

(1991) 07 BOM CK 0058

In the Bombay High Court

Case No : Criminal Revision Application No. 198 of 1989

Dnyandev Pundlik Mali

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-07-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 394(2), 397

Citation : (1992) 2 BomCR 99 : (1992) MhLj 1085

Hon'ble Judges : M.S. Vaidya, J

Bench : Single Bench

Advocate : R.K. Adsure, for R.N. Dhorde, for the Appellant; V.B. Nayak, Assistant Public Prosecutor, for the Respondent

Judgement

M.S. Vaidya, J.—Rule, made returnable forthwith.

Heard Mr. Adsure, holding for Shri Dhorde, for the petitioner and Shri Nayak, A.P.P., for State.

2. The petitioner was convicted the Judicial Magistrate, First Class, Kopergaon, in S.T.C. No. 916 of 1984 of offences punishable u/s 304A of I.P.C. and section 3 read with section 112 of Motor Vehicles Act. For the first mentioned offence, he was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs. 2,000/-, in default to suffer further simple imprisonment for three months; for the latter mentioned offence he was sentenced to pay fine of Rs. 100/-, in default to suffer simple imprisonment for seven days. As per the certified writ, the revision petitioner had paid the fine on 8-6-1987 i.e. on which date the Magistrate had decided the case.

3. Criminal Appeal No. 59 of 1987 preferred to the Sessions Court, Ahemadnagar, came to be dismissed in course of time. The present revision petition is directed against the aforesaid orders.

4. During the pendency of this revision petition an order passed on 13-3-1991 to call report of the Probation Officer, Ahemadnagar, in respect of the revision

petitioner. The Probation Officer reported that the petitioner had died. The serving officer also reported that the revision petitioner had died more than a year ago. None of his relatives have come forth to pursue the revision petition obviously because the amount of fine imposed upon the revision petitioner was paid by the revision petitioner himself in his lifetime. The revision petition was admitted and, therefore, it was felt at a point of time that it was necessary to dispose it of on merits but now that it is seen that the amount of fine has already been paid by the revision petitioner in his lifetime and he has ceased to have any personal interest in the matter on account of his death and, further, inasmuch as the relatives of the revision petitioner have not come forth to pursue the matter, the question arises whether or not it was necessary to hear the matter on merits.

5. Section 394(1) of Code of Criminal procedure lays down that every appeal u/s 377, or section 378 shall finally abate on the death of the accused. The appeals under those sections are the appeals preferred by the State either against acquittal or for enhancement of the sentence. That provision is, therefore, not applicable to the facts of the present case. Section 394(2) of Code of Criminal Procedure lays down that every other appeal under Chapter XXIX (except an appeal from a sentence of fine) shall finally abate on the death of the appellant. The proviso gives liberty to the near relatives to proceed with the matter in certain cases. There is no specific provision in the Code of Criminal Procedure in respect of abatement of the revision petition preferred by a person who was convicted by the lower Court . The question, therefore, is whether or not the principle contained in section 394(2) would be applicable to the revisions. The point came to be considered in *Prem Sing v. Bhola* 9 Cri. L.J. 103, where it was pointed out that section 439 of Code of Criminal Procedure, as it stood then, conferred on the Court of revision the powers enjoyed by the Courts of appeal and there is no reason for holding that the power to revise a sentence of fine, in spite of the death of the convict, was not conferred thereby. It was also pointed out that the object of amendment to section 431 of Code of Criminal Procedure, so as to add therein the words, "except an appeal from a sentence of line" was to prevent the estate of a deceased person being damaged, although the death had terminated the personal interests of the convict in the appeal, and it was held that the principle would apply to a case in which compensation had been awarded u/s 250 of Code of Criminal Procedure as it then stood. In effect, it was held that in cases where the sentence of time was imposed and in cases where compensation was allowed u/s 250 of Code of Criminal Procedure (as it then stood), the revision application or the appeal would not abate. But in a subsequent ruling *Daulatram v. Emperor* 20, Cri.L.J. 214, it was held that where the revision petitioner (convict) was dead and his personal interest in the revision was at an end, the principle of section 431 of Code of Criminal Procedure as it then stood, was applicable to the revision. In that case also a sentence of fine was imposed on the convict/revision petitioner but then the Court had exercised its revisional jurisdiction to set aside the sentence of fine on the ground that after the death of the convict his relatives would suffer some

hardship that was quite unnecessary.

6. In the present case, the facts are still different inasmuch as the convict/revision petitioner himself had paid in his lifetime the amount of fine imposed upon him and there was no question of recovery of amount of fine out of his estate in the hands of his near relatives. Again, none of the relatives have come forth to this date to prosecute the revision petitioner according to law. Under such circumstances, the present case stands almost on a footing of an appeal in which only a sentence of imprisonment has been awarded. In such a matter, the principle underlying the provision contained in section 394 sub-section (2) of Code of Criminal Procedure, 1973, could be made applicable and the revision petition would, therefore, stand abated. Hence the order.

7. Revision petition stands abated on account of the death of deceased/revision petitioner who has already paid in his lifetime the amount of fine imposed upon him. Rule discharged accordingly.

Rule discharged.