

Balbir Kaur v. Dalip Singh (Ujagar Singh, J.)

(6) In the face of the above-noted provision of law, i.e., section 245-F of the Act, the Settlement Commission alone had the exclusive jurisdiction to launch or not to launch any prosecution of the petitioners. If the Income-tax Commissioner is also held entitled to initiate these criminal proceedings in exercise of his jurisdiction under section 279 of the Act then the 'exclusive jurisdiction' of the Settlement Commission hardly has any meaning. To permit the Income-tax Commissioner to do so would be a complete negation of sub-section (2) of section 245-F.

(7) In the light of the discussion above, I allow this petition and quash the impugned complaint P-1 and the resultant proceedings now pending against the petitioners in the court of Chief Judicial Magistrate, Ludhiana.

S.C.K.

Before Ujagar Singh, J.

BALBIR KAUR,—*Petitioner.*

versus

DALIP SINGH,—*Respondent.*

Criminal Misc. No. 2618-M of 1987.

May 12, 1987.

Code of Criminal Procedure (II of 1974)—Section 249—Complaint filed by wife against husband—Death of wife—Resultant absence of wife—Trial Court allowing father of wife to continue proceedings—Validity of such order.

Held, that it is clear that Section 249 of the Code of Criminal Procedure, 1974, applies only to a case where the complainant is absent and in that case too the discretion is given to the trial Court to discharge the accused or to continue the proceedings—In a case where the complainant dies this provision is not attracted. The trial Court has the discretion to continue the proceedings and for that purpose it can allow any other person to prosecute and in its judicial discretion it has allowed father of the deceased complainant to continue the complaint against the petitioner and others. (Paras 4 and 5).

Petition under Section 482 of the Code of Criminal Procedure, 1973, praying that the petition may kindly be accepted and the impugned order passed by the Judicial Magistrate, 1st Class, Patti, District Amritsar, (Annexure P/1) may kindly be quashed as it amounts to abuse of the process of the court. Any other relief which this Hon'ble Court may deem fit under the circumstances of the case, may also be granted to the petitioner.

S. C. Khunger, Advocate, for the Petitioner.

H. S. Mann, Advocate, for the Respondent.

JUDGMENT

Ujagar Singh, J.

(1) Smt. Jasbir Kaur wife of Joginder Singh filed a complaint against Balbir Kaur (petitioner) widow of Rajwant Singh and some others under Section 494/114/109/34, Indian Penal Code, in the Court of Hukam Chand, Judicial Magistrate, 1st Class, Patti, district Amritsar on 2nd May, 1985.

(2) After preliminary evidence, the petitioner was summoned along with other accused to stand trial. During pendency of the said complaint, Jasbir Kaur complainant died and an application was filed by her father Dalip Singh in the said Court that he may be allowed to continue with the said proceedings and,—*vide* order dated 22nd August, 1986 passed by the trial Court he was allowed to continue with the proceedings. After appearing before the trial Court, the petitioner filed an application alleging that Jasbir Kaur deceased was the only aggrieved person with the alleged second marriage and as she had died, the complaint should be dismissed in her absence, and the petitioner be discharged. This application was dismissed,—*vide* order dated 3rd February, 1987, annexure P.1. The petitioner has come up before this Court for quashing the said order.

(3) Learned counsel for the petitioner basing his arguments on the provisions of Section 249 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) (hereinafter called the Code) has submitted that the death of the complainant amounts to her absence and therefore under Section 249 of the Code, the order and the complaint should be quashed and more so because under Section 198 of the Code only an aggrieved person can file the complaint and as the aggrieved person has already died, this complaint is not maintainable.

Balbir Kaur v. Dalip Singh (Ujagar Singh, J.)

(4) I have heard the counsel for the parties at length and am of the view that in such a situation, as in the present case, the trial Court has the discretion to continue the proceedings and for that purpose it can allow any other person to prosecute and in its discretion it has allowed Dalip Singh, father of the complainant deceased, to continue the complaint against the petitioner and others. Section 249 of the Code reads as under:—

“When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.”

Similar provision was there in the old Code under Section 259 and in *Ali Dar v. Mohd. Sharif and others* (1), a Division Bench of that Court has interpreted Section 259 as under:—

“As would appear from the authorities cited above, the three conclusions as enunciated in an earlier part of this order are clearly brought out. As indicated earlier we would prefer the view which lays down that a criminal complaint does not automatically come to an end on the death of the complainant and the accused cannot be discharged or acquitted simply because the complainant is dead and, therefore, is absent on the date of hearing of the case. This view is further strengthened from the following observations. The offences in this case for which the accused have been summoned are under Sections 447 and 427 of the RPC. Section 447 is a cognizable offence though offences under both the sections are compoundable. The argument in this case is whether the death of the complainant would bring to an end the criminal complaint lodged by Sultan Dar or that his brother Ali Dar should be permitted to continue the proceedings. The emphasis is on the word ‘absent’. In Section 247 which is a section with a similar aim and governs summons cases the words used are ‘the complainant does not appear.’ It is the interpretation of these two words ‘absent’ and ‘does not

(1) A.I.R. 1966 J & K 60.

appear' that is primarily the subject-matter of discussion between the parties. In our opinion 'is absent' or 'does not appear' would govern cases where there is 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. In the Oxford dictionary the word 'absent' has been defined as 'keeping oneself away'. In the Webster's dictionary the word has been defined as not present or not attending. In our opinion as already stated the words 'absent' and 'does not appear' come into play when the complainant is in a position to take some decision and either wilfully or due to negligence does not exercise his volition in favour of attending the court. But in the case of a person who is dead there can be no question of his keeping away or not appearing before a court or anywhere else. The person is no more and as such he cannot exercise any volition one way or the other in deciding to go to Court or keeping himself away from it. This in our opinion should be the interpretation placed on the words 'absent' and 'does not appear.'

In *Subhamma and another v. V. Kannappachari* (2), it was held by the Mysore High Court that the death of the complainant in a case of non-cognizable offence does not abate the prosecution, and it was within the discretion of the trying Magistrate in a proper case to allow the complaint to continue by a proper and fit complainant if the latter is willing. Similarly in *A. S. Nayagam v. M. Shiva Kumar* (3), it has held—

“Section 249 of the Code of Criminal Procedure operates at a stage before the charge is framed. By that time some witnesses might have been examined or no witnesses might have been examined, but might have been summoned and present in the Court when the Court finds that by that date the complainant has died. Even if the facts and circumstances in a given case fall squarely within the ambit of section 249 of the Code of Criminal Procedure, it has to be borne in mind that the Magistrate has to exercise his judicial discretion whether he should pass an order of

(2) 1970 Cr. L. J. 59.

(3) 1979 Mad. L.J. (Crl.) 90.

Dalip Kaur and others v. Harbans Singh (S. P. Goyal, J.)

discharge on the ground of absence of the complainant. I have already pointed out that in view of the distinction between sections 249 and 259 of the Code of Criminal Procedure in regard to death of the complainant being considered as absence of the complainant in a case where section 249 of the Code comes into play the death of the complainant may not amount to absence of the complainant. But, even if it is, for the sake of argument, assumed that it amounts to absence of a complainant, then in such circumstances if the Magistrate discharges the accused, it would certainly not amount to exercise of judicial discretion because such an order would not advance or cause injustice but would cause miscarriage of justice."

(5) In view of the interpretation of Section 249 of the Code, it is clear that this provision applies only to a case where the complainant is absent and in that case too the discretion is given to the trial Court to discharge the accused or to continue the proceedings. In a case where the complainant dies this provision is not attracted. The trial Court in this case in the ends of justice allowed Dalip Singh father of the complainant deceased to continue the proceedings in the complaint and the discretion has been judicially exercised by the trial Court. No illegality has been pointed out and the order of the trial Court was justified. I affirm the same and dismiss the present petition.

S.C.K.

Before S. P. Goyal, J.

DALIP KAUR and others,—*Petitioners.*

versus

HARBANS SINGH,—*Respondent.*

Civil Revision No. 1702 of 1986.

May 15, 1987.

Code of Civil Procedure (V of 1908)—Order XXI, Rule 32—Decree for injunction disobeyed by Judgment-Debtor and third party—Proceedings against third party under the said Rule—Sale made in disobedience of the decree—Setting aside of such sale—Jurisdiction of executing Court.