

# Ashwin Nanubhai Vyas vs State Of Maharashtra & Anr on 10 October, 1966

**Equivalent citations: 1967 AIR 983, 1967 SCR (1) 807**

**Author: M. Hidayatullah**

**Bench: M. Hidayatullah, S.M. Sikri**

PETITIONER:

ASHWIN NANUBHAI VYAS

Vs.

RESPONDENT:

STATE OF MAHARASHTRA & ANR.

DATE OF JUDGMENT:

10/10/1966

BENCH:

HIDAYATULLAH, M.

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HIDAYATULLAH, M.

SIKRI, S.M.

DAYAL, RAGHUBAR

CITATION:

1967 AIR 983

1967 SCR (1) 807

ACT:

Code of Criminal Procedure (5 of 1898), ss. 198 and 495-Inquiry under Chapter XVIII requiring complaint by person aggrieved-Death of complainant after filing complaint-Effect-Power to substitute another prosecution agency.

HEADNOTE:

During the inquiry under Chapter XVIII in respect of offences requiring a complaint by the person aggrieved, the complaint died after the complaint had been filed under S. 198 Cr. P.C. The application for substitution of the complainant was resisted by the accused--appellant, on the ground that only the aggrieved person could be the complainant and on the complaint's death, the complainant must be treated as abated. The magistrate rejected the objection, and the High Court dismissed a revision; against

it. In appeal to this Court.

HELD : The objection must be rejected.

Section 198 Cr. P.C. creates a bar which has to be removed before cognisance is taken. Once the bar is removed because the proper person has filed a complaint, the section works itself out. If any other restriction was also there the Code would have said so. Not having said so, one must treat the section as fulfilled and worked out. [811 D-E]

Unless the Code itself said what was to happen, the power of the Court to substitute another prosecution agency (subject to such restrictions as may be found) under s. 495 of the Code was always available. [812 D-E]

Case law discussed.

#### JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 268, of 1964- 11 I I Appeal by special leave from the judgment and order dated' August 25, 1964 of the Bombay High Court in Criminal Revision. Application No. 333 of 1964. N. N. Keswani for the. appellant.

K. L. Hathi and R. H. Dhebar, for respondent No. 1. K. Rajendra Chaudhuri and K. R. Chaudhuri, for respondent No. 2.

The Judgment of the Court was delivered by Hidayatullah, J. In this appeal, by special leave, against the judgment and order of the High Court of Bombay, August 25, 1965, the appellant Ashwin Nanubhai Vyas is an accused before the Presidency Magistrate's 4th Court at Girgaon, Bombay. The case was started on the complaint under s. 198, Code of Criminal In the circumstances, the answer returned by the High Court to the two questions referred to it has to be held to be incorrect. Both the questions have to be answered against the assessee and in favour of the Commissioner of Income-tax, so that the answer returned by the High Court to the two questions is set aside, the first question is answered in the affirmative, and the second in the negative. The appeal is accordingly allowed with costs in this Court as well as in the High Court.

R.K.P.S.  
Allowed.

Appeal