



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 111/2014

1. Smt. Shimla Sharma Daughter of Dhanna Lal Sharma, Wife of Shri Brijkishore Pathak (deceased complainant)
- 1/1. Brijkishore Pathak Son of Late Harprasad Pathak, aged 53 years (Husband)
- 1/2. Vinay Pathak Son of Shri Brijkishore Pathak, aged 21 years (Son)
- 1/3. Vinita Pathak Daughter of Shri Brijkishore Pathak, aged 20 years (Daughter)
- 1/4. Bulbul Pathak D/o Shri Brijkishore Pathak, aged 17 years (Daughter)
- Through Guardian Shri Brijkishore Pathak, All R/o D-104, Murlipura Scheme, Jaipur

----Legal Heirs (Deceased Complainant)
Versus

1. State of Rajasthan through Public Prosecutor
2. Damodar Sharma Son of Shri Mahadev Sharma, aged 60 years, Resident of Village Heerawala, Kanota, Jaipur.
3. Purshottam Sharma Son of Shri Mahadev Sharma, aged 54 years, Resident of Village Heerawala, Kanota, Jaipur.
4. Ghasi Lal Son of Shri Nathu Lal, aged 65 years, Resident of Lawan Bus Stand, Nangal Rajawatan, Dausa.

----Accused-Respondents

For Petitioner(s) : Mr. H.C. Ganeshia with
Mr. M.L. Sharma

For Respondent(s) : Mr. Narendra Singh Dhakar, PP
Mr. Abhishek Parashar

JUSTICE ANOOP KUMAR DHAND
Order

09/04/2026

Reportable

1.	Date of conclusion of arguments	09/04/2026
2.	Date on which the order was reserved	09/04/2026
3.	Whether the full order or only the operative part is pronounced	Full Judgment
4.	Date of pronouncement	18/04/2026



1. By way of filing the instant petition a challenge has been led to the impugned order dated 21.10.2013 passed by the Additional District & Sessions Judge No.8, Jaipur Metropolitan, Jaipur by which the appeal submitted by the appellant-deceased-petitioner No.1 Smt. Shimla Sharma was dismissed as abated on account of her death.

2. Learned counsel for the petitioners submits that petitioner Nos. 1/1 to 1/4 are legal heirs of the deceased-victim-Smt. Shimla Sharma, who filed a criminal complaint against the accused-respondents No. 2 to 4 for the offences under Sections 420, 467, 468, 471 & 120B IPC alleging therein that her grandfather-Shri Govind Narayan was the khatedar of a land bearing Khasra No.102 measuring 1 Beegha 5 Bisva. After death of her grandfather in the year 1974, the petitioner No.1-Smt. Shimla Sharma's father-Dhanna Lal Sharma, being Legal Representative of Govind Narayan was supposed to be the lawful owner of all his properties including the aforesaid land. However, at the time of death of her grandfather-Shri Govind Narayan, the accused-respondents in collusion with *Sarpanch* of the Gram Panchayat and the revenue officers opened mutation of the aforesaid land in their own name by demonstrating that grandfather of Smt. Shimla Sharma, i.e. Shri Govind Narayan passed away issueless, whereas in fact, father of Smt. Shimla Sharma, i.e. Shri Danna Lal Sharma was the son & legal representative/heir of the deceased-Shri Govind Narayan. Counsel submits that on the basis of the aforesaid incorrect & false information furnished by the accused-



respondents, the mutation of the aforesaid land was opened in their name.

3. Counsel further submits that the complaint submitted by Smt. Shimla Sharma was sent for investigation to the Police Station Kanota, District Jaipur Rural, where upon FIR No. 22/2011 was registered and after investigation, the accused-respondents were charge-sheeted for the offences under Sections 420, 467, 468, 471 & 120B IPC before the Court of Metropolitan Magistrate No.24, Bassi, Jaipur Metropolitan, where they faced trial but were ultimately acquitted vide judgement dated 20.12.2012. Counsel submits that aggrieved by the aforesaid judgment of acquittal, the complainant-Smt. Shimla Sharma submitted a Criminal Appeal before the Court of Additional District & Sessions Judge No.8, Jaipur Metropolitan, Jaipur and during pendency of the aforesaid appeal, the complainant/appellant-Smt. Shimla Sharma passed away on 25.09.2013 and the learned Appellate Court has abated the aforesaid appeal, without taking the petitioner Nos. 1/1 to 1/4 on record even though they were legal representatives/heirs of the deceased-appellant-Smt. Shimla Sharma.

4. Counsel further submits that in view of the meaning prescribed to the word "victim" under Section 2(wa) Cr.P.C, the petitioners No. 1/1 to 1/4 fall within the definition of victim, because the expression 'victim' includes his or her guardian or legal representative/heir. Therefore, the petitioners No. 1/1 to 1/4 were entitled to continue the appeal, submitted by the deceased-Smt. Shimla Sharma, and the impugned order dated 21.10.2013



should not have been passed. Hence, under these circumstances, interference of this Court is warranted.

5. In support of his contentions, counsel has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Khem Singh (D) Through LRs Vs. State of Uttaranchal (Now State of Uttarakhand) & Anr. Etc.** reported in **2025 SCC OnLine SC 1778**; and **K. Chathukutty & Ors. Vs. K.S. Prasanna Venkitesan & Anr.** reported in **2006 SCC OnLine Ker 544**.

6. *Per contra*, learned counsel appearing on behalf of the accused-respondents (hereinafter referred to as 'the accused') opposed the arguments raised by the counsel for the petitioners and has raised a technical objection regarding maintainability of the instant misc. petition. He submits that the impugned order of abatement of appeal, passed by the Appellate Court, is a final and revisable order against which only a Revision Petition is maintainable. Hence, the instant misc. petition is liable to be rejected being not maintainable.

7. On merits as well, counsel for the accused has opposed the arguments raised by counsel for the petitioner on the technical ground that even after amendment of the definition of 'victim', as defined under Section 2(wa) of Cr.P.C., the provision contained under Section 394 Cr.P.C., which deals with the abatement of appeals, has not been amended by the legislature. Counsel further submits that unless and until the provisions contained under Section 394 Cr.P.C. are amended, legal representatives of any complainant-appellant cannot be substituted in his/her place. In



support of his contentions, he has placed reliance upon the judgment passed by the Hon'ble Punjab and Haryana High Court in the case of **Avtar Singh Dhesi Vs. Ajaib Singh @ Jabba and Ors.** reported in **2015 SCC OnLine P&H 10017** and the judgment passed by the Hon'ble Allahabad High Court in the case of **Prithvi Singh Vs. State of U.P. and Ors.** reported in **2022 SCC OnLine All 1253**. Counsel further submits that under these circumstances, interference of this Court is not warranted and the instant petition is liable to be rejected.

8. Heard and considered the submissions made at the Bar and perused the material available on the record.

9. In short, the submission made on behalf of the petitioners No. 1/1 to ¼, who are the legal representatives/heirs of the deceased/appellant-Smt. Shimla Sharma, is that they also fall within the meaning of the word "victim", as defined under Section 2(wa) of Cr.P.C. and therefore, they are entitled to continue the appeal submitted by the deceased/appellant-Smt. Shimla Sharma against the judgment of acquittal of the accused. In the alternative, it is submitted that the appeal would not abate on account of death of the deceased/appellant-Smt. Shimla Sharma.

While, it is contended on behalf of the accused that the proviso contained under Section 394 Cr.P.C. would apply only to those cases where the accused-appellant dies and in that case, his/her legal representatives/heirs can continue the appeal but there is no such provision which allows for the continuation of an appeal by the legal representatives of the complainant-appellant, in case of his/her death. There is no corresponding provision for



continuation of an appeal by the legal representative/heir of a deceased-complainant-appellant.

10. In civil proceedings, if, on death of any party, either the right to sue, or to be sued, does not survive on the surviving parties, the proceedings would abate. In a criminal action, trial is of the offender i.e., the person who is accused of committing an offence. Therefore, if the accused facing trial dies (or ceases to exist), the trial would abate and so would the appeal against his acquittal, as the person to be prosecuted or convicted, as the case may be, ceases to exist. However, if the accused has been convicted and he files an appeal against his conviction, on his death, the proviso to sub-section (2) of Section 394 of Cr.P.C. enables a relative of the convict to pursue the appeal with the leave of the court. In absence thereof, the appeal abates. The purpose of such liberty is, *inter alia*, to save the convict's family's honour. There may be instances where the law requires that proceeding shall be instituted and prosecuted by a particular person and no one else. In such a case, if that person dies, in absence of law permitting some other person to continue the proceeding, the proceeding would abate.

11. Section 394 Cr.P.C. deals with the process of abatement of appeals in case of death of the appellants and it reads as under:-

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

(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."

The proviso attached to Section 394 Cr.P.C. grants liberty to

the near relatives of the deceased-accused-appellant to continue the appeal submitted by the accused against his conviction. But there is no corresponding provision granting such liberty to the legal representatives/heirs of the complainant/informant/victim continue the appeal against the judgment of acquittal of accused in case of death of the complainant/victim/informant-appellant.

12. The matter before this Court is within a very limited compass; whether the petitioners No. 1/1 to 1/4 fall under the definition of "victim" in terms of Section 2(wa) read with Section 372 of Cr.P.C. or whether the provision under Section 378 Cr.P.C. would prevail. For convenience, the sake of Sections 2(wa), 372, 374 and 378 of Cr.P.C. are reproduced herein below:-

2. Definitions.—In this Code, unless the context otherwise requires,—

(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;

372. No appeal to lie unless otherwise provided.

—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal





ordinarily lies against the order of conviction of such Court.

374. Appeals from convictions.—(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate,

may appeal to the Court of Session.

(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

378. Appeal in case of acquittal.—(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]





(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, 1 [the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision].

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

13. Section 2(wa) of the CrPC defines 'victim' in plain and simple language as a 'person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged...'. It is clear that Section 2(wa) of the CrPC has





thoughtfully accorded an expansive understanding to the term 'victim' and not a narrow or restricted meaning.

14. The language employed by the proviso to Section 372 of the CrPC is unambiguous to the effect that 'the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.'

15. In the case of **Mallikarjun Kodagali Vs. State of Karnataka** reported in **(2019) 2 SCC 752**, the Hon'ble Apex Court has discussed the substantive right of the victim as envisaged in the proviso to Section 372 of the CrPC, the conclusive paragraphs wherefrom are reproduced below:-

'73. In our opinion, the proviso to Section 372 CrPC must also be given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence. There is a historical reason for this, beginning with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly of the United Nations in the 96th Plenary Session on 29-11-1985. The Declaration is sometimes referred to as the Magna Carta of the rights of victims. One of the significant declarations made was in relation to access to justice for the victim of an offence through the justice delivery mechanisms, both formal and informal. In the Declaration it was stated as follows:

"4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress



through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6.The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

Providing proper assistance to victims throughout the legal process;

Taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilised, where appropriate, to facilitate conciliation and redress for victims."

75. Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear to us that a victim as defined in Section 2(wa) CrPC would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction. It must follow from this that the appeal filed by Kodagali before the High Court was maintainable and ought to have been considered on its own merits.

76.As far as the question of the grant of special leave is concerned, once again, we need not be





overwhelmed by submissions made at the Bar. The language of the proviso to Section 372 CrPC is quite clear, particularly when it is contrasted with the language of Section 378(4) CrPC. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word "complaint" has been defined in Section 2(d) CrPC and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 CrPC is concerned.'

16. Similarly in the case of **Mahabir Vs. State of Haryana** reported in **2025 SCC OnLine SC 184**, the Hon'ble Apex Court in para 53 & 54 has observed as under:-

"53. Therefore, by the aforesaid provision a right has been created in favour of the victim, which was not existing earlier in the Code, i.e., that a victim shall have a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. The plain reading of the statement of objects and reasons for introducing the proviso to Section 372 CrPC makes it clear that it wanted to confer certain rights on the victims. It has been noted therein that the victims are the worst sufferers in a crime, and they don't have much role in the court proceedings. They need to be given certain "rights" and compensation, so that there is no distortion of the criminal justice system. This, by itself, is clear that the object of adding this proviso is to create a right in favour of the victim to prefer an appeal as a matter of right. It not only extends to challenge the order of acquittal, but such appeal can also be filed by the victim if the accused is convicted for a lesser offence or if the inadequate compensation has been imposed.

54. Thus, it is clear as per the golden rule of interpretation, that the 'proviso' is a substantive enactment, and is not merely excepting something out of or qualifying what was excepting or goes before. Therefore, by adding the 'proviso' in Section



372 of CrPC by this amendment, a right has been created in favour of the victim."

17. In **Shri Balasaheb K. Thackerey & Anr. Vs. Shri Venkat @ Babru** reported in **AIRONLINE 2006 SC 316**, Hon'ble Apex Court has held that the Court has the power to permit a relative of the complainant to act as the complainant in order to continue the prosecution.

18. In **Jimmy Jahangir Madan Vs. Bolly Cariyappa Hindley (dead) by LRs** reported in **(2004) 12 SCC 509**, the Hon'ble Apex Court in para 5 has held that heir of the deceased-complainant can continue the prosecution and it has been held

"5. The question as to whether the heirs of the complainant can be allowed to file an application under Section 302 of the Code to continue the prosecution is no longer res integra as the same has been concluded by a decision of this Court in *Ashwin Nanubhai Vyas v. State of Maharashtra* in which case the Court was dealing with a case under Section 495 of the Code of Criminal Procedure, 1898, which is corresponding to Section 302 of the Code. In that case, it was laid down that upon the death of the complainant, under the provisions of Section 495 of the said Code, mother of the complainant could be allowed to continue the prosecution. It was further laid down that she could make the application either herself or through a pleader. Undisputedly, in the present case, the heirs themselves have not filed the applications to continue the prosecution, rather the same have been filed by their power-of-attorney holders."

19. Recently, in the case of **Khem Singh (D) through LRs (supra)**, the Hon'ble Apex Court has held that the legal heir of the deceased-victim can be substituted to continue the proceedings of the appeal and it has been held in para 11 to 12 as under:-



"11. We are conscious of the fact that the applicant who is seeking substitution in the instant case is not only the son and heir of the original appellant who preferred these appeals but is also an injured victim in the incident which occurred on 09.12.1992 in respect of which these appeals have been filed. Therefore, the applicant could have filed these appeals assailing the judgment of acquittal passed by the High Court in his individual capacity as an injured victim. However, the applications for substitution have been filled in order to continue the prosecution of these appeals as the heir of the original appellant who was also an injured victim. Hence, the detailed discussion that we have made is in acceptance of the argument of learned counsel for the applicant that as heir of the original appellant, who was an injured victim, he can prosecute these appeals. Therefore, the applicant is being permitted to be substituted in place of the original appellant as heir of the original appellant (who was a victim in the incident). In other words, we observe that even if the applicant was not an injured victim in the said incident but has sought to prosecute these appeals as heir of the injured victim (original appellant), he is permitted to do so. We therefore say, coincidentally, the applicant is also an injured victim in the incident. In view of the above discussion, we do not accept the contention of learned senior counsel for the respondent-accused that the applicant herein would have to separately file appeals before this Court as an injured victim and in that capacity only and not as heir of the original appellant.

11.1. Secondly, another contention of learned senior counsel for the respondent-accused is that under Section 394(2) CrPC, the expression "every other appeal" other than an appeal filed under Section 377 CrPC or Section 378 CrPC shall finally abate applies to an appeal filed by a victim. We do not think the same can be simply applied to an appeal filed by a victim or an heir of the victim. Although, sub-section (2) of Section 394 CrPC states that "every other appeal under this Chapter shall finally abate on the death of the appellant", it cannot be related to an appeal filed by a victim or on the death of the victim/appellant. This is because Sections 377 and





378 CrPC respectively deal with an appeal filed by the State Government against sentence and an appeal in case of acquittal. Such appeals are filed against the accused and therefore, when the accused dies, such appeals would abate. The expression "every other appeal" must therefore, relate to an appeal which is not filed under Section 377 or Section 378 CrPC. Such an appeal is an appeal against a conviction such as under Section 374 CrPC and on the death of the appellant who is the accused, such appeal would abate. The proviso to sub-section (2) of Section 394 CrPC however, states, that even if the accused-appellant dies during the pendency of the appeal, any of his near relatives may continue the appeal and the appeal may not abate. In other words, the heirs of the deceased accused-appellant have been permitted to continue the appeals so as to seek an acquittal and realise the fruits of such an acquittal which could be even in monetary terms despite the death of the accused-appellant.

11.2. If the same logic is to apply to the proviso to Section 372 CrPC, it would imply that the heirs of a victim can also pursue an appeal filed under that provision as the definition of victim under Section 2(wa) includes the heir of a victim.

11.3. The expression "prefer an appeal" in proviso to Section 372 CrPC has to be given an expanded meaning to include prosecution of an appeal or effectively pursue an appeal. According to Black's Law Dictionary, the word "prefer" means "to bring before; to prosecute; to try; to proceed with. Thus, preferring an indictment signifies prosecuting or trying an indictment; - Manik Lal Majumdar v. Gouranga Chandra Dey, (2004) 12 SCC 448.

11.4. We may usefully refer to Constitution Bench Judgment of this Court in Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540 wherein it was observed thus:

"23. From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.





(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

11.5. More importantly, Article 136 of the Constitution deals with Special leave to appeal by the Supreme Court. Sub-clause (1) of Article 136 begins with a non-obstante clause and confers discretion on the Supreme Court to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. When this power under Article 136 is exercised by the Supreme Court by granting leave, the special leave petition would get converted into a criminal appeal. If during the pendency of the special leave petition or the criminal appeal, the appellant dies, the heir of the appellant must be given an opportunity to prosecute the appeal irrespective of whether the heir is a victim of the criminal offence. More significantly, the appeal heard pursuant to Article 136 of the Constitution is not an appeal under Chapter XXIX CrPC.

11.6. In the circumstances, we find that in the instant case, the applicant, being heir of the victim, has the right to continue these appeals irrespective of the fact that he is an injured victim. In that view of the matter also, we find that the application for substitution has to be allowed.

11.7. However, if in a situation, the complainant who has preferred an appeal under Section 378 CrPC dies,





what would be the fate of the appeal is not a question which arises in this case and therefore, we keep the said question open to be adjudicated in any other appropriate case.

12. In the circumstances, the delay in filing the application for seeking setting aside of the abatement is condoned. The abatement is set aside. The application for substitution of applicant is allowed. Consequently, the applicant is permitted to be brought on record as the legal representative of the original appellant, apart from he being an injured victim also. Appellant's counsel to file amended memo of parties."

20. On the basis of the ratio as propounded by the Hon'ble Apex Court in the above cited judgments, it can safely be held that as per Section 2(wa) of Cr.P.C., the legal representative/heir of the 'victim' fall under the definition of 'victim'. Therefore, under such circumstances, in the instant case the legal representative/heir of the deceased-victim-Smt. Shimla Sharma, i.e. the petitioners No. 1/1 to 1/4, also fall under the definition of 'victim' and they are entitled to continue prosecution against the accused-respondents, in the event of death of the victim-Smt. Shimla Sharma by way of filing an application seeking leave to continue the appeal, submitted by the deceased-complainant-appellant, against the judgment of acquittal of the accused-respondents.

21. In view of the discussions made hereinabove, the impugned order dated 21.10.2013 passed by the Additional District & Sessions Judge No.8, Jaipur Metropolitan, Jaipur is quashed and set aside and abatement of appeal, submitted by the deceased-victim-complainant Smt. Shimla Sharma is quashed and set aside. The appeal is ordered to be restored to its original number. The petitioners No. 1/1 to 1/4, being the legal representative/heir of





the deceased Smt. Shimla Sharma, are allowed to file an application seeking leave to continue the appeal, submitted by the original appellant-Smt. Shimla Sharma (since deceased) and the same is ordered to be decided strictly in accordance with law. The parties are directed to appear before the Appellate Court on 20.05.2026 and on the subsequent dates so fixed by the Appellate Court. The Appellate Court is directed to hear and decide the application seeking leave to continue appeal on its merits, after hearing both the sides, strictly in accordance with law.

Parting Remarks:-

22. Before parting with this order, this Court feels it appropriate to observe that the legislature has brought various amendments in favour of the 'victim' while amending the definition of the word 'victim' and giving him/her the right to file appeal under Section 372 Cr.P.C., against the judgment of acquittal of the accused or in case of conviction for lesser offence or imposition of inadequate compensation. The definition of 'victim' includes his/her guardian and legal representative/heir as well. Section 2(wa) and Section 372 of Cr.P.C. were brought in picture and effect vide Code of Criminal Procedure (Amendment) Act, 2008 (Act No. 5 of 2009) w.e.f. 31.12.2009. Prior to this amendment, no such right to file appeal was given to the victim.

It appears that while making these amendments in favour of the victim, in the year 2008/2009, the legislature has forgotten to amend the provisio attached to Section 394 Cr.P.C., which deals with the abatement of appeals. Section 394(1) and (2) Cr.P.C. state that every appeal, other than the appeal under Chapter XXIX



Cr.P.C. (except an appeal from a sentence of fine), shall finally abate on the death of the appellant. Meaning thereby that all the appeals, whether filed by the accused against his conviction or appeals submitted by the victim against the judgment of acquittal of the accused, would abate in the case of death of the appellant.

But a proviso has been attached to Section 394 Cr.P.C. which gives liberty to the near relatives of the deceased-accused to apply for leave to continue the appeal and if such a leave is granted, the appeal shall not abate. But no such liberty or right has been granted by the legislature to the legal representatives/heirs of the victim to apply for leave to continue the appeal, in which case if the leave is granted, the appeal submitted by the victim would not abate. The purpose of granting such liberty to the near relatives of the accused is to save the convict's family's honour. The victim's family members/ legal heirs must have the same rights to save the victim's family's honour. But no such right has been granted by the legislature to the near relatives/ legal heirs of the deceased-victim to continue the appeal after his/her death.

Such an act of the legislature is discriminatory and it is creating a differentiation between two equals and the same amounts to utter violation of Article 14 of the Constitution of India.

23. This Court hopes, believes and trusts that the legislature would think and deliberate upon this issue and will come out with necessary amendments to the proviso attached to Section 394 Cr.P.C., giving similar liberty to the legal heirs of the deceased-victim as well viz., to file leave to application to continue the





appeal, submitted against acquittal by the victim, in case of his/her death and the appeal would not abate.

24. Let a copy of this order be sent to the Law Commission of India, New Delhi to consider and suggest the legislature for carrying out necessary amendment to the proviso attached to Section 394 Cr.P.C. in the interest of the legal heirs of the victim-appellants to continue the appeals in the event of their death.

(ANOOP KUMAR DHAND),J

Shivam-Puneet/22

