
(2011) 08 MAD CK 0337
In the Madras High Court
Case No : Criminal Appeal No. 403 of 2005

S. Durai	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374, 377, 378, 394, 394(2)
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7

Citation : (2011) 08 MAD CK 0337

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : N. Chandrasekaran, Spl.P.P. for CBI, for the Respondent

Final Decision : Dismissed

Judgement

T. Mathivanan, J.—The Appellant S. Durai stood convicted under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to suffer one year of rigorous imprisonment for each count and to pay a fine of Rs. 5,000/-for each count in default to suffer three months of rigorous imprisonment for each count, by the judgment dated 21.04.2005 and made in C.C. No. 36 of 1999, on the file of the learned Additional Special Judge for CBI Cases, Chennai.

2. Challenging the Order of conviction and sentence, he had filed the present appeal before this Court after invoking the proviso to Section 374 of the Code of Criminal Procedure.

3. This appeal seems to have been filed in the year 2005. From the date of filing, this appeal had been crossing so many hearings without any progress. When the appeal came up for hearing on 27.07.2011, Mr. N. Chandrasekaran, learned Special Public Prosecutor for C.B.I. Cases has submitted that since a bailable warrant was ordered to be issued against the Appellant, the Inspector of Police, CBI, ACB, Chennai was directed to execute the warrant issued against the Appellant and in the event of arrest, the Appellant was also directed to be

released on bail by the arresting officer on execution of a bond for a sum of Rs. 10,000/-by the Appellant to the satisfaction of the arresting officer and the Registry was also directed to list the matter on 12.08.2011.

4. When the matter was called on 12.08.2011, Mr. N. Chandrasekaran, learned Special Public Prosecutor for C.B.I. Cases had represented that in the process of execution of bailable warrant, it came to light that the appellant Mr. S. Durai had expired on 04.03.2011. He had also added that the death certificate was obtained from the house of Appellant and on verification in the Tahsildar's Office, Thiruvallur, it was confirmed that the said certificate was issued by the Tahsildar Office, Thiruvallur and therefore the un-executed bailable warrant, the report of the Police Constable along with death certificate issued by the Head Quarters, Deputy Tahsildar, Thiruvallur alongwith the copy of the death registration certificate were produced by him along with a memorandum to that effect.

5. From the submissions made by the Learned Counsel for the Respondent, this Court is satisfied that the appellant S. Durai had passed away on 04.03.2011. However, this appeal was directed to be listed on 16.08.2011, so as to enable the Learned Counsel for the Appellant to make representation if any as to whether he is going to implead any legal representatives of the deceased Appellant to continue the appeal. But, no one was appeared on behalf of the Appellant on 16.08.2011. Again, the appeal stands listed today ie. 17.08.2011. Even today also the Learned Counsel for the Appellant, who is on record, has not chosen to appear before this Court. Hence, this Court has left with no other option excepting to pass an order under the proviso to Section 394 of the Code of Criminal Procedure.

6. Section 394 of the Code of Criminal Procedure reads as follows:

394. Abatement of appeals.

(1) Every appeal u/s 377 or Section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence offline) shall finally abate on the death of the Appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the Appellant dies during the dependency of the appeal, any if his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation. In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister.

7. Apparently, this appeal comes under Sub-Section 2 to Section 394 of the Code of Criminal Procedure. It is insignificant to note here that as per the death certificate produced by the learned Special Public Prosecutor for C.B.I. Cases, the

Appellant had passed away 04.03.2011 during the pendency of the appeal. Though adequate chances were given by this Court, no one has come forward on behalf of the Appellant within a period of thirty days of the death of the Appellant to continue the appeal. Hence, it is presumed that no legal heir is interested to continue appeal after the demise of the Appellant.

8. Under this circumstance, this appeal is liable to be dismissed as abated as contemplated u/s 394(2) of the Code of Criminal Procedure.

9. In the result, the appeal is dismissed as abated.