

Suresh Sisodia vs Raj Kumar Sharma

13.12.2022

Present: None

ORDER

1. Vide this order, I shall decide the application u/s 421 CrPC filed by complainant (advocate in person) for realization of fine of Rs. 11,00,000/- imposed upon convict (now deceased) from immoveable property of convict, to be paid as compensation to complainant along with an application to summon the LR's for realization of said fine amount from the immoveable property of the convict which is now with the LR's of deceased convict.

2. Thereafter, notice of said application(s) was given to LR's of deceased convict and learned advocate Sh. Sujit Dwivedi appeared on behalf of LR's and refused to pay the fine amount of Rs. 11,00,000/- by the LR's to the complainant.

3. He further stated that as per section 421 CrPC r/w Section 431 CrPC the fine amount can only be recovered from the property of the offender whereas the list of properties provided by complainant are no longer in the name of deceased convict and due to mutation of the said property the same are now in name of LR's and Section 421 CrPC r/w Section 431 CrPC is not applicable to recover the fine amount from the LR's.

4. Per contra, complainant has brought the attention of this court to Section 70 of Indian Penal Code along with judgement of **Indranil Mukherjee vs State of West Bengal and ors.** C.R.R no

1555 of 2021 decided on 21.04.2022 by Hon'ble High court of Calcutta and judgement of **Shamin Saiffudin Sarkhot vs Jugraj Miyachand Jain** decided on by Hon'ble High Court of Bombay (2016) 2 ABR (Cri) 191, to emphasize that the fine amount imposed by court can be realized from the property/estate of the deceased which is inherited by the LRs.

5. Section 70 in The Indian Penal Code reads as:

“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.”

6. In Shamin Saiffudin Sarkhot (supra), the Hon'ble High Court of Bombay dealt with similar situation in which the accused was convicted by the trial court and later died. It was held as follows:

“7. As regards the contention of the petitioner that she is not liable to pay amount, Section 70 of the Indian Penal Code, takes care of this contention. According to section 70 of IPC, death of offender does not discharge him from the liability and the property which would after his death comes into the hands of his legal heirs, be legally liable for his debts. **Therefore, provisions of Section 421 and 431 of the Code read with Section 70 of IPC, make amount of fine or compensation recoverable from the property of the offender.**

8. Here in the case, property which has come into the hands of petitioner was admittedly owned by original accused Saifuddin, by virtue of will deed executed by Saifuddin on 6.10.2010, said property is received by the petitioner naturally, with all liabilities attached therewith. In view of Section 70 of IPC, amount of fine and compensation is recoverable from the said property.

9. The trial Court has considered all these legal aspects of the case and thereafter passed the impugned order. As no illegality or impropriety much less perversity in the findings is found, writ petition is dismissed.

7. Thus, it is clearly held in above mentioned judgement that the fine amount shall be recoverable from the property inherited by the LR's of deceased offender.

8. In Indranil Mukherjee (supra) after discussing in detail the above-mentioned legal aspect and the benevolent provisions of Section 70 IPC r/w Section 421 CrPC and Section 431 CrPC and also referring to Shamin Saiffudin Sarkhot (supra), it was held by Hon'ble high Court of Calcutta that:

“29. The combined reading of the aforesaid provisions makes it clear that where the compensation has been directed to be paid upon conclusion of a proceeding under Section 138 of the Negotiable Instruments Act, 1881, the legal heirs who have inherited the estate of the deceased are liable to repay the fine or compensation amount when an application under Section 421 of the Code of Criminal Procedure, 1973, has been filed.

38. Therefore, I am of the view that if in case of death of an accused the compensation awarded

under Section 138 of Negotiable Instrument Act, 1881 can be recovered from the estate of the deceased accused.”

9. Thus, in the considered view of this court, it is settled law that in case the convict dies after his conviction, then the fine amount imposed upon him can be recovered from the property inherited by the LRs of deceased offender/convict u/s 70 IPC r/w Section 421 CrPC and Section 431 CrPC. The same is based upon well-known jurisprudence that the property of deceased is received by LRs with all its liabilities attached therewith.

10. In the present case, the convict was sentenced to pay fine of Rs. 11,00,000/- vide order on sentence dated 23.12.2021 passed by this court. The said order was upheld by learned appellate court vide order dated 16.09.2022 despite death of convict during pendency of appeal and the sentence of fine/ compensation was directed to be enforced as per law.

11. Accordingly, for detailed reasons mentioned above, the present application of the complainant to recover/realize amount of fine of Rs. 11,00,000/- from the property of deceased convict or from the property of deceased convict inherited by his LRs is **allowed**.

12. Complainant has mentioned the following properties of convict in above mentioned application, namely:

- i Agricultural land in village Moinuddin Pur, Tehsil Maant, Dist. Mathura (U.P.) vide Khata No. 59, Khasra No. 204. (Copy of Nakal Khatoni enclosed with application).

- ii** Residential property vide no. 146A, measuring 86 square yards situated at Hari Nagar Ashram, New Delhi-110014. (Copy of property documents filed along with application)

13. Therefore, I order that SDM concerned shall realize and recover the fine amount of Rs. 11,00,000/-, as per rules, from the property mentioned at **point (ii)** at H.no. 146A, measuring 86 square yards situated at Hari Nagar Ashram, New Delhi-110014 of the **deceased convict Raj Kumar @ Raje** s/o Late Bhagwan Singh Sharma r/o H.no. 146A, Hari Nagar Ashram, New Delhi and deposit the same in this court on the next date of hearing i.e., **30.01.2023**.

14. Needless to mention that the concerned SDM **shall make proper inquiry/verification**, as per rules, that the above-mentioned property is either in the name of deceased convict or the same is inherited by his LRs, before realizing the fine amount of Rs. 11,00,000/- as per Section 70 IPC r/w Section 421 CrPC and Section 431 CrPC.

15. Copy of this order along with property documents furnished by the applicant/complainant be sent along with process.

(SAHIL KHURMI)
MM(NI)-02/RADC/NEW DELHI
13.12.2022