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**(2015) 02 JH CK 0056**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (S) No. 3641 of 2005**

Janki Devi

APPELLANT

Vs

Bihar State Co-operative Bank Limited and Others

RESPONDENT

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**Date of Decision :** 19-02-2015

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 409

**Citation :** (2015) 02 JH CK 0056

**Hon'ble Judges :** Sujit Narayan Prasad, J.

**Bench :** Single Bench

**Advocate :** Ashutosh Kumar Singh, for the Appellant; Manoj Tandon, Advocates for the Respondent

**Final Decision :** Allowed

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## Judgement

Sujit Narayan Prasad, J.—The petitioner has approached this Court for release of death-cum-retiral dues of the deceased husband who died on 14.08.1996.

2. Heard the parties and perused the documents on record.

3. The brief facts of the case as pointed out by learned counsel for the petitioner is that the husband of the petitioner was working as Cashier in Bihar State Co-operative Bank Limited, Bokaro Branch, Bokaro. The husband of the petitioner died due to cardio pulmonary failure on 14.08.1996 in Bokaro General Hospital, Bokaro. On 15.08.1996, the Branch Manager, of the Bihar State Co-operative Bank Limited, Bokaro Branch, Bokaro has instituted a F.I.R. before the Sector-IV, Bokaro P.S. Bokaro. It appears from the F.I.R. that the husband of the petitioner was found senseless in the cash counter from where he was taken to the hospital and he died in the hospital. After completion of investigation, the final form was submitted against the husband of the petitioner showing him as dead. Vide order dated 27.11.2001, the learned C.J.M., Bokaro issued notice to the informant. The petitioner thereafter, made several representations before the authorities of the Bank for release of death-cum-retiral dues like the amount of provident fund,

gratuity, salary for the period 01.08.1996 to 14.08.1996, leave encashment, group insurance, family pension under the family pension scheme and E.D.L.I. but in spite of repeated representations, the same has not been released.

4. The grievance of the petitioner is that the authorities have got no jurisdiction to hold the death-cum-retiral benefits of the petitioner without holding any enquiry during the life time of the husband of the petitioner.

5. According to the learned counsel for the petitioner, no show cause notice, no departmental proceeding or no memorandum of charge has been issued in course of life time of the husband of the petitioner. However, he has submitted that the F.I.R. was instituted on 15.08.1996 i.e. also after death of the husband of the petitioner which occurred on 14.08.1996.

6. Learned counsel for the respondent-Bank has submitted that the husband of the petitioner was an employee of the Bank working on the post of Deposit Organizer and was posted during the relevant time as Cashier at Bokaro Branch. The husband of the petitioner became unconscious when the acting Branch Manager informed him on 14.08.1996 that physical verification of the cash would be done by the Branch Manager. The husband of the petitioner was sent to the hospital under unconscious state where he died due to cardiac pulmonary failure.

7. The stand of the respondent is that after physical verification of the cash, there was shortage of Rs. 5,06,350/- and accordingly on 15.08.1996, F.I.R. was instituted in the concerned police station being Sector-IV, Bokaro P.S. case No. 101 of 1996. It has been stated in the final report of the Investigating Officer of the case, that the amount was defalcated by late Bachu Prasad, Cashier, as appears from Annexure-3 of the writ application. The bank accepted the report and decided to forfeit gratuity and other non-C.P.F. dues as per rules applicable. However, a sum of Rs. 1,73,887.00/- was paid to petitioner against the amount of provident fund on 31.12.1998. The amount of E.D.L.I., has also been released.

8. The fact which is not in dispute in this case is that the husband of the petitioner died on 14.08.1996. F.I.R. was instituted on 15.08.1996 wherein the police after completion of investigation has submitted final form on 27.11.2001 i.e. after about five years from the death of husband of the petitioner. The amount has been defalcated as per physical verification of the cash of the bank. The police although has submitted final form after coming to the conclusion that the husband of the petitioner has defalcated the said amount.

9. From perusal of the final form which is annexed as Annexure-3 to the writ application, it appears that one hand note was found from the cabin of the deceased husband of the petitioner in which one Kaushal Kumar was found responsible for defalcation which according to the police was found untrue in course of investigation. In course of investigation it has also come that the deceased husband of the petitioner used to give money on interest and accordingly, the final form has been submitted after finding the case true against the husband of the petitioner for the offence under section 409 of Indian Penal

Code.

10. Admittedly, the husband of the petitioner died on 14.08.1996. All the investigation has been conducted after the death of husband of the petitioner.

11. Learned counsel for the respondent-Bank has submitted that the gratuity and other non-C.P.F. dues were forfeited as per rules applicable but under which rule it was forfeited has not been disclosed.

12. It is settled principle of law that after the death, no proceeding either criminal or departmental can be initiated and even if initiated during life time of the delinquent employee, the same shall also be stopped.

13. Since no order has been passed by the authorities of the bank to withhold any grant of gratuity or other admissible dues which is legally payable to the petitioner, in absence of any order, the amount which the petitioner was legally entitled to get, cannot be withheld.

14. In this regard, reliance has been placed upon the order passed by the Hon"ble Supreme Court in the case of State of Jharkhand Vs. Uma Prasad, wherein at para-4 it has been held-

"However, on consideration of the records, we find that late Birendra Prasad, the deceased was put under suspension on 26.09.1998 on the order of the Commissioner, Chhotanagar Division, Ranchi, and by another order dated 16.06.2000, his suspension was revoked. Thereafter, he died on 08.10.2004 in harness while working as an Assistant in the Secretariat, Department of Art, Culture, Sports and Youth Affairs, Jharkhand. That being the position and since the learned counsel for the respondent is unable to show us any order passed by the competent authority issuing any charge-sheet against the said deceased, there could be no recovery of any amount from the retiral benefits of the deceased Birendra Prasad. There is no record to show that any departmental proceeding was drawn up by the Department against the deceased before his death." From perusal of the above judgment it is evident that after death of the husband of the petitioner, the required death-cum-retiral dues of the husband of the petitioner was said to be withheld, which was legally admissible after death of the husband of the petitioner. The authorities had decided not to release the death-cum-retiral dues on the ground that the some amount was misappropriated by the husband of the respondent namely, late Birendra Prasad. Hence the death-cum-retiral benefit was not paid. Therefore, she (widow of the deceased) approached this High Court.

The learned Single Judge of the High Court passed the order earlier in this case directing the authorities to release post retiral dues which was challenged before the Division Bench of the High Court wherein the order of learned Single Judge was affirmed. The said order of Division Bench of the High Court was challenged before the Hon"ble Supreme Court, the Hon"ble Supreme Court upheld the order of High Court holding that there could be no recovery of any amount from the

retiral benefits of the deceased, Birendra Prasad. The order of upholding is stated in para-4 quoted above.

15. The facts of this case are same as stated hereinabove because in this case the husband of the petitioner died on 14.08.1996., F.I.R. was instituted on 15.08.1996. The police have submitted final form after lapse of about more than 5 years and in absence of the husband of the petitioner, the police has come to conclusion that the amount was defalcated by the husband of the petitioner as such no order has been passed by the authorities concerned withholding the post retiral benefits of the deceased husband of the petitioner and accordingly, on the ground of final form submitted by the police, the decision was taken to withhold the said amount which husband of the petitioner was legally entitled to get. Merely the submission of final form by the police cannot be said to be misconduct or conviction in the eye of law unless it is proved by the competent court of criminal jurisdiction. It is a fact that the death of the husband of the petitioner occurred prior to the institution of F.I.R.

16. In that view of the matter, I find similarity in this case with the case referred hereinabove. Hence, this writ petition is worth to be allowed.

17. Accordingly the respondents are directed to release the amount of death-cum-retiral dues within the reasonable period preferably within the period of 10 weeks from the date of receipt of copy of this order.

18. With the above observations and directions this writ petition stands disposed of.