

HIGH COURT OF MADHYA PRADESH AT JABALPUR
SINGLE BENCH: HON'BLE SHRI JUSTICE SUBHASH KAKADE

Criminal Appeal No.1375 of 2012

APPELLANT: Hajarilal Hanotiya, aged about 83 years,
S/o Late Shri Kalu Ram Hanotiya Retd.
Servant, R/o WCL Colony, H.No.2980,
MQ Shobhapur, Gram Pathakheda
Distt. Betul (MP)

Versus

RESPONDENT: Sachin Singh Thakur, aged about 27
Years, S/o Shri Ramesh Singh Thakur,
R/o In front of Housing Board Colony,
Main Road Seoni Malwa, Distt.-
Hoshangabad, Proprietor Sai Motors,
Bajaj Service Centre, In front of Uma
Garage, Main Road Seoni Malwa,
Distt. Hoshangabad (MP)

Shri B.M.Prasad, learned counsel for the appellant.

Shri Shobhitaditya, learned counsel for the respondent.

(O R D E R)

Delivered on: 22.03.2016

This appeal has been preferred by the appellant/complainant being aggrieved by the judgment of acquittal of the respondent/accused dated 10.07.09 passed by learned Sessions Judge, Hoshangabad in Criminal Appeal No. 187/08, arising out of order of conviction passed by learned JMFC, Itarsi on 25.10.08 in Criminal Case No. 1078/06 for offence punishable under Section 138 of Negotiable Instruments Act (for short "the Act").

2. The short facts of criminal complaint case are that the respondent/accused issued a cheque of Rs.20,000/- in favour of appellant to discharge of his liability vide Cheque No. 232863 dated

24.05.06 of State Bank of India, Branch Seoni Malwa on account of commercial transaction between the parties. The appellant presented the cheque through his banker for collection, but the same was dishonoured due to insufficient fund in the account of respondent. After issuance of required legal notice, the appellant filed a complaint case under Section 138 of the Act against the respondent.

3. After taking cognizance in compliance of process issued by learned trial Court, the respondent appeared and abjured his guilt. Learned JMFC on basis of recorded evidence held that there was dishonour of cheque for insufficiency of funds in account of respondent, hence convicted him for the offence punishable under Section 138 of the Act and sentenced him to suffer R.I. for four months and fine of Rs.5000/- with default stipulation and also awarded compensation of Rs.25,000/- to be paid to the appellant. Aggrieved thereby the respondent preferred a Criminal Appeal, learned appellate Court allowing the appeal acquitted the respondent hence the appellant approached this Court.

4. It is pertinent to mention here that the appellant Hajarilal had passed away on dated 20.02.13.

5. Learned counsel for the respondent has submitted on the strength of provisions of Section 394 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") that as the appellant has died, therefore, this appeal stands abated.

6. Question arises whether appeal filed by the appellant/complainant against the acquittal of the respondent/accused under the provisions of Section 378(iv) of the Code will be abated in terms of provisions of Section 394 (2) of the Code as the appellant/complainant has died ?

7. At this juncture, perusal of provisions of Section 394 (1) of the Code will be beneficial to resolve the controversy which reads as under :-

"Abatement of appeals :- (1) Every appeal under Section 377 or section 378 shall finally abate on the death of the accused.

8. The word “appellant” is used in Section 394(2) of the Code necessarily indicates the appellant who was accused, this word “appellant” does not include the person who was complainant and file an appeal against the acquittal of the accused.

9. This fact finds support from the reading of the proviso of sub-section (2) of Section 394 of the Code, which reads as under :-

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided 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 near relatives may, within thirty 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.”

Explanation : In this section, “near relative” means a parent, spouse, lineal descendant, brother or sister.

10. Hence, there is no doubt that the word “appellant” used for Section 394(2) of the Code denotes the appellant who is accused not complainant.

11. As the appeal is already admitted vide order dated 18.06.12, in life time of the appellant, therefore, now it will be decided on its merits irrespective of the fact that the appellant is no more now.

(Subhash Kakade)
Judge.

JK.