

(2010) 03 PAT CK 0175

Patna High Court

Case No: Criminal Miscellaneous No. 16877 of 1998

Most. Daulti Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: March 26, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 394, 394(2)

Citation: (2011) 59 BLJR 1679 : (2011) 2 PLJR 189**Hon'ble Judges:** Shiva Kirti Singh, J**Bench:** Single Bench**Advocate:** Jitendra Prasad Singh, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent**Final Decision:** Dismissed

Judgement

Shiva Kirti Singh, J.

Petitioner, who is widow of late Rajendra Prasad Singh, has prayed for quashing of order dated 18.7.1998 passed by learned 8th Additional District and Sessions Judge, Patna in Criminal Appeal No. 131/94 whereby her petition u/s 394(2) of the Code of Criminal Procedure for continuing the appeal after death of her husband, the Appellant, was rejected.

2. The impugned order shows that after the death of the Appellant Rajendra Prasad Singh, which is said to have taken place on 19.12.1997, on 12.1.1998, the son of the Appellant and the Petitioner herein, namely, Anand Kishore Prasad, filed a petition supported with an affidavit and the death certificate of the Appellant and made a prayer to drop the appeal of the Appellant Rajendra Prasad Singh in view of his death. That petition was moved on 13.1.1998 and for confirmation of the factum of death, a report was called for from the concerned police station. On considering the report regarding death on 19.12.1997, the proceeding against the Appellant late Rajendra Prasad Singh was dropped as having abated on 21.3.1998 and the records

were consigned to the record room.

3. After such developments, the Petitioner claiming to be widow of the Appellant late Rajendra Prasad Singh, filed an application on 18.7.1998 seeking leave to continue the appeal. The prayer has been rejected by the impugned order.

4. Learned Counsel for the Petitioner has submitted that the interest of justice requires interference in the matter because if the Petitioner succeeds in appeal filed on behalf of her husband and conviction is set aside, that will help her in claiming pension/family pension from the Railway Mail Service where late Rajendra Prasad Singh was employed before his conviction. It appears that the conviction was in respect of an offence in relation to his official duties.

5. On a careful consideration of the provisions in Section 394 of the Code of Criminal Procedure, it is found that under Sub-section (2) every appeal under Chapter-XXIX of the Code of Criminal Procedure which will include the appeal of the Petitioner's husband, except an appeal from a sentence of fine, shall finally abate on the death of the Appellant. In the present case, the appeal was against a sentence of conviction and hence, it had to abate on the death of the accused Appellant. But under the proviso, where the appeal is against a conviction and sentence of death or of imprisonment, as in the present case, on the death of the Appellant during the pendency of the appeal, any of his near relatives may apply to the Appellate Court within 30 days of the death, seeking leave to continue the appeal and if leave is granted, the appeal shall not abate. The explanation to the aforesaid Section 394 explains that near relative means a parent, spouse, lineal descendent, brother or sister.

6. In the present case, the son of the deceased Appellant being a lineal descendent had the right to seek leave to continue the appeal. For that, he could have filed a petition within 30 days of the death of the Appellant. He chose to file an application within the time prescribed but he made a prayer for dropping the appeal on the ground that it has abated due to death of the Appellant. In such circumstances, a belated application by the Petitioner taking a different stand seeking setting aside of abatement which has already taken effect, has been rightly rejected by the learned lower court. It has been claimed that Petitioner had preferred an application seeking condonation of delay also. In the facts noticed above, such application could not be of any help. The application seeking condonation of delay cannot be of any significance when the son of the deceased Appellant and the Petitioner had already moved the court below within time praying for dropping the appeal and such order had already been passed. There is no power of review in a court exercising powers under the Code of Criminal Procedure.

7. For all the aforesaid reasons, this Court finds no merit in this application. It is accordingly dismissed.

8. It is made clear that this order shall not stand in the way of the Petitioner in claiming retiral benefits etc. including pension/family pension on account of Appellant's death, in accordance with rules.