



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 525 OF 2024
IN
CRIMINAL APPEAL NO. 423 OF 2004

Maya w/o Gangadharrao Narwade,
Age 56 years, Occ: household,
R/o Plot No.19, Survey No. 51,
Garkheda Parisar, Aurangbad.

... Applicant

Versus

The State of Maharashtra

... Respondent

.....
Mr. Sohail Subhedar h/f Mr. Nilesh S. Ghanekar, Advocate for the
Applicant.

Mr. N. D. Batule, APP for the Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 29.02.2024

Pronounced on : 04.03.2024

ORDER :

1. Vide instant application under Section 394(2) of the Code of Criminal Procedure, the applicant, who is widow of the appellant in Criminal Appeal No. 423 of 2004, prays for leave to continue the appeal, on his behalf.

2. Learned counsel for the applicant submits that the appeal is preferred assailing the judgment and order of conviction dated

24.06.2004 passed by learned Special Judge, Aurangabad in Special Case No. 11/2001 for offence under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. It is further submitted that, appellant died on 29.10.2023 i.e. during pendency of the appeal. It is specifically submitted that present applicant is the wife of deceased and thus a “near relative” of the deceased within the meaning of the term as defined in explanation to Section 394 [2] Proviso of the Code of Criminal Procedure [Cr.P.C.]. It is submitted that the applicant is an old lady and was under shock after demise of her husband and therefore she could not gather instructions regarding the proceedings from the Advocate. It is submitted that she desires to continue the appeal because in case the appeal succeeds, the applicant would get the service benefits of deceased appellant.

3. Section 394 of Cr.P.C. reads as under:

“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.”

4. Here, the original appellant has died on 29.10.2023. A copy of death certificate Exhibit “A” is also produced which is at page 7 of the application. The application is filed on 30.01.2024 i.e. beyond the limitation of 30 days. Though there is delay of 84 days in filing instant application, after hearing the application for condonation of delay and on getting convinced, the same has been condoned in the interest of justice. The applicant being widow of the original appellant, squarely comes under the term “near relative” as is explained under Section 394 Cr.P.C. Considering the reasons mentioned in the application, it would be just and appropriate to allow the applicant to continue the appeal. Hence, I proceed to pass the following order:

ORDER

- I. The application is allowed.
- II. The applicant is granted leave to continue the appeal in place of deceased original appellant.

[ABHAY S. WAGHWASE, J.]