

**SUPREME COURT OF INDIA**

Shri Shankar Prasad Ghosh (Dead)

Vs.

The State of Bihar

(Arijit Pasayat and P.P.Naolekar JJ.)

13.06.2008

**JUDGMENT**

**Arijit Pasayat, J.**

1. One Shankar Prasad Ghosh had filed the present appeal before this Court questioning correctness of the judgment rendered by a learned Single Judge of the Patna High Court. By a common judgment the learned Special Judge (CBI), South Bihar, Patna had found each of the accused persons guilty of offence punishable under Sections 409, 477A read with Section 34, 467 and 471 of the *Indian Penal Code, 1860* (in short the `IPC'). It also found the accused guilty of offence punishable under Section 5(2) read with Section 4(1)(c) and Section 5(1)(d) of the *Prevention of Corruption Act, 1947* (in short the `Act'). Various custodial sentences and fine were imposed. The judgment of the Special Judge was assailed in appeal before the High Court which dismissed the appeal. The High Court upheld the conviction but altered the sentences to the period already undergone. The fine amount was, however, maintained alongwith default stipulation.

2. In this case leave was granted on 20.4.1998 but no stay was granted. During the pendency of the appeal, appellant- Shankar Prasad Ghosh died on 15.5.2000. After about 5 years applications have been filed purportedly in terms of Section 394(2) of the *Code of Criminal Procedure, 1973* (in short the `Code') to bring on record the legal heirs of the deceased appellant for the purpose of continuance of the appeal. On 15.3.2007 it was directed that the applications shall be considered when the appeal will be taken up for hearing.

3. Learned Counsel for the respondent-State submitted that there is no scope for accepting the applications. Section 394 has no application to the appeal before the Supreme Court. In any event, time statutorily prescribed is 30 days. In the instant case, applications have been filed nearly 5 years after the date of the death of the appellant-Shankar Prasad Ghosh. Even no explanation has been offered as to why the applications were filed after such a long time. Accordingly, he submitted that there is no scope for condoning any delay beyond the fixed period of 30 days.

4. In State of A.P. v. S. Narasimha Kumar and Ors. , it was noted as follows:

6. In *Bondada Gajapathi Rao v. State of Andhra Pradesh* three-judge Bench of this Court was dealing with the situation as to whether appeal by special leave against sentence of imprisonment abates on the death of the accused/appellant. Three separate judgments were rendered by the Hon'ble Judges. The principles as can be culled out from the said decision are as follows: (though rendered in the context of the Old Code are equally applicable under the Cr.P.C.).

“(1) Section 431 of the Old Code does not apply proprio vigore to a case of appeal filed with the special leave of the Supreme Court granted under Article 136 of the *Constitution of India, 1950* (in short the `Constitution') when the appellant-accused dies pending the appeal.

(2) But where the appeal is against sentence of fine, the appeal may be permitted to be continued by the legal representatives of the deceased appellant accused. There is no provision making such appeals abate. If they can be continued when arising under the Old Code, there is no reason why they should not be continued when arising under the Constitution. If revision petitions may be allowed to be continued after the death of the accused so should appeals, for between them no distinction in principle is possible for the purpose of continuance.

(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.

(4) But where the sentence is not one of fine but of imprisonment, which on the death of the accused becomes infructuous, the sentence does not affect the property of the deceased-accused in the hands of his legal representatives, and therefore, the appeal, in such a case, would abate, upon the death of the accused.

(5) In fact that the accused was a government servant and was under suspension during the trial and the fact that if the conviction and sentence were set aside, his estate would be entitled to receive full pay for the period of suspension, cannot be said to affect his estate, because, the setting aside of the sentence would not automatically entitle the legal representatives to the salary. It would be extending the principle applied to the case of a sentence of fine, if on the basis of it appeal against imprisonment is allowed to be continued by the legal representatives after the death of the appellant and for such an extension there is no warrant. Reference was made to *Pranab Kumar Mitra v. State of West Bengal and Anr.*”

5. In *S.V. Kameswar Rao and Anr. v. State (A.C.B. Police, Karnool District, Andhra Pradesh)*<sup>1</sup>, it was inter-alia observed as follows:

“5. Section 394 of the Code of Criminal Procedure reads that every appeal shall finally abate on the death of the appellant. The proviso to that section says 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 relatives, which expression is defined by the explanation appended to this proviso may within 30 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. In the present case, none of the relatives of the deceased within the term of the explanation to the proviso has approached this Court within 30 days for leave to continue the appeal. This present application is filed nearly after a period of 10 years. No explanation is given in this application for not approaching the court within that prescribed period and no sufficient cause is shown for condonation of such undue and inordinate delay of 10 years. A decision of this Court in P.S.R. Sadhanantham v. Arunachalam is relied on in the petition wherein it has been held thus: (SCC p. 145, para 7)

Article 136 is a special jurisdiction. It is residuary power; it is extraordinary in its amplitude, its limit, when it chases injustice, is the sky itself.”

6. In Harnam Singh v. The State of Himachal Pradesh it was observed as follows:

7. The appeal before us was filed by special leave granted under Article 136 of the Constitution and is neither under Section 411-A(2) nor under Section 417 nor under any other provision of Chapter XXXI of the Code. Plainly therefore, Section 431 has no application and the question whether the appeal abated on the death of the appellant is not governed strictly by the terms of that section. But, in the interests of uniformity, there is no valid reason for applying to appeals under Article 136 a set of rules different from those which govern appeals under the Code in the matter of abatement. It is therefore necessary to find the true meaning and scope of the provision contained in Section 431.

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“14. If this be the true interpretation of Section 431, there is no reason why the same principle ought not to be extended to criminal appeals filed in this Court under Article 136 of the Constitution. Accordingly the widow of the deceased appellant who has been brought on the record of the appeal as his legal representative is entitled to continue the appeal as the sentence of fine directly affects the property which would devolve on her on the death of her husband.

15. In Bondada Gajapathy Rao v. State of A.P. the appellant was convicted by the High Court under Section 302 of the Penal Code and was sentenced to imprisonment for life. He filed an appeal in this Court by special leave but died during the pendency of the appeal. His sons and daughter applied for substitution as his legal representatives contending that the conviction of their father had resulted in his removal from Government service and if the conviction were set aside the estate will be able to claim the arrears of salary from the date of conviction till the date of his

death. This Court declined to permit the legal representatives to continue the appeal on the ground that the claim on the strength of which they sought permission to continue the appeal was too remote. This decision is distinguishable as the appeal was not from a sentence of fine and as the interest of the legal representatives was held to be contingent and not direct. Even if the conviction were set aside, the legal representatives would not have automatically got the arrears of salary due to their father.”

7. In view of what has been stated by this Court in the afore-noted cases the principles embodied in Section 394 of the Code can be pressed into service in appeals before this Court. It is true that the period of 30 days has been statutorily fixed for making an application by the legal heirs. In the instant case, the applications were filed after about 5 years. We need not go into the question as to whether there is scope for condonation of delay as no explanation has been offered for the delayed presentation. In that view of the matter, the observations of this Court in Kameswar Rao's case (*supra*) are clearly applicable. The appeal has abated on the death of the appellant-Shankar Prasad Ghosh and is disposed of accordingly.

<sup>1</sup>*1991 Supp (1) SCC 377*