Shanti Devi vs Mukti Gupta and Others

CrMP No. 4934 of 2026
Reserved on 05.11.2026

17.11.2026 Present: Mr Mahesh Sharma, Advocate for the petitioner.

None for the respondents.

CrMP No. 4934 of 2026

The appellant/applicant has filed the present application for substituting the legal representatives of respondent No.1. It has been asserted that Mukti Gupta (respondent no. 1) has expired on 26.02.2024. She has left behind Deepali Gupta, her legal representative. The right to sue survives against the legal heirs. The applicant tried to collect information to file the present application, but she was unable to verify the particulars of the remaining legal heirs. She is residing separately at Kumarsain, whereas the respondent No. 1 was residing at Raebareli, Uttar Pradesh. The applicant does not have the financial resources to go to Raebareli to find out the legal representative of respondent No. 1. Therefore, it was prayed that the present application be allowed, the delay in filing the application be condoned, and the legal representative be brought on record.

2. Mr Mahesh Sharma, learned counsel for the applicant/petitioner, submitted that the respondent No. 1 has expired and is survived by Ms Deepali Gupta as her legal representative. The applicant/petitioner was unable

to find out the remaining legal representatives. The right to sue survives against the legal representatives. Hence, he prayed that the present application be allowed and Ms Deepali Gupta be brought on record as the legal representative of respondent No. 1.

3. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

4. The applicant/petitioner had filed an application under section 23 (2) of the Protection of Women from Domestic Violence Act (DV Act) asserting that her marriage was solemnised with Umesh Kumar Gupta, the son of the respondent No. 1. The respondents subjected the applicant to domestic violence and did not provide any maintenance to her; hence she sought various reliefs under the DV Act. She also filed an application seeking interim maintenance, which was dismissed by the learned Judicial Magistrate First Class (3), Shimla. The applicant filed an appeal, which was allowed by the learned Additional Sessions Judge (2), Shimla and maintenance of ₹ 5,000/- per month was awarded to her. She filed the present revision asserting that the interim maintenance be enhanced to ₹50,000 and the respondents be restrained from alienating the property mentioned in the complaint.

5. It was held by this Court in ***Veena Devi v. Desh Raj, 2015 SCC OnLine HP 2899*** that the DV Act does not contemplate prosecuting the legal heirs of the respondents. It was observed:

> "**9.** It cannot be disputed that the Act does not contain any provisions for prosecuting the legal heirs of a party. Needless to say that the provisions of the Act are a self-contained enactment and wherever there is some provision lacking, the provisions of the Code of Criminal Procedure will have to be pressed into service.
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> **10.** In ***Smt. Bupinder Lima v. State of Andhra Pradesh, 2000 (Vol.99) Company Cases, 424***, the learned Single Judge of the Andhra Pradesh High Court was seized of the matter relating to Section 138 of the Negotiable Instruments Act, 1881, where the accused had died, and criminal liability was sought to be fastened on his legal heirs. It was held that the criminal liability could not be fastened on the heirs and the legal representatives of a person who is said to have been guilty of the offence in question. It was held as under:
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> > "It is inconceivable that criminal liability can be fastened on the heirs and the legal representatives of the person who is said to have been guilty of the offence in question. I have no doubt in my mind that the petitioners herein cannot be prosecuted for the offence under section 138 of the Negotiable Instruments Act for the alleged failure of the late A.V. Lima in meeting the liability to pay the amount covered by the cheque which was dishonoured in response to the notice sent by the complainant."
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> **11.** A similar question came up before the Punjab and Haryana High Court in ***Smt. Kamla v. C.P. Bhardwaj, 2006 (3) PLR (Vol.144), 174***, in which the Court has held as under:-
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> > "4. Learned counsel for the petitioners contends that no complaint under Section 138 of the Act could have been filed against the petitioners,

who are the legal heirs of the deceased Brahm Parkash. He submits that from the plain reading of Section 138 of the Act, it is clear that no proceeding alleging an offence under Section 138 of the Act can be filed against the legal heirs. In support of his contention, learned counsel has relied upon the following judgments of various High Courts:

> (i) ***Bhupinder Lima v. State of A.P. 1999 (4) All. M.R. (Journal) 20 (Andhra Pradesh)***.
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> (ii) ***Draupadi Devi v. State of Rajasthan 2000 (4) Recent Criminal Cases 257 (Rajasthan)***.
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> (iii) ***Girja v. K. Vinay 2004 (1) Recent Criminal Cases 458 (Ker.)***.
>
> (iv) ***Savita H. Sorle v. Rajesh Damindar Sarode, 2006 (3) Recent Criminal Reports 216 (Bombay)***.

5. The Karnataka High Court, in ***Girja v. K. Vinay*** (supra), has observed as under*:*

> "...on careful perusal of the relevant statutory provisions of law, it is clear that the intention of the legislature was not to make the provisions for prosecuting the legal heirs of the drawer of a cheque, in the event of dishonour under the provisions of the Negotiable Instruments Act. It is needless to say that the provisions of the Negotiable Instruments Act are a self-contained enactment and wherever there is lacking, the provisions of the Code of Criminal Procedure will have to be pressed into service. As stated earlier, there are absolutely no statutory provisions made under the Negotiable Instruments Act to cover a situation like this. Under the provisions of Section 394 of the Cr.P.C., it is seen that the said section deals with the abatement of appeals filed under Section 377 or 378 of the Cr.P.C. This provision cannot be pressed into service for the reason that the Trial Court or this Court has not been dealing with an appeal under the said provisions. It is also necessary to mention that the

> provisions of Section 256 of the Cr.P.C. deal with the situation that arises after the death of the complainant. In the case in hand, the drawer of the cheque, the accused in a proceeding of this nature, had died even before the presentation of the complaint. Such being the case, the provisions of Section 256 of the Cr.P.C. also cannot come to the aid of the complainant. From this aspect, it is clear that the statute law in this regard is totally silent on the matter. When this is the intention of the Legislature, the Courts of law will have to interpret the law, keeping in mind the golden rules of interpretation, and the Courts should always interpret the law keeping in view the letter and spirit of the law, and such an interpretation should advance the purpose of legislation. It is needless to say that if the Courts do not resort to this exercise, the result thereon will not only be irregular but also illegal, so as to vitiate the entire proceedings."
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> 6. Learned counsel for the respondent could not controvert the aforesaid factual and legal position. Thus, in view of the aforesaid admitted facts and legal position, I am of the opinion that filing of the complaint by the complainant as well as the process issued by the Magistrate against the petitioners is nothing but an abuse of the process of the Court. On the plain reading of Section 138 of the Act, it is clear that the proceedings in the complaint alleging an offence under Section 138 cannot be initiated against the legal heirs of the person who had issued the cheque."

12. In ***McLeod Russel India Limited v. Reg. Provident Fund Commissioner, Jalpaiguri, AIR 2014 Supreme Court 2573***, the Hon'ble Supreme Court held that the criminal liability remains steadfastly fastened to the actual perpetrator and cannot be transferred. The relevant observations read thus: -

> "10. There is no gainsaying that criminal liability remains steadfastly fastened to the actual perpetrator and cannot be transferred by

> any compact between persons or even by statute."

6. Therefore, it is impermissible to bring on record the legal representative of the respondent No. 1 in the present proceedings, and the application for bringing on record the legal representatives of respondent No. 1 cannot be allowed.

7. In view of the above, the present application fails and is dismissed. The name of respondent No. 1 is ordered to be deleted from the array of the parties. The present application stands disposed of. The amended memo be filed within a week.

(Rakesh Kainthla)
Judge

17th November, 2026
(ravinder)