

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.49 OF 2015

The B.E.S. & T. Undertaking
Through its Superintendent, Electric Supply ...Appellant
vs.
Ekmal S/o Anis Khan and Ors. ...Respondents

Mr. Abhishek Khare a/w Rakesh Singh, Ms. Heena Shaikh, Mr.
Ashwin Umerikar i/b. M.V. Kini & Co. Advocate for the Appellant.
Mr. S.P. Shrivastava, Advocate for the Respondent No.1.
Mr. V.N. Sagare, APP for the State.

CORAM : S. M. MODAK, J.
DATE : 7th MARCH 2024

P.C. :-

1. As directed on 15th February 2024 bailable warrant for Rs.15,000/- was issued against Respondent No.2. Shivdi Police Station has given a report dated 5th March 2024 informing that the Respondent Bilal Ezaz Khan has expired on 29th November 2019 and his son has supplied copy of the death certificate issued by Government of Uttar Pradesh.

2. It is also annexed along with the documents which are forwarded by the learned Deputy Registrar, City Civil Court, Greater Bombay

Pallavi

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Note: This order is corrected vide speaking to minutes of order dated 03/04/2024 and the corrections are shown in bold.

which are marked as Annexure 'X'. This is an Appeal by the first informant as per the *proviso* to Section 372 of Cr.P.C.

3. My attention is invited to the prayers made in the memo of Appeal. One is about reversal of the order of acquittal and second is for payment of compensation. The provisions of Section 390 of Cr.P.C. mentions about abatement of the Appeal on account of death and one of the Appeal is under Section 378 of Cr.P.C. When there is acquittal, Appeal can be preferred under Section 378. So even though this is an Appeal as per the *proviso* to Section 372 of Cr.P.C., similar procedure will be applicable. No doubt, the issue about determination of civil liability will continue. It will depend upon giving details about his LR's. In view of that, the following order is passed:-

ORDER

- (i) There will be abatement of part of the Appeal relating to challenge to the judgment of acquittal against Respondent No.2 – Bilal Ezaz Khan.
- (ii) Appeal will continue against Respondent No.1 - **Ekmal S/o Anis Khan and Ors.**

(iii) Let Appellant to give details of LR's of deceased Respondent No.2. Once given notice will be issued to them. It is for the purpose of determination of civil liability.

(iv) Stand over to **3rd April 2024** for “**compliance**”. **High on board.**

[S. M. MODAK, J.]