

Rajan vs State of Kerala

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Court : Kerala

Decided On : Nov-30-2021

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : CRL.A/1953/2006

Appellant : RAJAN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
TUESDAY, THE 30TH DAY OF NOVEMBER 2021 / 9TH
AGRAHAYANA, 1943 CRL.A NO. 1953 OF 2006 AGAINST THE
JUDGMENT DATED 16.9.2006 IN SC 384/2001 OF ADDITIONAL
DISTRICT & SESSIONS COURT (ADHOC), MAVELIKKARA
APPELLANT/ACCUSED: RAJAN KIZHAKKATHIL PUTHIYAVEEDU,
MUTTOM MURI, CHEPPAD VILLAGE, KARTHIKAPPALLY. BY ADV
SRI.RINNY STEPHEN RESPONDENT: STATE OF KERALA REP. BY
THE STATE PROSECUTOR,, HIGH COURT OF KERALA,
ERNAKULAM. BY SRI SANAL P RAJ, PUBLIC PROSECUTOR THIS
CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.11.2021,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

JUDGMENT

Dated this the 30th day of November, 2021 This appeal has been filed by the accused in S.C.No.384/2001 on the files of the Additional Sessions Court, Mavelikara against the judgment dated 16.9.2006.

2. The court below found the accused guilty for the

offence punishable under Section 55(a) of the Abkari Act and he was convicted for the said offence. He was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,00,000/-, in default to undergo rigorous imprisonment for a further period of one year.

3. When the appeal came up for hearing, the learned counsel for the appellant, Sri. Rinny Stephen, submitted that the appellant passed away. Thereafter, opportunity was given to

take steps to implead the legal heirs of the appellant. Today, when the appeal is taken up, the learned counsel for the appellant submits that, the legal heirs conveyed him that they are not interested to come on record and to proceed with the appeal. -:3:-

4. Section 394 of Cr.P.C deals with the abatement of

appeals. Section 394(1) of Cr.P.C provides that, every appeal under Sections 377 or 378 of Cr.P.C shall finally abate on the death of the accused. Section 394(2) of Cr.P.C states that every other appeal under Chapter XXIX (except an appeal from a sentence of fine) shall finally abate on the death of the appellant. The proviso to Section 394(2) says 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 relative may, within thirty days of 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.

5. A Full Bench of this Court in Pazhani v. State of

Kerala (2017 (1) KHC 173) has considered the question whether an appeal against conviction and sentence of imprisonment as well as fine would abate on the death of the appellant/accused, if no relative of the appellant comes forward to continue to prosecute the appeal. It was held that in the case of an appeal from sentence of fine, there is no abatement of appeal on the death of the accused and the appeal can be prosecuted by the

-:4:-

near relatives of the deceased appellant if they voluntarily come forward to prosecute the appeal. It was further held that, if the near relatives do not file an application to come on record with the stipulated period, the court shall consign the appeal to the record room and if the near relatives wish to come on record, they would be entitled to file an application to revive the appeal, in which case the court would be justified in hearing the appeal on merits, provided the application is filed without undue delay. Following the dictum laid down in Pazhani (supra) a Single Bench of this Court in Oolli Baby @ Baby v. State of Kerala (2020 (1) KHC 590) has held that in an appeal against sentence of imprisonment as well as of fine, if the near relatives of the accused do not come forward to prosecute the appeal, the appeal would stand abated insofar as the sentence of imprisonment is concerned and the appeal shall be closed and consigned to the record room. The supreme court in Ramesan (dead) Through

Lr. Girija A v. State of Kerala [(2020) (3) SCC 45] has held

that the appeal before the high court against the sentence of imprisonment and fine is required to be heard against sentence of fine despite death of the accused. It was further held that the -:5:- legal heirs should be given an opportunity to proceed with the appeal against sentence of fine.

6. As already stated, this is an appeal filed under Section

374(2) of Cr.P.C. None of the near relatives of the appellant has filed an application to continue the prosecution of the appeal. The learned counsel for the

appellant submitted that the near relatives are not interested to prosecute the appeal. Thus, even though opportunity was given to the legal heirs, they have not come forward to prosecute the appeal. Hence, I am of the view that applying the dictum laid down in Pazhani (supra), the appeal can be closed and consigned to the record room.

Accordingly, this appeal stands abated insofar as the sentence of imprisonment is concerned and it is closed and consigned to the record room. Sd/- DR. KAUSER EDAPPAGATH JUDGE kp True copy P.A. To Judge

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