

(2011) 10 JH CK 0060

In the Jharkhand High Court

Case No : Criminal Revision No. 139 of 2001 and I.A. No. 1888 of 2011

Purushottam Das Gajjar

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2011) 10 JH CK 0060

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prashant Kumar

1. Interlocutory Application No. 1888 of 2011 filed for substitution of names of Gunwanti Devi, Lata P. Gajjar and Manoj Kumar P. Gajjar, who claimed themselves to be the legal heirs of Purushottam Das Gajjar, the original petitioner of this case. It is stated that the original petitioner namely Purushottam Das Gajjar died on 02.01.200."5 and the application for substitution has been filed on 11.10.2011. In the said application no explanation given as to why there is delay in filing the substitution petition.

2. However, it is submitted by learned counsel for the petitioner that in the 145 Cr.P.C. proceeding Lata P. Gajjar and Manoj Kumar P. Gajjar were also petitioners, therefore, this revision can proceed on their behest. It is further submitted that there is no provision in the Cr.P.C., which prescribed period of limitation for filing substitution petition. Accordingly, it is submitted that the substitution petition filed by the petitioner be allowed.

3. On the other hand, Sri Kailash Prasad Deo, learned counsel appearing for the opposite parties submits that Lata P. Gajjar and Manoj Kumar P. Gajjar were petitioners in the court below, but after passing of final order they did not challenge impugned order and had not filed revision within the limitation period.

Under the said circumstance, if they will be allowed to substitute the deceased petitioner (Purushottam Das Gajjar) then the same will amount to allowing him to file revision application beyond the period of limitation, prescribed under the Limitation Act. It is submitted that a substitution petition can be filed as per the judgment of Supreme Court, but the same cannot be entertained after delay of six years, that too, without any explanation. Accordingly, it is submitted that the interlocutory application is liable to be rejected.

4. Having heard the submissions, I have gone through the record of the case. Admittedly, this revision application was filed by deceased-Purshottom Das Gajjar, who is one of the petitioner in the court below. The other two petitioners namely Lata P. Gajjar and Manoj Kumar P. Gajjar, who were also petitioners in court below had not filed any revision. Thus, the order passed by learned court below becomes final, so far they are concerned. Under the said circumstances, if the first contention of learned counsel for the petitioner is allowed then the same will amount to giving an opportunity to Lata P. Gajjar and Manoj Kumar P. Gajjar to file revision even after expiry of period of limitation prescribed under the Limitation Act, which is prohibited under the law. Thus, the said submission cannot be accepted.

5. So far second contention raised by learned counsel for the petitioner is concerned, it is true that under the Cr.P.C. there is no period of limitation prescribed for filing of substitution, but it is also clear that under the Cr.P.C. there is no provision for filing of substitution petition in a revision. However, the substitution petition filed in revision applications, arising out of 145 Cr.P.C. proceeding, are being entertained as per the judgments of apex court, but in my view, such substitution application in revision matter is required to be filed within a reasonable time. In the instant case, the substitution petition has been filed after six years of the death of deceased petitioner-Purushottam Das Gajjar and in the substitution petition no explanation given for the said delay.

6. Under the said circumstance, I am not inclined to allow the substitution petition, which was filed after long delay. Accordingly, the substitution petition i.e. I.A. No. 1888 of 2011 is dismissed. Consequently, the revision application is also dismissed as the same has abated due to death of sole petitioner.