

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 2997 of 2022**

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SANJAYBHAI BHIKHUBHAI GOHEL

Versus

STATE OF GUJARAT

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Appearance:

MR TUSHAR L SHETH(3920) for the Applicant(s) No. 1

for the Respondent(s) No. 2,2.1,2.2,2.3,2.4

MS CM SHAH, APP for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA**

**Date : 24/01/2024**

**ORAL ORDER**

1. By way of this writ application, the applicant Sanjaybhai Gohel has questioned the legality and propriety of the order impugned dated 23.02.2022 below Exh.36, passed in Criminal Case No.794 of 2018, by which the Court of Judicial Magistrate, Gondal, Dist.: Rajkot rejected the prayer to implead the private respondents as legal heirs of accused Laljibhai Samjibhai Patel who died during the proceedings of the criminal case filed under Section 138 of the Negotiable Instruments Act, 1881.
2. This Court has heard learned counsel Mr.Tushar Sheth and learned APP Ms.C.M. Shah for the respondent – State.
3. Brief facts leading to file present application are that the applicant is

the complainant before the Lower Court. The private complaint for dishonour of cheque came to be filed against one Laljibhai Patel. During the pendency of the said case, he died on 14.05.2021. The applicant moved an application for impleadment of the private respondents as legal heirs of the accused Laljibhai. Learned Trial Court after considering the statutory provisions, came to a conclusion that the legal heirs cannot be impleaded as accused in criminal case, when the accused is died unless statute prescribed so.

4. Being aggrieved with the said order, the present application by invoking extraordinary jurisdiction of this Court, has been preferred by the applicant original complainant.
5. Mr.Tushar Sheth, learned counsel has submitted that the death of the accused does not discharge the legal heirs from their liability as legal heirs who inherit property of the deceased are legally liable for his debt as also they are liable to pay compensation as contemplated under Sections 421 and 431 of the Code of Criminal Procedure, 1973 read with Section 70 of the Indian Penal Code and the same is recoverable from the property of the deceased.
6. In view of the aforesaid contentions, learned counsel has submitted that the order impugned is passed de-hors the aforesaid provisions

and the same deserves to be quashed and set aside as order is not sustainable in eye of law.

7. Ms.Chetna Shah, learned APP being a State Counsel, supported the findings of the order impugned and contended that no any exceptional case is made out for exercising extraordinary jurisdiction of this Court.
8. Having heard learned counsels for the respective parties, the issue falls for my consideration is whether the legal heirs of the accused can be impleaded in pending criminal proceedings filed by the complainant.
9. It is settled legal position of law that there cannot be any prosecution in a criminal case against a person who died through his or her legal heirs. If an accused died pending the trial, the case against him will be abetted unless there is an express provision of law to continue with the proceedings by impleading the legal heirs of the deceased.
10. In the facts of present case, the applicant – complainant has filed a prosecution under Section 138 of the N.I. Act. The said statutory provision is extracted hereinbelow:

*“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account*

*maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 4 [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:*

*Provided that nothing contained in this section shall apply unless—*  
*(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*

*(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, 5 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

*(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”*

11. A bare perusal of Section 138 shows that the person who has issued a cheque is liable under Section 138 of the N.I. Act and for the vicarious liability of the person in charge of the business of the partnership firm and/or company, Section 142 has been enacted for

fixing the penal liability of the person in charge of business.

12. In view of the statutory provisions, this Court is of the considered view that in absence of statutory provisions, no proceedings alleging offence under Section 138 of the N.I. Act can be continued against the legal heirs of the deceased accused.
13. It is the contention that the legal heirs of the accused are liable for the debt and amount of compensation if any awarded would be recoverable from the property of the deceased. This Court does not find any merits of the contentions. The reason is that pending the criminal proceedings, if the accused is died, the case would be abetted unless the statute authorize the Court to exercise its powers for impleadment of the legal heirs of deceased accused. If the accused died after conviction and sentence by a criminal Court and an appeal is pending against the conviction, then it is permissible in law to implead the legal heirs with the leave of the Court only in situation mentioned in Section 394 of the Code of Criminal Procedure, 1973 and at the same time, if the appeal is filed under Section 377 or Section 378 of the Code of Criminal Procedure, 1973, there is no provision in the Court for allowing the application to implead the legal heirs of the accused.

14. For the aforestated reasons, the order impugned does not suffer any legal infirmity, warranting interference by this Court.
15. Resultently, no case is made to admit this application at the admission stage. Accordingly, present application stands **dismissed**.

Rakesh

**(ILESH J. VORA,J)**