

2025:PHHC:062448



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM A-376-MA of 2007 (O&M)
Date of Decision: 29.04.2025**

Harnek Singh Gill

...Petitioner

Versus

K.L. Maini

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Gurcharan Dass, Advocate
for the applicant.

Mr. Yogesh Goel, Advocate
Mr. Vipul Goel, Advocate and
Mr. Lakshay Goel, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

CRM 7028 of 2008

1. The applicants have filed the present application under Section 5 of the Limitation Act for condonation of delay of 93 days in filing the present application for grant of permission to pursue the appeal.

2. Learned counsel for the applicants submits that Harnek Singh Gill, appellant had died on 06.10.2007 in Canada and the

applicants are son and daughter of the appellant and are interested in continuing the appeal. He further contends that the delay of 93 days had occurred as both the applicants were in a state of grief due to sudden death of their father and could not move the present application.

3. I have heard the learned counsel for the parties and perused the record.

4. For the reasons mentioned in the application, the application is allowed and the delay in filing the present application is ordered to be condoned.

CRM 7026 of 2008 and CRM A-376-MA of 2007

1. The applicants have filed the present application under Section 394(2) read with Section 482 Cr.P.C. with a prayer to grant permission to the applicants to pursue the appeal and to substitute their names in place of the appellant.

2. Learned counsel for the applicants submits that Harnek Singh, the original appellant/complainant had filed a complaint under Section 138 of the Negotiable Instruments Act 1881 against the respondent. However, vide judgment dated 10.05.2006, the Court of Judicial Magistrate 1st Class, Ludhiana, acquitted the respondent of the notice of accusation. Challenging the judgment of acquittal passed by the Court of Judicial Magistrate First Class, Ludhiana, the

appellant had preferred the present appeal alongwith an application for grant of leave to appeal before this Court and the said appeal is still pending before this Court.

3. I have heard the learned counsel for the parties and perused the record carefully.

4. Section 394 of the Code of Criminal Procedure provides for abatement of the appeals and the same has been reproduced below:-

“394. Abatement of appeals.—

(1) Every other 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. From a perusal of the above referred provision of law, it is apparent that every appeal filed under Section 377 or 378 shall finally abate on the death of the accused. It further provides that every

other appeal under Chapter XXIX (appeals) shall finally abate on the death of the appellant except when the appeal has been preferred from a sentence of fine. Even in an appeal against acquittal, which has been preferred before this Court against the judgment of acquittal recorded by the Judicial Magistrate in a complaint case, is instituted under Section 378 Cr.P.C., which is also part of Chapter XXIX (Appeals). Thus, every appeal filed by the appellant under Section 378 Cr.P.C. shall also finally abate on the death of the appellant in view of the provisions contained under Section 394(2) Cr.P.C. It clearly lays down that only those appeals, which have been preferred before the High Court against the sentence of fine, would not abate and all other cases would finally abate. The only exception carved out by the statute in this regard is where the appeal is against a conviction and the sentence of death/imprisonment has been imposed and the appellant dies during the pendency of the appeal, any of his near relative may apply to the appellate Court for leave to continue the appeal and on grant of leave, such appeal shall not abate.

6. In the present case also, the appellant had filed the appeal against the judgment dated 10.05.2006 passed by the Court of Judicial Magistrate 1st Class, Ludhiana, whereby, the respondent had been acquitted by the trial Court and in view of the provisions contained in Section 394(2) Cr.P.C., the appeal shall abate on the death of the

appellant. Thus, in view of the above discussion, the appeal filed by the appellant stands abated and is dismissed as such.

7. CRM 7026 of 2008 is also ordered to be dismissed.

8. All pending applications, if any, are disposed off, accordingly.

29.04.2025

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No