



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4620 OF 2023
IN
CRIMINAL APPEAL NO. 481 OF 2009

Godavari w/o Dnyanoba Kokate,
Age : 76 years, Occupation : Housewife,
R/o: Kokate Nagar, Palam,
Taluka Palam, District Parbhani.

... Applicant
[Wife of deceased R. No.2]

Versus

1. State of Maharashtra
2. Dnyanoba Shrirangrao Kokate,
Age : 78 years, Occupation : Retired,
R/o: Kokate Nagar, Palam,
Taluka Palam, District : Parbhani.

... Respondents
[R. No.2 Orig. Appellant
now deceased]

.....
Mr. Jyodeep Chatterji, Advocate for the Applicant.
Mr. N. D. Batule, APP for Respondent No.1-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 09.02.2024
Pronounced on : 14.02.2024

ORDER :

1. Vide instant application, the applicant, who is widow of deceased respondent no.2 i.e. appellant in Criminal Appeal No. 481 of 2009, prays for leave to continue the appeal, on his behalf.

2. Learned counsel for the applicant submits that present respondent no.2 had preferred Criminal Appeal No. 481 of 2009 assailing the judgment and order of his conviction dated 09.09.2009 passed by learned Additional Sessions Judge and as a Special Judge [Anti-Corruption], Basmathnagar in Special [ACB] Case No. 01/2007.

3. It is further submitted that, respondent no.2 [original appellant] died on 06.12.2023 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 desires to continue the appeal because in case the appeal succeeds, the applicant would get the service benefits of respondent no.2-deceased.

4. 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.”

5. Here, the original appellant has died on 06.12.2023. A copy of death certificate Exhibit “A” is also produced which is at page 7 of the application. The application is filed on 22.12.2023 i.e. well within 30 days of the death of the original appellant. The applicant being widow of the original appellant, squarely comes under the term “near relative” as is explained under Section 394 Cr.P.C. Moreover, 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.]