

Abdul Hakim and anr. Vs. State

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Court : Allahabad

Decided On : Sep-02-1972

Reported in : 1973CriLJ492

Judge : P.N. Bakshi, J.

Appellant : Abdul Hakim and anr.

Respondent : State

Judgement :

ORDER

P.N. Bakshi, J.

1. A complaint was filed under Section 500 I.P.C. by one Mohammad Ishaq against opposite parties Abdul Hakim and Abdul Karim in the Court of Judicial Officer City Meerut. The Court took cognizance of the offence and recorded the statement of the complainant. Process was issued to the opposite parties. It appears that Mohammad Ishaq died on 11th May, 1969. An application was filed on 13.9.1969 by Rafeeq Ahmad son of Mohammad Ishaq for permission to continue the prosecution. An objection was filed thereto by the Opposite parties to the effect that in view of Section 198 Cr.P.C. Rafeeq Ahmad should not be allowed to continue the proceedings. The Judicial Officer City held that the provisions of Section 198 Cr.P.C. were not attracted as they referred only to the initial jurisdiction of a court to take cognizance of an offence. He therefore, allowed the

application of Rafeeq Ahmad to proceed with the case by his order dated 3rd June, 1970. Abdul Hakim and Abdul Karim being aggrieved by the aforesaid order filed a revision before the Sessions Judge Meerut. Their revision was dismissed on 11.8.1970. Now they have come up in revision before this Court.

2. I have heard learned Counsel for the parties at considerable length and have also perused the record of the case. On behalf of the applicants it is contended that having regard to the various provisions of the Criminal Procedure Code, the order Passed by the courts below is not warranted in law. Reference has been made to Section 247 Cr.P.C. which authorises a court in a summons case to acquit the accused if the complainant does not appear on the date fixed. Reliance is also placed on Sections 259 Cr.P.C. which authorises a court in a warrant case which is instituted upon complainant, to discharge the accused before framing a charge, if on the date fixed the complainant is absent and the offence is non-cognizable and can be lawfully compounded. I have been referred to a ruling reported in AIR 1916 Patna 152 : 18 Cri LJ 151, Jeetan Dusadh v. Domo Saho. In that case the accused was being tried for an offence under Sections 379, 147 and 323 I.P.C. The complainant had died in the course of the trial His son applied for permission to continue the proceedings. The Magistrate declined to grant the permission and acquitted the accused holding that under Section 247 Cr.P.C. he had no option but to acquit the accused. On reference by the District Magistrate, holding that the matter was one which affected the tranquility of the district it was decided, by the High Court of Patna that Section 247 Cr.P.C. applies primarily to the case of a complainant who is alive and not to the case of a complainant dying before the trial. As Section 247 did not apply at all to a case of this kind, there was nothing to prevent the Magistrate from going on with the proceedings.

3. The next case referred by counsel is reported in A.I.R. 1932 Nag. 72 : 33 Cri LJ 407, Anand Rao v. Gadi. The view expressed in this case was as follows:

It is doubtful whether Section 247 applies in a case where the complainant dies but even if it applies there is nothing in Section 247 to prevent an adjournment of the case to enable another, complainant to be substituted. Consequently, where in a summons case the complainant's son appears and states that his father is dead,

but asks that the case should be proceeded with the Court can properly grant his request.

4. In a case reported in : AIR1926 Bom178 . In Re: Mohammad Azam the view expressed by the Patna High Court mentioned above was accepted. The High Court of Bombay doubted whether Section 247 applies to a case in which the complainant had died. It was held therein that after the death of the complainant the trying Magistrate has discretion in a proper case to allow the complainant to be continued by a fit and proper complaint. In AIR 1922 Lahore 227 : 22 Cri LJ 166. Hazara Singh v. Emperor it was held that the death of the complainant or the person injured does not terminate or cause to abate criminal proceedings, once legally instituted whether upon complaint or otherwise. In AIR 1924 All 666 (2) : 25 Cri LJ 1007, Musa v. Emperor, it was held, by a Single Judge of this Court that prosecution under Section 323 of the Indian Penal Code does not abate by reason of the death of the person injured. The above view also finds support from later cases decided by other courts in our country. In AIR 1966 J & K 60 : 1966 Cri LJ 412, Ali Dar v. Mohd. Sharif, it has been held as follows:

Under the Indian. Law a crime is an offence not against individuals but against the society or the public as such. Once a complaint has been properly instituted and proceeded with, the courts must punish the offender if the case is proved against him the death of the complainant has no effect on the proceedings, though in some cases the wrong done is strictly to the person of the complainant or where the complaint can be lodged only by a specified class of persons.

5. It has also been held in AIR 1969 Mys. 221 : 1970 Cri LJ 59 that the death of the complainant in a case of non-cognizable offence does not abate the prosecution. It is within the discretion of the trying Magistrate in a proper case to allow the complainant to continue a proper and fit complaint if the later is willing.

6. A contrary view however, has been expressed in AIR 1915 Cal. 708 (1) : 16 Cri LJ 322 Puran Chand Maulik v. Dingar Chandra Pal holding that where the person on whose complaint a prosecution under Section 352, I.P.C. was started died and on his death his nephew applied to be substituted, such substitution should not be allowed, and order should be passed under Section 247 Cr.P.C. acquitting the

accused on the ground of failure of the complainant to appear at the hearing of the case. In AIR 1928 Mad 167 : 29 Cri LJ 257 Bontu Appala Naidu v. Emperor, it was held that in a summons case if the complainant is dead during the course of the inquiry the Magistrate should acquit the accused and not proceed with the inquire. The view of the Court was that the complainant having died could not appear before the Magistrate, As such, there could be no question of adjourning the case and the Magistrate should have acquitted the accused and not proceeded with the enquiry.

7. After a consideration of the cases mentioned above I am of opinion that there is not (no) binding in the Criminal Procedure Code to warrant the view that on the death of the complainant the criminal proceedings must abate. Though a case may be started on the complaint by any particular individual and though a discretion has been given to the court to acquit the accused under Section 247 Cr.P.C. or to discharge him under Section 259 Cr.P.C. there is no justification for holding that the criminal proceedings must necessarily abate on the death of the complainant. A criminal case cannot be compared to a civil action where the cause of action is personal to the plaintiff. In my opinion, no analogs can be drawn in criminal cases from the proceedings for abatement embodied in the Civil Procedure Code. Once a criminal case has been started, be it upon a complaint or otherwise, the proceedings must be carried on to its conclusion according to the provisions of the Criminal Procedure Code. The absence of any Provision in the Code of Criminal Procedure to apply the principle of abatement is a clear indication of the fact that criminal proceedings were not intended by the framers of the statute to abate on the death of the complainant.

Reference in this connection may be made to a decision of their Lordships of the Supreme Court reported in : 1967 CriLJ943 . Aswin Nanubhai Vyas v. State of Maharashtra. In that case the accused was being tried for offences under Sections 493 and 496 I.P.C. which are exclusively triable by Sessions and require for their cognizance a complaint by an aggrieved person. After the filing of the complaint the aggrieved person died. Her mother applied to the court for being substituted as a fit and proper complainant in the case. She expressed her willingness to act as a complainant and to continue the proceedings. This application was opposed on

the around that the trial of offences under Sections 493 and 496 of the Indian Penal Code were governed by Section 198 Cr.P.C. and only the aggrieved Person could be the complainant. It was urged that on the death of the complainant the proceedings should be treated as abated. The question, therefore, which was considered by the Supreme Court in that case was whether on the death of the complainant the proceedings ipso facto came to an end or could be continued under the provisions of the Criminal Procedure Code. Their Lordships considered the various provisions of the Criminal Procedure Code and came to the conclusion that though the Code provides for abatement of appeals on the death of the accused in appeals under Section 411-A(2) and Section 417 Cr.P.C. on the death of the appellant, there is no express provision for abatement on the death of the complainant. It was held therein that the court has Power under Section 495 Cr.P.C. to substitute another prosecuting agency subject to such restrictions as are mentioned therein. In my opinion, therefore, the trial Magistrate had the discretion to permit Rafeeq Ahmad to continue the prosecution on the death of his father Mohammad Ishaq and the discretion has been Properly exercised by that court.

8. Counsel for the applicants urged that Section 198 Cr.P.C. bars the continuance of the Prosecution after the death of the complainant as in a complaint for an offence under Section 500 I.P.C. the son was not an aggrieved Person within the meaning of that section. I am not inclined to accept this submission. From a perusal of the complaint it is obvious that allegations had been made therein against the grandfather and the grandmother of Rafeeq Ahmad. The allegations if proved affected the reputation of the entire family. It cannot, therefore, be said that Rafeeq Ahmad had no locus standi to continue the prosecution. It has been held in : AIR1951 All585 Jokhai v. State that where a false imputation of unchastity is made against the daughter-in-law who is living with her father-in-law, the reputation of the entire family suffers and the father-in-law is an equally aggrieved person within the meaning of the expression under Section 198 Cr.P.C. In 1970 Mad LJ (Cri) 669 a private complaint had been lodged for an offence under Section 500 I.P.C. The complainant died thereafter, but the brother of the deceased was allowed to continue the prosecution. In a decision reported in 1964 (1) Cr LJ 367 (Cal) Mrs. Pat Sharpe v. Dwijendra Nath Bose it was held that the

words 'person aggrieved' in Section 198 Cr.P.C. did not always mean 'person defamed'. The words 'person aggrieved' have a wider connotation than the words 'person defamed', and the addition of the word 'some' before the words 'person aggrieved' supports this wider connotation, 'where the person defamed was Netaji Subhas Chandra Bose it was held that his nephew was a person aggrieved within the meaning of Section 198 Cr.P.C.'

It thus appears from a consideration of the cases cited above that if on the allegations made against the complainant the reputation of the entire family is at stake, his close relations who are directly or indirectly affected thereby, will be covered by the expression 'aggrieved person' used in Section 198. Cr.P.C. To my mind, therefore, there does not seem to be any good reason why Rafeeq Ahmad, who was the son of Mohammad Ishaq complainant, should not be allowed to continue the proceedings on the death of the complainant. Moreover the submission made by learned Counsel for the applicant regarding the bar of, Section 198 Cr.P.C. applies only to the jurisdiction of the Court to take cognizance of an offence falling under Chapter 19 or 21 or Sections 493 to 496 of the Indian Penal Code except upon a complaint made by some aggrieved person for such an offence. This section only limits the power of the Court to take initial cognizance of the offence, but once Court has taken seisin of the case there is nothing to prevent it from proceeding with it. It has been held very clearly in a decision reported in : AIR 1963 MP47 Nathu Jeorakhan v. Sheopal Kuppa that 'once the proceedings have been allowed to be instituted by the Court, the condition of the real aggrieved person being alive till the decision of the trial has not been imposed for continuing the trial.' Section 495 Cr.P.C. would clearly apply in such cases and the Magistrate enquiring into or trying any case has the jurisdiction to permit the prosecution to be conducted by any proper person. In view of what I have held above. I am of opinion that Rafeeq Ahmad was in law entitled to continue the case in question and both the Courts below have passed an order which is eminently justified on facts as well as in law.

9. For all those reasons I do not find any force in this revision, which is hereby dismissed.

