

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

CRAN 11/2024
In
C.R.R. 138 of 2022

M/s. Krishna and Associates Pvt. Ltd. and Ors.
Versus
The State of West Bengal & Another

For the Petitioners : Mr. Anirban Mitra, Adv.
Mr. Amit Halder, Adv.

For the Opposite party No. 2 : Mr. Kaushik Banerjee, Adv.
Ms. Rashmita Sen, Adv.
Ms. Sarbani Ghosal, Adv.
Mr. Rajarshi Banerjee, Adv.

Heard on : 08.01.2025

Judgment on : 07.02.2025

Ajay Kumar Gupta, J:

1. Learned Metropolitan Magistrate, 11th Court, Calcutta upon completion of trial of a Complaint Case No. C-927/96 under Sections 138/141 of the Negotiable Instruments Act, 1881, finally decided and found guilty of the offences as complained of whereby convicted and sentenced the petitioner nos. 2 and 3 to suffer imprisonment for six months each and to pay a compensation of Rs. 12,00,000/- to the applicant/complainant.

2. Being aggrieved by and dissatisfied with the aforesaid conviction and sentence, the Petitioners preferred Criminal Appeal being Criminal Appeal No. 33/2000 which was renumbered as Criminal Appeal No. 149/21 before the Learned Additional Sessions Judge, Fast Track Court No. 1, Bichar Bhawan, Calcutta.

3. After admission of appeal, the matter was finally heard on 06.12.2021. The Learned Additional Sessions Judge, Fast Track Court No. 1, Bichar Bhawan, Calcutta was pleased to affirm the judgment of the Learned Magistrate thereby directing that in addition to suffer imprisonment so affirmed by the said order, the accused persons/petitioners shall pay compensation of Rs. 12,00,000/- (Rupees Twelve Lakhs) only in accordance with Section 357(3) of the

Code of Criminal Procedure, 1973 and, in default, Petitioner Nos. 2 and 3 shall further suffered simple imprisonment for 3 months each being vicariously liable.

4. Assailing the Judgment passed by the Learned Appellate Court, the petitioners herein preferred the instant Criminal Revisional application being CRR No 138 of 2022 before this Hon'ble Court.

5. This Court is to determine the legality, propriety and correctness of the judgment and order affirmed by the Learned Additional Sessions Judge, Fast Track Court No. 1, Bichar Bhawan, Calcutta regarding the conviction and sentence passed against the petitioners.

6. During the pendency of this case, petitioner no. 3 expired on 28.07.2023. However, in the event of death of petitioner no. 3, the Criminal Revisional application cannot be considered as abated against the petitioner no. 3 since the Learned Court below has directed the accused no. 3 along with another accused/convict to pay a sum of Rs. 12,00,000/- as a compensation to the complainant.

7. In such a situation, the legal heirs or representatives of the deceased are liable to pay compensation from the estate of the deceased, if Revisional application would be dismissed after hearing

the parties. Therefore, the opposite party filed this application in order to avoid future complications and/or impasse and to uphold the law of the land praying for substitution of legal heirs of the petitioner no. 3, since deceased, in connection with the instant Revisional application.

8. The name of his legal heirs, namely, Mrs. Krishna Gupta, wife of deceased, Bhromar Gupta, Bidisha Gupta, both are daughters of the deceased and Arjun Gupta, son of the deceased, as mentioned in the application may be added/substituted as party to this Revisional application and are directed to contest in the Revisional application in accordance with law. Hence, this application for substitution.

9. It was submitted by the learned counsel appearing on behalf of the applicant of CRAN No. 11 of 2024 that it is settled proposition of law an appeal/revision from the sentence of fine cannot be abated in the event of the death of appellant/revisionist/convict as it is excepted from all pervasive rule of abatement of appeal/revision for the reason that fine/compensation constitutes a liability on the estate of the deceased and the legal representatives on whom the estates devolve are to word off the liability. In view of this settled propositions of law, the legal heirs of the petitioner no. 3 being his legal

representatives after his demise are liable to word off the liability of the deceased from the estates of the deceased. In support of his submission, he cited following judgments as under:

i. Ramesh Gupta & Anr. Vs. Subhas Das & Anr.¹;

ii. Shamim Saifuddin Sarkhot Vs. Jugraj Miyachand Jain and Anr.²;

iii. Ramesan (Dead) Through Legal Representative Girija A. Vs. State of Kerala³.

10. On the contrary, learned counsel appearing on behalf of the petitioners/convicts vehemently argued and submitted that there is no provision for substitution of any legal heirs and representatives of the petitioner no. 3/convict, if he dies during the pendency of the trial or revision or even appeal. After the death of petitioner no. 3, the case automatically abated against him.

11. The learned counsel further submitted that appeal or revision may not be abated only with regard to that sentence of fine as provided under Section 394(2) of CrPC. But, in case of compensation, the case of the petitioner no. 3 would be abated.

¹ 2014 (2) MWN (Cr.) DCC 1 (Cal.);

² 2016 (4) Mh.L.J.;

³ (2020) 3 SCC 45.

Learned counsel appearing on behalf of the petitioners/convicts placed reliance of judgments as under:

i. M. Abbas Haji Vs. T.N. Channakeshava⁴;

ii. Smt. Girija Vs. K. Vinay⁵.

12. Heard the arguments and submissions made by the rival parties and upon perusal of the record as well as judgments relied by the parties, following questions arise before this Court as under:-

i. Whether death of accused during pendency of the Revisional application preferred against conviction and sentence of compensation would be abated automatically or not?

ii. Whether compensation and fine are similar and the said amount as imposed by the Court is to be recoverable from the estate of the deceased?

13. It appears from the judgments of Learned Metropolitan Magistrate as well as Learned Additional Sessions Judge that the accused persons were convicted under Sections 138/141 of the Negotiable Instruments Act, 1881 and were sentenced to suffer

⁴ (2019) 9 SCC 606;

⁵ ILR 2003 KAR 3252;

rigorous imprisonment for six months and to pay a compensation of Rs. 12,00,000/- to the applicant/complainant.

14. During pendency of the Revisional application, accused/petitioner no. 3 expired. If he would have been alive and the conviction and sentence affirmed then he would have to pay the said compensation to the complainant in view of the judgment passed by the Learned Additional Sessions Judge in accordance with Section 357(3) of the Code of Criminal Procedure, 1973 and, in default, petitioner no. 3 shall further suffer simple imprisonment for three months being vicariously liable.

15. There is no definition of fine stipulated in the CrPC but there is a provision to allow fine while convicting the accused person in view of the Indian Penal Code. Even no compensation is defined either in CrPC or IPC.

16. The present proceeding is initiated under Sections 138/141 of the Negotiable Instruments Act, 1881 and whenever a person is convicted under the said sections, there is a provision to sentence of imprisonment as well as fine but, in the present case, both the Learned Courts below awarded compensation to be paid by the accused to the complainant to the tune of Rs. 12 Lakhs. Actually, compensation is granted to address the suffering caused by any loss

or injury resulting from an act for which the accused has been sentenced. While it establishes criminal liability, the compensation awarded to the victim is treated similarly to what could be granted in a civil suit. As for accused herein, no fine was imposed on him; instead, he was directed to pay compensation.

17. The fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a fine but the legal fiction raised in relating to recover the fine only, it is in that sense fine “stands on a higher footing than compensation awarded by the Court” in ***Dilip S. Dahanuka Vs. Kotak Mahindra Bank Limited***⁶.

18. It is settled principle of law that every trial or appeal against conviction abates on the death of the accused except an appeal from the sentence of fine, as fine constitutes a liability on the estate of the deceased. The judgment relied by the applicant/opposite party no. 2 in the cases of ***Ramesh Gupta & Anr. Vs. Subhas Das & Anr*** and ***Ramesan (Dead) Through Legal Representative Girija A. Vs. State of Kerala*** are squarely applicable in the present case. In both the cases, the Hon’ble High Court at Calcutta and Hon’ble Supreme Court held criminal appeal after the death of appellant/accused will

⁶ (2007) 6 SCC 528.

continue on the death of appellant/accused and the same must be treated as an appeal against sentence of fine and, therefore, the appeal must not abated with regard to that sentence of fine as provided under Section 394(2) of the CrPC and an appeal before the Hon'ble High Court being against the sentence of fine was required to be heard against that sentence despite death of appellant/accused.

19. This Court also relies a Judgment passed in the case of ***Harnam Singh Vs. The State of Himachal Pradesh***⁷. Usually, fine is a monetary penalty imposed by a Court or Regulatory Authority while compensation is a legal right to be paid to the victim of crime or other wrong doing. Fine is paid to the Government by the convict or that can be recovered or enforced by Court's order from the estate of the accused/convict. Whereas, compensation can be enforced through legal means or by paying the victim directly even if the accused/convict failed to pay the compensation, the same may be recovered from the estate of the deceased. Even after death of accused, his property goes to the hand of legal heirs or representatives after his demise.

20. In the light of the provisions contained in Sections 421 of the Code of Criminal Procedure, 1973, fine amount as imposed by the

⁷ (1975) 3 SCC 343 : 1974 SCC (CRI) 951

Court, is to be recovered by sale and auction of the property of the accused; whereas as per Section 431 of the Code of Criminal Procedure, 1973, even amount of compensation can be recovered as if it was a fine. In the instant case, compensation was directed to be paid by the accused persons. Therefore, as per both sections 421 and 431 of the Code of Criminal Procedure, 1973, amount is to be recovered by way of auction and sale of the property of the late accused/petitioner no. 3, namely, Goutam Gupta.

21. According to Section 70 of the Indian Penal Code, death of offender does not discharge from his liability and the property which would, after his death comes into hands of legal heirs or representatives, be legally liable for his debts. Therefore, provision of Sections 421 and 431 of the Code of Criminal Procedure, 1973 read with Section 70 of the Indian Penal Code, 1860 make amount of fine or compensation recoverable from the property of the offender. Therefore, legal heirs and representatives of the deceased naturally with all liabilities and attached therewith and in view of Section 70 of the IPC, amount of fine and compensation is recoverable from the said property. Therefore, an opportunity should be afforded to the legal heirs or representatives of the deceased, Goutam Gupta so that no prejudice caused to them in future.

22. The judgments relied by the opposite party no. 2 is squarely applicable in the facts and circumstances of the present case.

23. The legal heirs and representatives of the deceased did not prefer any application for substitution themselves as the petitioners in place of deceased Goutam Gupta. Therefore, the present Opposite Party No. 2 filed an application for substitution of legal heirs and representatives of the deceased Goutam Gupta. Therefore, the case of the petitioners would not abate for the death of petitioner no. 3 (since deceased), namely, Goutam Gupta as the sentence includes the compensation.

24. Accordingly, **CRAN 11 of 2024** is, thus, **allowed**.

25. Registry is directed to take necessary steps to substitute the legal heirs and representatives of petitioner no. 3, since deceased, in the cause title of the Revisional application.

26. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)