

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 20 OF 2006

Amirkhan s/o Ibrahim Khan Pathan
died through his legal heirs

- 1-A) Tahera w/o Amir Khan,
age 65 Years occupation Household
resident of Choti Galli, Kandhar,
Taluka Kandhar, District Nanded.
- 1-B) Imran Khan s/o Amir Khan,
age 40 Years occupation Labour,
resident of Dargapura, Kandhar,
Taluka Kandhar, District Nanded.
- 1-C) Asma d/o Amir Khan,
age 35 Years occupation Household
resident of Choti Galli, Kandhar,
Taluka Kandhar District Nanded.
- 1-D) Uzma d/o Amir Khan w/o Amjad Khan,
age 32 Years occupation Household
resident of as above.
- 1-E) Irfan Khan s/o Amir Khan
age 30 Years occupation labour
resident of Dargapura, Kandhar,
Taluka Kandhar, District Nanded.

..Applicants

VERSUS

The State Of Maharashtra
Through Police Station Malakoli
Taluka Loha District Nanded.
Copy to be served on Public Prosecutor,
High Court, Aurangabad

..Respondent

...
Advocate for the Applicants : Ms. A.N. Ansari
APP for Respondent No.1/State : Mr. A.S. Shinde
...

CORAM : S.G. MEHARE, J.

DATED : AUGUST 05, 2024

ORAL JUDGMENT :-

1. Heard learned counsel for the applicants and learned APP for the State.

2. The deceased/accused Amirkhan was convicted by the Trial Court for the offence punishable under Sections 279 and 338 of the Indian Penal Code. He was sentenced to suffer R.I. for one month each for both offences and fine of Rs.500/- each. He had impugned the judgment of the Trial Court before the First Appellate Court. Soon after the conviction, he deposited the fine amount with the Trial Court. His first appeal was also dismissed and against that decision, he has preferred this criminal revision. During the pendency of the revision, he died. His legal heirs came on record and sought leave to continue the appeal against the fine.

3. The learned counsel for the applicants would submit that since the deceased was convicted for the above mentioned offences, his office issued him a notice for recovery of the amount granted by the Motor Accident Claims Tribunal. He had already challenged that notice before the Maharashtra Administrative Tribunal. She further argued that if this revision is allowed, the legal heirs of the deceased would get the fine refund.

4. The recovery letter has been placed on record. The letter does not contemplate that since the applicant has been convicted for the offence punishable under Sections 279 and 338 of the Indian Penal Code, the recovery is proposed against him. The recovery was proposed against him pursuant to the award passed under the Motor Vehicles Act. Therefore, there is no substance in her argument that his conviction was a cause for recovery of the compensation amount.

5. Her next limb of argument is that since the composite sentence of corporal imprisonment and fine was imposed, the legal heirs may continue with the appeal against the fine. To bolster her argument, she relied on the case of Ramesan (Dead) Through LR. Girija A Vs. The State of Kerala, Criminal Appeal No.77 of 2020 (@ SLP (Crl.) Diary No.40131/2017). In this matter, the question before the Hon'ble Supreme Court was whether in the facts of the case, the accused who was sentenced for imprisonment as well as for fine, the High Court committed an error in not abating the appeal in toto. The Hon'ble Supreme Court discussed Section 394 and 431 with Section 421 of the Criminal Procedure Code. Referring to various judgments on this issue, the Hon'ble Supreme Court recorded the finding that in such a situation, the appeal preferred by the deceased/convict does not abate on his death.

6. The learned APP has raised the objection that Sections 394 and 431 does not apply to the revision.

7. It is a continuation of the challenge to the dissatisfaction of the sentence. So, this Court is of the view that it is not a arguable point.

8. So far as the right to continue with the appeal or revision if the convict dies is concerned, on his death the sentence against him for corporal punishment becomes inexecutable. However, if the legal heirs of the deceased wanted to proceed with the judgment and order of imposing penalty, the foremost requirement is that they should satisfy the Court that imposing such fine affects his property inherited by his legal representatives. In other words, it can be said that if the sentence affects that property, the legal representatives can be said to be interested in the proceeding and allowed to continue it. The idea behind the rights of legal representative against the judgment and conviction imposed may be that there are some offences that deprive a person from the right to inherit the property. Take an example of a murder of the family head for getting the share. If that murder is proved, the person convicted is ousted from inheriting the property and ultimately his or her legal heirs are also affected. In the case at hand, the deceased/accused was getting the pension and after his death, his wife is getting the pension. Even if the order of fine is set aside, the Court is of the view that it would not affect her pension. Except the pension as appeared from the arguments of the learned counsel for the applicants, the deceased had no other property that

may be affecting due to the sentence of fine. Since the sentence does not affect the property, the legal representatives cannot be said to be interested in the property. The Court is of the view that in such a case the legal heirs would not be entitled to represent the deceased.

9. Since the applicants failed to prove that the sentence of fine imposed upon the accused affected the property which they have inherited, the revision application does not survive. Hence, the revision application stands dismissed. No order as to costs.

10. It is made clear that none of the parties should use the finding recorded in this case, in any other proceedings about recovery of the compensation amount.

11. Record and proceeding be returned to the learned Judicial Magistrate First Class, Loha.

12. Rule stands discharged.

(S.G. MEHARE, J.)