

A RAMESAN (DEAD) THROUGH LR. GIRIJA A

v.

THE STATE OF KERALA

(Criminal Appeal No. 77 of 2020)

B JANUARY 21, 2020

[ASHOK BHUSHAN AND M. R. SHAH, JJ.]

C *Code of Criminal Procedure, 1973 – ss. 394, 421 – Composite sentence of imprisonment and fine – Death of accused pending appeal – Abatement of appeal – If any – Accused was convicted u/ ss.55(a), 55(g) of the Abkari Act and was imposed imprisonment for two years and fine of Rs. One Lakh under both the sections – High Court upheld the conviction, however held that since the accused died pending the appeal, the sentence of imprisonment has become unworkable – Regarding the imposition of fine it held that*

D *the Court below committed no mistake and thus, dismissed the appeal – On appeal by the legal heir of the accused, held: Both under the Old Code as well as under the present Code of Criminal Procedure, it is provided that the appeal against a sentence of fine shall not abate – Fine as per the provisions of the Code is recoverable from*

E *movable and immovable properties of the accused – Further, s.70, IPC inter alia provides that the death of offender does not discharge from the liability any property which would, after his death, be legally liable for his debts – In the present case, the appeal filed by accused in the High Court, being against sentence of fine, was required to be heard against the sentence of fine and was not to abate on his*

F *death – High Court rightly did not direct for abatement of appeal and proceeded to consider the appeal on merits – However, it does not appear that the legal heirs of accused were given opportunity to proceed with the appeal against the sentence of fine – High Court ought to have given them an opportunity to make their submissions against the sentence of fine, which fine could have been very well*

G *recovered from the assets of the accused in their hands – Judgment of the High Court set aside – Criminal appeal revived before the High Court – To be heard afresh after giving opportunity to the legal heirs of the accused to make submissions against the sentence*

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of fine – Code of Criminal Procedure, 1898 – ss.431, 439 – Kerala Abkari Act – s.55 (a), (g) – Penal Code, 1860 – s.70. A

Partly allowing the appeals, the Court

HELD: 1.1 Section 394 Cr.P.C. deals with abatement of appeals. Both under the Old Code as well as under the present Code of Criminal Procedure, it is provided that the appeal against a sentence of fine shall not abate. The fine as per the provisions of Code of Criminal Procedure is recoverable from movable and immovable properties of the accused. Section 70 of Indian Penal Code provides that any part of fine which remains unpaid may be levied at any time within six years after the passing of the sentence. The provision further provides that the death of offender does not discharge from the liability any property which would, after his death, be legally liable for his debts. [Paras 7, 9-11] [98-F; 99-D; 100-D-E] B C

1.2 The judgment in *Harnam Singh v. The State of Himachal Pradesh* categorically laid down that even if sentence of fine is imposed alongwith the sentence of imprisonment under Section 431, such appeal shall not abate. The similar expression, which was used in Section 431, i.e., “except an appeal from the sentence of fine” has been used in Section 394 Cr.P.C. The appeal filed by accused in the High Court was not to abate on death of the accused. The High Court rightly did not direct for abatement of appeal and proceeded to consider the appeal on merits. The principle regarding non-abatement of the appeal from a sentence of fine as contained in Section 431 of Cr.P.C., 1898 as well as Section 394 of present Cr.P.C. is the same. A similar legislative scheme has been contained, which was occurring in Section 431 Cr.P.C., 1898. The appeal before the High Court being against sentence of fine was required to be heard against the sentence of fine despite death of accused-appellant. From the judgment of the High Court, it does not appear that after the death of the appellant-accused, his legal heirs were given opportunity to proceed with the appeal against the sentence of fine. The judgment of the High Court does not also mention that any counsel has appeared for the legal heirs. The High Court ought to have D E F G

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- A given an opportunity to legal heirs of the accused to make their submissions against the sentence of fine, which fine could have been very well recovered from the assets of the accused in the hands of the legal heirs. Ends of justice would be served in reviving the Criminal Appeal No. 254 of 2007 before the High Court to give an opportunity to the legal heirs of the accused to make their submissions against the sentence of fine. The judgment of the High Court is set aside and Criminal Appeal No.254 of 2007 is revived before the High Court to be heard afresh after giving an opportunity to the legal heirs of the accused. [Paras 16, 18-22] [103-B-C, H; 104-A-G]

- C *Pranab Kumar Mitra v. State of West Bengal and Another* AIR 1959 SC 144 : [1959] Suppl. SCR 63 – followed.

- D *Bondada Gajapathi Rao v. State of Andhra Pradesh* AIR 1964 SC 1645 : [1964] SCR 251 ; *Harnam Singh v. The State of Himachal Pradesh* (1975) 3 SCC 343 : [1975] 2 SCR 823 ; *Lakshmi Shanker Srivastava v. State (Delhi Administration)* (1979) 1 SCC 229 : [1979] 2 SCR 348 – relied on.

Case Law Reference

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| E | [1959] Suppl. SCR 63 | followed | Para 12 |
| | [1964] SCR 251 | relied on | Para 13 |
| | [1975] 2 SCR 823 | relied on | Para 14 |
| F | [1979] 2 SCR 348 | relied on | Para 17 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 77 of 2020.

From the Judgment and Order dated 06.03.2014 of the High Court of Kerala at Ernakulam in Criminal Appeal No. 254 of 2007.

- G Anjani Kumar Mishra, Ms. Hardeep Kaur Mishra, Sudhir Aggarwal, Shiv Ram Pandey, Advs. for the Appellant.

Vipin Nair, P.B. Suresh, Kartik Jayashankar, Sugghosh S Neergundh, Advs. for the Respondent.

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The Judgment of the Court was delivered by

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ASHOK BHUSHAN, J.

1. This appeal has been filed against the judgment of the High Court of Kerala dated 06.03.2014 by which Criminal Appeal of the appellant has been dismissed.

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2. Brief facts of the case giving rise to this appeal are:-

2.1 A First Information Report was registered against Ramesan under Sections 55 (a) and (g) of the Kerala Abkari Act [1 of 1077 (ME)]. Charge under Sections 55(a) and (g) of the Kerala Abkari Act was framed. Prosecution led oral and documentary evidence to prove the charge. Statement of Ramesan was also recorded under Section 313 of Cr.P.C., who completely denied the incident and charge.

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2.2 Additional Session Judge vide its order dated 20.12.2006 convicted the first accused Ramesan under Section 55(a) and imposed imprisonment for a period of two years and a fine of Rs. One Lakh. The accused was also convicted and sentenced under Section 55(g) of the same punishment of imprisonment of two years and fine of Rs. One Lakh. In default of payment of fine amount, accused was to undergo simple imprisonment for six months each under Sections 55(a) and (g) of the Abkari Act.

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2.3 An appeal was filed by the first accused Ramesan in the High Court being Criminal Appeal No. 254 of 2007 on 06.02.2007. After filing of the appeal, the appellant Ramesan died on 21.12.2007. The High Court noticed the factum of death of the appellant on 21.12.2007, however, proceeded to decide the appeal on merits referring to the principle under Section 394 Cr.P.C. The High Court after considering the evidence on record upheld the conviction.

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A The High Court took the view that since the
appellant died pending the appeal, the sentence
of imprisonment has become unworkable,
however, regarding the imposition of fine, there
is no reason to hold that Court below committed
any mistake and the appeal was consequently
dismissed. This appeal has been filed by Girija
B A., the legal heir of Ramesan (deceased).

3. Learned counsel for the appellant contended that in view of the
death of the accused on 21.12.2007, the High Court ought to have abated
the entire appeal. It is submitted that Section 394 of Cr.P.C. saves the
C appeal, which arises against sentence of fine only. When there was
composite sentence of imprisonment as well as fine, the appeal has to
abate both against the sentence of imprisonment as well as fine. It is
contended that High Court committed error in proceeding to decide the
appeal on merits. High Court ought to have abated the appeal in toto.

D 4. Learned counsel for the State refuting the submission contends
that there being sentence of fine also, the appeal has rightly been decided
on merits by the High Court. The sentence of fine or composite sentence
of imprisonment and fine, is also a sentence of fine.

E 5. We have considered the submissions of the learned counsel for
the parties and have perused the records.

6. The only question to be decided in this appeal is as to whether
in the facts of the present case, the accused who was sentenced for
imprisonment as well as for fine, the High Court committed an error in
not abating the appeal in toto.

F 7. Section 394 Cr.P.C. deals with abatement of appeals. Section
394 is as follows:-

“394. Abatement of appeals.

G (1) Every appeal under section 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 of fine) shall finally abate on the death of the
appellant:

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Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of 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. A

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

8. Even in Cr.P.C., 1898, there was a provision pertaining to abatement of the appeal, which was to the following effect:-

"431. Every appeal under Section 411-A, sub-section (2), or Section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant." C

9. Both under the Old Code as well as under the present Code of Criminal Procedure, it is provided that the appeal against a sentence of fine shall not abate. D

10. The fine as per the provisions of Code of Criminal Procedure is recoverable from movable and immovable properties of the accused, Section 421 Cr.P.C. provided as follows:-

"421. Warrant for levy of fine. —(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may- E

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender; F

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter: G

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded H

A in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub- section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub- section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.”

D 11. Section 70 of Indian Penal Code provides that any part of fine which remains unpaid may be levied at any time within six years after the passing of the sentence. The provision further provides that the death of offender does not discharge from the liability any property which would, after his death, be legally liable for his debts. Section 70 of the Indian Penal Code is as follows:-

E “**70. Fine leviable within six years, or during imprisonment—Death not to discharge property from liability.**—The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment 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.”

G 12. This Court had occasion to consider the provisions of Sections 431 and 439 of Cr.P.C. 1898 in **Pranab Kumar Mitra Vs. State of West Bengal and Another, AIR 1959 SC 144**. Section 439 provides for revisional jurisdiction of the High Court. One of the issues was as to whether Section 431 applies to revisional application filed in the High Court. In paragraph 7, this Court laid down following:-

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“7.In view of the fact that even in the absence of any statutory provisions, we have held, in agreement with the decision aforesaid of the Bombay High Court, that the High Court has the power to determine the case even after the death of the convicted person, if there was a sentence of fine also imposed on him, because that sentence affects the property of the deceased in the hands of his legal representative,.....”

13. This Court in **Bondada Gajapathi Rao Vs. State of Andhra Pradesh, AIR 1964 SC 1645** had occasion to consider Section 431 Cr.P.C. A special leave petition was filed in this Court, the accused died during pendency of special leave petition. This Court again reiterated the principle on which hearing of a proceeding may be continued after the death of an accused. ;In paragraph 3 of the judgment, following was laid down:-

“3. The principle on which the hearing of a proceeding may be continued after the death of an accused would appear to be the effect of the sentence on his property in the hands of his legal representatives. If the sentence affects that property, the legal representatives can be said to be interested in the proceeding and allowed to continue it.”

14. This Court had occasion to consider the case of a composite sentence of imprisonment as well as fine in **Harnam Singh Vs. The State of Himachal Pradesh, (1975) 3 SCC 343**. In the above case, the accused was convicted under Sections 5(1)(d) and 5(2) of Prevention of Corruption Act, 1947 as well as under Section 161 Indian Penal Code and he was sentenced for rigorous imprisonment of two years and to a fine of Rs.300. Contention was raised before this Court that since the deceased was not sentenced to pay a fine only but was punished with a composite sentence of imprisonment and fine, the appeal would abate as regards the sentence of fine also. Such contention was noted in paragraph 4 of the judgment, which is to the following effect:-

“4. Learned Counsel for the State of Himachal Pradesh, who are respondents to the appeal, has raised a preliminary objection to the right of the appellant’s widow to prosecute the appeal. He contends that the substantive sentence of imprisonment imposed on the appellant Harnam Singh came to an end with his death and

- A therefore the appeal in regard to that sentence stands abated. As regards the sentence of fine, it is contended that since the deceased appellant was not sentenced to pay a fine only but was punished with a composite sentence of imprisonment and fine, the appeal would abate as regards the sentence of fine also. According to
- B the learned Counsel this Court may, at the highest, set aside the sentence of fine if it finds that the appellant need not have been asked to pay a fine. But the order of conviction and the substantive sentence must remain and the legality or propriety of that order cannot any longer be questioned in view of the death of the appellant.”
- C 15. Rejecting the above submission, this Court laid down that 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. In paragraph 10, following was laid down:-
- D “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
- E 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
- F “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
- G “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
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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.” A

16. The above judgment categorically laid down that even if sentence of fine is imposed alongwith the sentence of imprisonment under Section 431, such appeal shall not abate. The similar expression, which was used in Section 431, i.e., “except an appeal from the sentence of fine” has been used in Section 394 Cr.P.C. Thus, the appeal in the present case where accused was sentenced for imprisonment as well as for fine has to be treated as an appeal against fine and was not to abate and High Court did not commit any error in deciding the appeal on merits. B C

17. This Court had occasion to consider Section 394 Cr.P.C. in **Lakshmi Shanker Srivastava Vs. State (Delhi Administration), (1979) 1 SCC 229**. In the above case, the accused was sentenced to suffer rigorous imprisonment for 18 months on each count and a fine of Rs.200. The accused had died during pendency of the appeal in this Court and argument was raised that in view of the above, the appeal abates and cannot be proceeded with. Such argument was noticed in paragraph 4, which is to the following effect:- D

“4. Mr H.R. Khanna, learned Counsel who appeared for the respondent raised a preliminary objection. It was urged that the appellant died during the pendency of this appeal and, therefore, the appeal abates and cannot be proceeded with. Simultaneously it was urged that if the appeal were not to abate on the only ground that the appellant was also sentenced to pay a fine of Rs 200 and, therefore, it may be said that right to property of the legal representatives may be adversely affected and, therefore, they would be entitled to continue the appeal, the respondent State is prepared to concede that the sentence of fine may be set aside.” E F

18. In the above case, a leave was obtained under the proviso to Section 394(2) by legal heirs to continue the appeal. This Court had overruled the primary objection that appeal should abate although relying on the proviso to Section 394(2). The principle regarding non-abatement of the appeal from a sentence of fine as contained in Section 431 of Cr.P.C., 1898 as well as Section 394 of present Cr.P.C. is the same. A G

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A similar legislative scheme has been contained, which was occurring in Section 431 Cr.P.C., 1898, hence, judgment of this Court regarding interpretation of Section 431, Cr.P.C. as has been done by this Court in **Bondada Gajapathi Rao (supra)** and **Harnam Singh (supra)** shall squarely apply to the interpretation of Section 394 Cr.P.C.

B 19. We, thus, conclude that the appeal filed by accused Ramesan in the High Court was not to abate on death of the accused. The High Court rightly did not direct for abatement of appeal and proceeded to consider the appeal on merits. The appeal before the High Court being against sentence of fine was required to be heard against the sentence of fine despite death of accused-appellant.

C 20. Although, we have upheld the view of the High Court that appeal filed by the accused was not to abate and was required to be heard and decided on merits but there is one aspect of hearing of the appeal before the High Court, which need to be noted. From the judgment of the High Court, it does not appear that after the death of the appellant-accused, his legal heirs were given opportunity to proceed with the appeal against the sentence of fine. The judgment of the High Court does not also mention that any counsel has appeared for the legal heirs. The High Court ought to have given an opportunity to legal heirs of the accused to make their submissions against the sentence of fine, which fine could have been very well recovered from the assets of the accused in the hands of the legal heirs.

E 21. In above view of the matter, we are of the view that ends of justice be served in reviving the Criminal Appeal No. 254 of 2007 before the High Court to give an opportunity to the legal heirs of the accused to make their submissions against the sentence of fine.

F 22. In result, the appeal is partly allowed. The judgment of the High Court dated 06.03.2014 is set aside and Criminal Appeal No.254 of 2007 is revived before the High Court to be heard afresh after giving an opportunity to the legal heirs of the accused.

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