

(2003) 03 KAR CK 0096

In the Karnataka High Court

Case No : C.R.P. No. 281 of 2002 c/w C.A.P. 791 of 2001

P.R. Anjanappa and Another

APPELLANT

Vs

Yurej Agencies Private Limited and Others

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 377, 378, 394, 431
Penal Code, 1860 (IPC) — Section 64, 70

Citation : (2004) 2 ALT(Cri) 335 : (2004) CriLJ 2565 : (2004) ILR (Kar) 1883 :
(2004) 2 KCCR 1281 : (2004) 3 RCR(Criminal) 897

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : S.K. Venkata Reddy and Narayan Associates, for the Appellant; B.R. Patil, for R-1, S.K. Venkata Reddy, for R2 and Narayan Associates, for the Respondent

Judgement

Bannurmath, J.—This revision petition was filed challenging the judgment of conviction and order of sentence dated 26-3-2001 passed by the learned XIV Addl. C.M.M., Bangalore in C.C. No 24949/1997 convicting the petitioner/accused for the offence u/s 138 of the negotiable Instruments Act and sentencing him to undergo S.I for six months and to pay a fine of Rs. 63,00,000/- with default sentence. It was ordered that the fine amount be recovered from the accused and out of the same, a sum of Rs. 57,50,000/-, be paid to the complainant as compensation u/s 357 Cr.P.C. Aggrieved by this order, the petitioner has approached the learned XIII Addl. Sessions Judge, Bangalore in CrI.A.No. 15025/2001 who also affirmed the judgment of conviction and sentence and hence the present revision petition.

2. This revision petition was admitted on 22-3-2002, pending final disposal. In the mean while, on 17-2-2003, the learned Counsel for the petitioner filed a memo stating that the revisional petitioner - P.R Anjanappa expired on 1-2-2003 and as such, as per Section 394 Cr.P.C. the revision petition abates as the sentence imposed cannot no longer be executed. This memo was opposed by the

learned Counsel for the respondent - complainant inter alia contending that the provisions of Sections 394 Cr.P.C. are not attracted to the revision filed u/s 397 r/w. 401Cr.P.C.

3. Since the learned Counsel for the respondent contended that the question of abatement and its consequences is matter of general importance, the counsel for both the sides were heard in detail in this regard.

4. The learned Counsel for the petitioner vehemently contended relying upon the law laid down by the division Bench of this Court in the case of V. GOVINDRAJALU v. STATE BANK OF MYSORE A.I.R 1962 Mys 275 in which case it was held that as per the old section, Section 431 Cr.P.C., corresponding to Section 497 Cr.P.C., wherever an accused has been convicted and sentenced to undergo substantive sentence, as well as fine and while his appeal is under consideration the appellant dies, the appeal filed in so far as it relates to substantive sentence, abates. It is contended that in the present case the sentence of six months S.I does not alone become substantive sentence, as the sentence of fine accompanies imprisonment sentence in default of payment of fine also becomes substantive sentence and as such, as the sentence passed against the petitioner is composite in nature which cannot be bifurcated, the entire revision petitioner abates. He also relied upon two pronouncement of the Apex Court. One is the case of Harnam Singh Vs. The State of Himachal Pradesh, is the case of OM PRAKASH ETC., v. THE STATE OF HARYANA AIR 1979 SC 1266 wherein also it is laid down that every appeal against the conviction abates on the death of accused except an appeal from a sentence of fine.

5. There is no dispute as to the proposition of law as envisaged u/s 394 Cr.P.C. as well as the Law declared by the this Court and the Apex court in this regard. Under the present provision, Section 394 Cr.P.C., it is mandated that "every appeal u/s 377 or 378 Cr.P.C. shall finally abate on the death of the accused. The only exception is provided under Sub-section (2) of Section 394 Cr.P.C. wherein it is provided that "every other appeal under this chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant," that is to say, every other appeal shall abate on the death of the appellant except the appeal from sentence of fine, which, even in case of death of appellant /accused, does not abate. The object behind this provision as well as the exception as provided under Sub-section (2) is obvious. Wherever, the accused is sentenced to undergo imprisonment and has preferred appeal against the conviction and sentence and during its pendency he dies, there is no question of affirming his sentence as he cannot be sent to the prison. However, so far as fine is concerned, the exception provided is only because even after the death of the appellant /accused, his legal representatives, who come in possession of his assets are liable to clear the fine imposed by the Court against the deceased which practically exists as pious and legal obligation. In case the legal representatives or the successors of the convicted deceased appellant /accused wants to challenge the same, they are at liberty to come on record as the successors of the appellant and contest the case

of not only the sentence of fine, but also the judgment of conviction so as to get the name of the accused cleared or blot of conviction cleared.

6. But the question in the present case is of slightly different nature. This is a revision petition wherein the deceased accused was not only convicted of substantive sentence but also a substantive heavy fine along with it the default sentence. The learned Counsel for the petitioner vehemently contended that in a case like the one on hand where the successor of the legal representatives of the deceased do not want to contest the conviction of their predecessor and also do not want to pay the fine, they cannot be sent to jail by invoking the default clause and as such, it would be practically a composite sentence and hence as per the decisions referred above, would automatically gets abated.

7. By looking into the provisions of the code as well as the sentencing pattern, the same can be divided into four groups. (1) where there is only substantive sentence (imprisonment) imposed (2) Fine simpliciter with or without default sentence (3) Substantive sentence with fine but without any default sentence and (4) Substantive sentence with fine along with default sentence. So far as categories (1) and (3) are concerned, it is to be noted that the sentence is very clear and simple. In the case of awarding of imprisonment sentence only, as the accused/ appellant cannot be sent to jail due to his death even if his conviction is affirmed, the appeal abates automatically. So far as fine simpliciter is concerned, as per provisions u/s 394 Sub-section (2), the appeal does not abate as the successors or the legal representatives who succeed to the assets of the accused, are liable to clear the fine as legal obligation/debt as well as pious duty. Similarly, in so far as where the Court awards imprisonment sentence as well as fine without any default clause, same principles apply. But here, the substantive sentence gets no doubt abated, but the sentence of fine without any default sentence carries on and again, the principles like the one for fine simpliciter noted above applies and it is the duty of the successors to pay the fine.

8. The problem like the one on hand is the last category. In this regard, I have also perused the provisions of Indian Penal Code especially Sections 64 to 70 wherein the proceedings for recovery of fine has been prescribed. Section 67 of the IPC imposes duty on the Court to impose default sentence for non-payment of fine and the provisions and proceedings prescribed under Sections 68, 69 and 70 are thereafter laid down. u/s 68 IPC, the default imprisonment gets terminated whenever the fine is either paid or levied by the process of law, that is to say, whenever the accused pays the fine in its entirety, the default sentence automatically gets terminated or as highlighted by underlining above, the words "levied by the process of law" clearly indicates that it also can be recovered by due process of law prescribed in this regard. Section 69 of IPC is an interesting section wherein, in a given case, where the accused initially prefers to undergo a default sentence rather than pay the fine, and after realising his hardship in the jail, again opts for payment of fine, the law prescribes that wherever possible, the fine should be reduced proportionate to the sentence that he has already

undergone in default of non-payment. u/s 70 of IPC, a limit of six years from the date of sentence is prescribed within which time, the Court can initiate fine levy proceedings. It is to be noted at this stage itself, in the very same provisions i.e., Section 70 IPC, it is made clear that the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

9. This provision practically concludes and answers the question raised by the petitioner. Section 70 IPC, later portion, clearly indicates that in spite of the death of the offender/ convicted accused, the liability of paying fine by the deceased accused devolves upon the successors or the legal representative and the fine levy proceedings can be initiated against the successors or the legal representatives. This is exactly what the Apex Court has laid down in the case of Harnam Singh *supra*. At paragraph-9, the Apex Court words thus:

"9. Every other appeal under chapter XXXI, except an appeal from a sentence of fine, finally abates on the death of the appellant. By "every other appeal" is meant an appeal other than one against an order of acquittal, that is to say, an appeal against an order of conviction. Every appeal against conviction therefore abates on the death of the accused except an appeal from a sentence of fine. An appeal from a sentence of fine is excepted from the all pervasive rule of abatement of criminal appeals for the reason that the fine constitutes a liability on the estate of the deceased and the legal representative on whom the estate devolves are entitled to ward off that liability." By Section 70 of the penal code, the fine can be levied at any time within six years after the passing of the sentence and if the offender has been sentenced for a longer period than six years, then at any time previous to the expiration of that period:

"and the death of the offender does not discharge from the liability any property which would after his death, be legally liable for his debts."

The fact that the offender has served the sentence in default of payment of fine is not a complete answer to the right of the Government to realise the fine because under the proviso to Section 386(1)(b) of the Code the court can, for special reasons to be recorded in writing, issue a warrant for realising the fine even if the offender has undergone the whole of the imprisonment in default of payment of fine. The sentence of the fine thus remains outstanding though the right to recover the fine is circumscribed by a sort of a period of limitation prescribed by Section 70, Penal code."

(Emphasised by me)

It is important to note that therefore, the Apex Court has also considered the sentence of composite nature, that is to say where substantive sentence as well as fine is imposed, it is stated in paragraphs 10 & 11 of the aforesaid case as follows:

"10. The narrow question which then requires to be considered is whether an

appeal from a composite order of sentence combining the substantive imprisonment with fine is for the purposes of Section 431, not an appeal from a sentence of fine. It is true that an appeal from a composite order of sentence is ordinarily directed against both the substantive imprisonment and the fine. But, such an appeal does not for that reason cease to be an appeal from a sentence of fine. It is something more not less than an appeal from a sentence of fine only and it is significant that the parenthetical clause of Section 431 does not contain the word "only". To limit the operation of the exception contained in that clause so as to take away from its purview appeals directed both against imprisonment and fine is to read into the clause the word "only" which is not there and which, by no technique of interpretation may be read there. The plain meaning of Section 431 is that every criminal appeal abates on the death of the accused "except an appeal from a sentence of fine." The section for its application requires that the appeal must be directed to the sentence of fine and not that it must be directed to that sentence only. If by the judgment under appeal a sentence of fine is imposed either singularly or in conjunction with a sentence of imprisonment the appeal against conviction would be an appeal from a sentence of fine within the meaning of Section 431. All that is necessary is that a sentence of fine should have been imposed on the accused and the appeal filed by him should involve the consideration of the validity of that sentence."

"11. It is difficult to discern any principle behind the contrary view, The reason of the rule contained in the exception is that a sentences of fine operates directly against the estate of the deceased and therefore the legal representatives are entitled to clear the estate from that liability whether or not is the sentence of fine combined with any other sentence can make no difference to the application of that principle."

This observation and the law laid down by the Apex Court answers the query raised by the learned Counsel for the petitioner. The word ""only fine" cannot be imported wherever the sentence is of composite nature. When both the sentences are practically as observed, are said to be separable ones and there is nothing like composite sentence. As such, in my view, wherever there is sentence of substantive nature as well as sentence of fine is imposed it cannot be termed as composite sentence simpliciter so as to pronounce the abatement of entire appeal by virtue of death of the appellant. As such, it is open for the successors of the deceased appellant/ accused to come on record or get substituted themselves and contest the appeal and get both conviction as well as fine imposed, set aside.

10. But the question as raised by the learned Counsel for the petitioner as to what happens when in a given case, the successors of the deceased accused do not want to contest the case and does not want to pay the fine and since admittedly, the default sentence cannot be executed against them, is also to be looked into. As noted above, in view of the scheme under IPC for recovery of fines by initiating fine levy proceedings especially Sections 66 to 70, in my view,

even if the successors of the deceased do not contest the conviction or imposition of sentence of fine, they cannot escape the liability of paying the fine. If they come on record, it is well and good, the Court would consider if arguments are advanced regarding the conviction as well as the adequacy or otherwise of the fine and if they do not come on record in order to avoid the payment of fine under the shelter of non-excitability of the default sentence, in my view, the duty is cast upon the Court to direct the successors to be brought on record and hear them accordingly and if the sentence is affirmed and in spite of such affirmation, the L.Rs., or successors do not pay fine, the Court has to proceed with the fine levy warrant as prescribed under the IPC as well as the procedure as per Section 421 of Cr.P.C. In this regard, if we see the scheme of recovery of fine under IPC, it is clear that imposition of default sentence is as a punishment for non-payment of fine and it does not serve as a discharge of fine.

11. In this regard, if we look into Sections 64 and 70 of IPC, it is clear that the property of the accused is liable for the payment of fine even if he has undergone imprisonment in default of fine and as such even on death of the offender does not discharge any property which would after his death, be legally liable for his debts due from him (including liability) to discharge the fine.

12. Though the learned Counsel for the respondent tried to contend that the provision u/s 394 Cr.P.C. which apply to appeals cannot be directed to revision as there is no specific mention of the provisions, I am of the view that the same can be safely made applicable so far as revisions also.

13. In view of the aforesaid findings, the present revision petition no doubt abates so far as the substantive sentence imposed against the deceased petitioner/accused is concerned but does not abate so far as the fine imposed by the Courts below. At this stage, the learned Counsel for the petitioner submits that he will file an application in this regard to bring the successors of the deceased on record as petitioners to contest the case/challenge the entire conviction and sentence. The petitioner is permitted to file such application within one week.

14. At the request of the learned Counsel for the petitioners, adjourned to 4.4.2003.

15. Call on 4.4.2003