

Sm. Mayabati Halder Vs. the Rent Controller, Calcutta and anr.

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Court : Kolkata

Decided On : Dec-24-1980

Reported in : AIR1981Cal118,85CWN296

Judge : A.N. Sen, C.J. and ;M.M. Dutt, J.

Acts : [West Bengal Premises Tenancy Act, 1956](#) - Section 31; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 247 and 495; ;West Bengal Premises Tenancy Rules, 1956 - Rule 10

Appeal No. : F.M.A. No. 697 of 1979

Appellant : Sm. Mayabati Halder

Respondent : The Rent Controller, Calcutta and anr.

Advocate for Def. : Runu Choudhuri, ;Hirendra Chandra Ghosh, ;Abinash Chandra Bhattacharjee and ;N.K. Bhowmick, Adv.

Advocate for Pet/Ap. : Nalin Chandra Banerjee and ;Mukti Prasanna Mukherjee, Adv.

Disposition : Appeal dismissed

Judgement :

M.M. Dutt, J.

1. This appeal arises out of the judgment of Basak, J. discharging the Rule Nisi obtained by the appellant Sm. Mayabati Halder on her application under Article 226 of the Constitution.

2. Ranjit Kumar Nandy, the husband of the respondent No. 2 Sm. Aparna Nandy, was a tenant of two rooms of premises No. 51/B, Mohim Halder Street, Calcutta. On February 10, 1969, the said Ranjit Kumar Nandy filed a petition of complaint under Section 31 of the [West Bengal Premises Tenancy Act, 1956](#) before the Rent Controller, Calcutta alleging inter alia that his landlady, the said Sm. Mayabati Halder had wilfully stopped the supply of tap water to the said premises by cutting and rendering unserviceable the water connection and had totally blocked and dosed the drain used for the purpose of outflow of garbage water from inside the said premises. The said application was registered as R. C. Case No. 71 of 1969. The appellant entered appearance in the proceeding started on the said petition of complaint and contested the same by a petition of objection. As many as three witnesses were examined in the proceeding. Before the hearing was concluded, the complainant Ranjit Kumar Nandy died, on September 26, 1975.

3. On January 28, 1976 an application was filed by the respondent No. 2 Sm. Aparna Nandy, his widow, praying for her substitution in the proceeding in place of her deceased husband. The said application was opposed by the appellant. It was contended by the appellant that on the death of the complainant, the petition of complaint should be dismissed in view of the provision of Section 247 of the Criminal Procedure Code, 1898. The learned Rent Controller by his order dated May 24, 1977 overruled the said contention of the appellant and directed that the respondent No. 2 Aparna Nandy should be allowed to continue the proceeding started on the petition of complaint filed by her husband, the deceased Ranjit Kumar Nandy.

4. The appellant, being aggrieved by the said order of the Rent Controller, moved this Court under Article 226 of the Constitution and obtained the Rule Nisi out of which this appeal arises. As stated already, Basak J. discharged the Rule Nisi. Hence this appeal.

5. Section 31 which is placed under Chapter VII -- Penalties and miscellaneous -- provides as follows:

'31. Penalty for disturbances of easements, etc.-- Whoever, without the previous written consent of the Controller or, save for the purpose of effecting repairs or complying with any municipal requisition, wilfully disturbs any easement annexed to such premises, or removes, destroys or renders unserviceable, anything provided for permanent use therewith, or interferes with any supply or service comprised in the tenancy of such premises shall, on the complaint of the party aggrieved, be liable on the first occasion, to a fine which may extend to one thousand rupees, and on a second or subsequent occasion in regard to the same or any other premises, to a fine which may extend to two thousand rupees, to be imposed, after inquiry, by the Controller and the Controller may order immediate restoration of any supply or service which has been interfered with.'

Rule 10 of the West Bengal Premises Tenancy Rules lays down the procedure to be followed by the Rent Controller in making enquiries under the Act. Rule 10 reads as follows:

'10. In making enquiries under the Act, the Controller shall follow, as nearly as may be, the procedure laid down-

(a) in the case of enquiries relating to offences, in the Code of Criminal Procedure, 1898, for the trial of cases, and

(b) in the case of all other enquiries, in the Code of Civil Procedure, 1908, for the trial of suits, recording a memorandum of the substance only of the evidence and the reasons for his findings as in cases in which no appeal lies.'

6. In view of Rule 10 (a), the Rent Controller has to follow, as nearly as may be, the procedure laid down in the Code of Criminal Procedure for the trial of cases. It is not disputed that the procedure laid down under Chapter XX of the Code of Criminal Procedure relating to the trial of summons-cases by Magistrates will apply to cases under Section 31 of the Act as nearly as may be. Section 247 of the Code which is placed under Chapter XX relates to non-appearance of complainant. It

provides as follows:

'247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reasons he thinks proper to adjourn the hearing of the case to some other day :

Provided that where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance, and proceed, with the case.'

It is contended by Mr. Nalin Banerjee, learned Counsel appearing on behalf of the appellant that as the said Ranjit Kumar Nandy, the complainant could not appear on the day to which the hearing before the Rent Controller had been adjourned as he died before that day, it was incumbent upon the Rent Controller to acquit the appellant. He submits that the Rent Controller had no jurisdiction to substitute the widow of the deceased complainant in the proceeding. A similar contention was also made before the learned Judge, but the learned Judge overruled the same.

7. In view of the submission made on behalf of the appellant, the question naturally arises whether Section 247 of the Code also includes the case of non-appearance of the complainant on the adjourned day of hearing by reason of his death. There cannot be any doubt that the maxim--*actio personalis moritur cum persona* -- is not applicable to criminal prosecutions as it applies to cases founded on torts. A criminal offence is committed against the society, though in some cases individuals may be affected. It is not necessary that a complaint has to be filed by the person aggrieved. A complaint may be filed by a person other than, a person aggrieved.

8. In *Mohammad Azam v. Emperor*, AIR 1926 Bom 178, the Division Bench of the Bombay High Court expressed a doubt whether Section 247 of the Code was intended to apply to the case of non-appearance by reason of death and took the view that it would apply primarily to the case of a complainant who was alive, but

did not appear. In *Ali Dar v. Mohd. Sharif*, AIR 1966 J & K CO, the Jammu and Kashmir High Court, on a review of the decisions on the question, observed inter alia that the words 'does not appear' in Section 247 governed cases where there was some sort of wilful act on the part of the complainant or at least a culpable negligence in keeping himself away from the court on the date fixed for the hearing. But where a person was dead, no question of his keeping away or not appearing before a court or anywhere also could arise; the person being no more could not exercise any volition one way or the other in deciding to go to court or keeping himself away from it. A learned single Judge of the Mysore High Court in *Sub-bamma v. Kannappachari*, AIR 1969 Mys 221 has expressed the view, relying on the decision of the Bombay High Court in *Mohammad Azam's case* (supra), that the death of the complainant in a case of non-cognizable offence does not abate the prosecution, and that it is within the discretion of the trying Magistrate in a proper case to allow the complainant to continue by a proper and fit complainant if the latter is willing.

9. So far as this Court is concerned, it was held in *Madho Chowdhury v. Turab Mian*, 18 Cal WN 1211 : (AIR 1915 Cal 263) that an acquittal under Section 247 of the Code on the ground that the complainant was dead was no bar to a subsequent complaint on the same facts, because the acquittal was wholly without jurisdiction. In another case in *Purna Chandra Moulik v. Denger Chandra Pal*, 19 Cal WN 334: (AIR 1915 Cal 708 (1)) though the accused was acquitted on the death of the complainant as the ground that was relied on by the learned Magistrate was not held to be sufficient for continuing the proceeding, it was, however, not laid down that as a matter of course the accused must be acquitted on the death of the complainant. It may be said that by necessary implication it was ruled in that case that if there was sufficient ground, the accused should not be acquitted on the death of the complainant. In a later decision, a Division Bench of this Court consisting of Roxburgh and Ormond JJ. in *Muniruddin Akand v. Kasamuddin Munshi*, ILR (1947) 1 Cal 99, has held that Section 247 does not require that in a summons case the accused must necessarily be acquitted on the death of the complainant, and that when the brother of the complainant who is interested in the matter, desires to carry on the case on the death of the complainant at the stage of argument, he should be allowed to do so. In laying

down the above proposition, the Bench relied on an observation of Chamiar C. J. in *Domoo Sahoo v. Jitan Dusadh*, (1916) 1 Pat LJ 264 : (AIR 1916 Pat 152), where it was held by the learned Chief Justice that it was open to doubt whether Section. 247 was intended to apply to a case where the complainant had died.

10. Very recently, a similar question had to be considered by Jyotirmoyee Nag, J. in *Hiralal Goenka v. P. Lander*, (1978) 82 Cal WN 632 (633). In that case, the proceeding was also one under Section 31 of the [West Bengal Premises Tenancy Act, 1956](#), and the complainant died. The learned Rent Controller allowed the proceeding to be continued, but declined to substitute the legal representative of the deceased. It was held by the learned Judge that the Rent Controller misinterpreted the provision of Section 247, for there was no bar against allowing the legal representative of a deceased tenant to carry on a proceeding under Section 31.

11. We should, however, refer to another decision of a single Bench of this Court presided over by Henderson J. in *Ram Dulal Acharjee v. Benode Behari Acharyya*, AIR 1949 Cal 245 (252) where a contrary view has been taken. It may, however, be pointed out that in expressing a contrary view, the learned Judge has not referred to the earlier Bench decisions of this Court, particularly *Mimiruddin's case* (ILR (1947) 1 Cal 99) (supra) which has a binding force.

12. The view that Section 247 also applies to the non-appearance of the complainant because of his death presupposes by necessary implication that Section 247 is a provision dealing with the consequence of the death of a complainant. In repelling such a view, the learned Judge has placed reliance on a decision of the Supreme Court in *Ashwin v. The State of Maharashtra*, : 1967 CriLJ943 . In that case, the complainant died at the committal stage under Chapter XVIII of the Code. The question that came to be considered by the Supreme Court was whether the complainant's mother could be substituted as the fit and proper complainant as prayed for by her or whether the proceedings had ipso facto come to an end on the death of the complainant. While overruling the contention of the accused that the proceedings terminated on the death of the complainant, the Supreme Court observed :

'The Code of Criminal Procedure provides only for the death of an accused or an appellant but does not expressly provide for the death of a complainant. The Code also does not provide for the abatement of inquiries and trials although it provides for the abatement of appeals on the death of the accused in appeals under Ss. 411-A (2) and 417 and on the death of an appellant in all appeals except an appeal from a sentence of fine. Therefore, what happens on the death of a complainant, in a case started on a complaint has to be inferred generally from the provisions of the Code * *' We need not analyse those cases because, in our opinion, unless the Code itself says what is to happen, the power of the Court to substitute another prosecution agency (subject to such restrictions as may be found) under Section 495 of the Code of Criminal Procedure is always available.'

If Section 247 be regarded as providing the consequence of the death of a complainant, in that case, the Supreme Court would not have observed that the Code did not expressly provide for the death of a complainant or the abatement of inquiries and trials. It is argued that as to what would happen on the death of a complainant has to be inferred generally from the Code as observed by the Supreme Court. In our opinion, such inference is in favour of the continuance of the proceeding rather than the termination thereof as contended on behalf of the appellant. It is true that Section 247 provides for the acquittal of the accused in the case the complainant does not appear on the day fixed for hearing, but this is subject to the condition that the Magistrate does not, for some reason he thinks proper, adjourn the hearing of the case to some other day. Therefore, the rule laid down in Section 247 of the Code for the acquittal of the accused is not an absolute rule. Leaving aside the non-appearance of the complainant by reason of his death, a complainant may be prevented from appearing due to his illness and other unavoidable circumstances beyond his control. If the Magistrate is satisfied that there is sufficient cause for the non-appearance of the complainant, he will adjourn the hearing of the case to some other day. It seems to us that Section 247 contemplates a deliberate or wilful non-appearance of the complainant and not when such non-appearance is due to some sufficient cause. We do not think we are to decide whether Section 247 also relates to non-appearance of the complainant due to his death. But assuming that it does, there cannot be any better cause for non-appearance of the complainant than his death. As has been

already observed, the maxim *actio personalia moritur cum persona* has no application to criminal prosecutions; the death of the complainant cannot ipso facto bring about the termination of the proceeding. In such a case, the Magistrate is entitled to exercise his power under Section 495 of the Code by substituting another prosecution agency. If the Magistrate considers the legal representative of the deceased complainant to be a fit and proper person, he may go on with the proceeding with the legal representative as the complainant or the prosecution agent. So, even in case of the death of the complainant, the proceeding does not terminate.

13. It is, however, contended that as under Rule 10 (a) of the West Bengal Premises Tenancy Rules, the Rent Controller has to follow the procedure for trial of cases, Section 495 of the Code, which is provision under Chapter XXXVIII and not under Chapter XX of the Code relating to trial of summons cases, will not apply to a proceeding under Section 31 of the West Bengal Premises Tenancy Act. It is submitted that in view of the non-applicability of Section 495 of the Code, the Rent Controller has no option but to acquit the accused in case of the non-appearance of the complainant by reason of his death. We are unable to accept the contention. Chapter XXXVIII of the Code contains supplementary provisions relating to the appointment of public prosecutors, and Section 495 which is a provision of that Chapter provides for permission to conduct prosecution. The supplementary provisions under Chapter XXXVIII including Section 495, in our opinion, are applicable to all trials under the Code. In other words, these supplementary provisions should be deemed to be incorporated into all Chapters of the Code providing for trial of cases. It will not be a correct proposition of law to lay down that invocation of Section 247 will not attract the provision of Section 495 of the Code on the ground that Rule 10 (a) of the West Bengal Premises Tenancy Rules does not provide for the applicability of the supplementary provisions of the Code including Section 495.

14. Even assuming that Section 495 of the Code is not applicable to a proceeding under Section 31 of the West Bengal Premises Tenancy Act, still, in our opinion, the Rent Controller will be entitled to allow the legal representative of the deceased complainant to proceed with the case. The Rent Controller is not a

Magistrate, nor he is a court. The proceeding under Section 31 is not a criminal proceeding, and the Rent Controller does not convict a person. If he is satisfied about the commission of the offence, he merely imposes a fine. The proceeding may, however, be said to be in the nature of a criminal proceeding, that is, a quasi criminal proceeding. Rule 10 (a) of the West Bengal Premises Tenancy Rules seems to have been framed for the purpose of doing justice to the alleged offender as also to the complainant as in the case of a criminal trial of summons cases. It is apparent from Rule 10 (a) that the provisions of the Code for trial of cases are not to be strictly followed, but they are to be followed by the Rent Controller 'as nearly as may be'. In other words, in enjoining that the Rent Controller shall follow the provisions of the Code for the trial of cases as early as may be, Rule 10 (a) really provides for the guidelines for the trial of a complaint under Section 31 of the West Bengal Premises Tenancy Act. Unlike in a criminal prosecution, a complainant under Section 31 must always be the person aggrieved. Generally the tenant is the complainant and the person complained against is the landlord as in the instant case before us. The complainant Ranjit Kumar Nandy was a tenant and, on his death, the respondent No. 2, his widow, being one of his heirs and legal representatives, became the tenant. The offence complained of is a continuing one and the respondent No. 2 is undoubtedly 'the party aggrieved' within the meaning of Section 31. In our opinion, it will be an useless formality to ask her to file a fresh complaint. Apart from the provision of Section 495 of the Code, the respondent No. 2 being the legal representative of the deceased, complainant, and she being also the party aggrieved has, in our view, the right to be substituted in place of her deceased husband for the purpose of carrying on the proceeding. Moreover, under Section 31, besides the power of imposing a fine on the person guilty of the offence, the Rent Controller has also the power to direct immediate restoration of any supply or service which has been interfered with. It will be contrary to all rules of natural justice to deprive the legal representative of a deceased tenant of the relief by way of restoration of the supply or service that has been interfered with simply on the ground of the non-appearance of the complainant due to his death. It is also not the intention of the Legislature that an offender will go scot-free leaving the legal representative of the deceased tenant deprived of the essential supply or service because of the death

of the tenant during the pendency of the proceeding under Section 31. As observed earlier, the provisions of the Code for the trial of cases have been directed to be followed by the Rent Controller 'as early as may be' under Rule 10 (a) as guidelines for inquiries under Section 31 and not for the purpose of stultifying the proceeding. In our opinion, therefore, the learned Rent Controller was right in allowing the respondent No. 2 to continue the proceeding started on the petition of complaint filed by her deceased husband under Section 31 of the West Bengal Premises Tenancy Act. No other point has been urged on behalf of the appellant.

15. In the result, for the reasons afore-said, we affirm the judgment of Basak J. and dismiss this appeal. There will, however, be no order for costs. The learned Rent Controller is hereby directed to dispose of the proceedings as expeditiously as possible.

A.N. Sen, C.J.

16. I agree.