabrication of records were made by the accused persons as if meeting was held by Kammavar Educational Organization, on 09/09/2007. Similarly fabrication was made in the minute book and impersonation was also alleged. On the basis of the complaint, a case was registered in Crime No.15 of 2025 by the respondent police for the offences under sections 120B, 419, 463, 465, 468 and 471 of IPC against 17 persons. After completing the investigation, final report has been filed and it was taken on file in CC No.75 of 2023 by the Judicial Magistrate No.II, Virudhu Nagar.

11.The case was tried by the Judicial Magistrate No.II, Virudhu Nagar and all the accused were acquitted. Judgment was pronounced, on 19/04/2017. The State did not prefer any appeal. The de-facto complainant preferred appeal before the appellate Court under sections 372 and 378(2) (a) of Cr.P.C. Pending appeal, as mentioned above, the de-facto complainant/appellant was reported to be dead, on 27/09/2019.



Crl.O.P.(MD)No.4572 of 2023

WEB COPY

12.A similar issue arose before the Patna High Court. But the Patna High Court of the view that once the appeal is admitted it got to be decided as per section 387(2) of Cr.P.C. It will not abate on the death of the appellant. According to the Patna High Court in effect, the aggrieved party is the State. So the appeal got to be decided itself own merit. Against which, the accused/respondent preferred SLP before the Hon'ble Supreme Court. At the time of hearing, there was no argument on the side of the accused that on the death of the appellant, the appeal will abate.

13.The observation of the Patna High Court in the case of ***Sheojanam Prasad And Anr. vs Sumant Prasad Jain And Ors. (AIR1971 PAT 124)*** reads as under:-

"18.Section 495 of the Code provides that a Magistrate enquiring into or trying any case may permit the prosecution to be conducted by any person other than the officer of the police and as such he may in a complaint case allow it to be prosecuted by some body other than the original complaint. On the same



WEB COPY



Crl.O.P.(MD)No.4572 of 2023

principle this Court, as well in an admitted appeal against the order of acquittal presented to the High Court under Section 417 (3) of the Code and which as a consequence of the death of the sole appellant does not abate can permit any one considered competent to prosecute the appeal with a view to assist the Court in coming to its decision in the appeal. It is true that with the death of the sole appellant the power given to the Advocate automatically ceases, but since the deceased appellant's learned Advocate Mr. Prem Shankar Sahay was ready to present the appellant's case only with a view to assist the court in coming to a decision, we permitted him to do so and he has accordingly been heard."

14.The observation of the Hon'ble Supreme Court in the case of **Sumat Prasad Jain Vs. Sheojanam Prasad (Dead) and others and State of Bihar [(1973)1 SCC 56]** reads as under:-

"6.The complainant thereupon filed



WEB COPY



Crl.O.P.(MD)No.4572 of 2023

an appeal in the High Court. Pending the appeal the complainant, as aforesaid, died on July 22, 1967. Two questions in the main were canvassed before the High Court; (1) whether on the death of the complainant the appeal filed by him abated, and whether his son Ashok Kumar could be brought on record as the legal representative of the deceased complainant, and (2) whether on the averments in the complaint and the evidence on record a case of counterfeiting the property mark of the complainant could be maintained. The High Court was of the view that there was no provision in the *Code of Criminal Procedure* under which a legal representative of a deceased complainant could apply for being brought on record for the purpose of continuing an appeal filed by such a complainant. On that view. the High, Court dismissed the application by the complainant's son for being brought on record. The High Court, however, was of



WEB COPY



Crl.O.P.(MD)No.4572 of 2023

the view 'that the complainant's death did not bring about abatement of the appeal since once a criminal appeal was admitted the High Court' had to go on with it and decide it, the real interested party being not the complainant but the State. That question, has Dot been agitated before us, and therefore, we are not called upon to decide it or to express our opinion one way or the other. "

15.It is seen that the view expressed by the Patna High Court was accepted by the Hon'ble Supreme Court. So the contention on the part of the petitioners is that soon-after the death of the appellant, in the light of the fact that the legal-heirs are not coming forward to implead themselves, it got abated is completely out of place and cannot be accepted. So the order passed in that case by the appellate court is not illegal though for different reasons.

16.For all the reasons stated above, this court is of the considered view that this criminal original petition fails and accordingly, it is **dismissed**. Consequently connected Miscellaneous Petition is closed.



WEB COPY



CrI.O.P.(MD)No.4572 of 2023

08/12/2023

Index:Yes/No
Internet:Yes/No
er

To,

- 1.The Additional District Judge,
Virudhunagar.
- 2.The Inspector of Police,
CBCID, Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CrI.O.P.(MD)No.4572 of 2023

G.ILANGO VAN, J

er

CrI.OP (MD) No. 4572 of 2023

08/12/2023