



**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NOS. 5589-5590 OF 2025**  
**(Arising out of Special Leave Petition (Crl.) Nos. 1715-1716/2025)**

**Syed Shahnawaz Ali**

**...Appellant (s)**

***Versus***

**The State of Madhya Pradesh & Ors.**

**...Respondent (s)**

**J U D G M E N T**

**MANOJ MISRA, J.**

1. Leave granted.
2. These two appeals arise from a common proceeding and are directed against the orders of the High Court of Madhya Pradesh at Jabalpur<sup>1</sup> dated 21.02.2024 and 31.08.2024 passed in Criminal Revision No. 1986 of 2020 and Misc. Criminal Case (MCRC) No. 36327 of 2024 respectively.

**Facts**

3. The father of the appellant, Shamshad Ali, filed an application under Section 156(3) of the Code of Criminal

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<sup>1</sup> The High Court

Procedure, 1973<sup>2</sup> for registering a first information report<sup>3</sup> against respondents 2 to 5. The said application was allowed, an FIR was registered and investigated. After investigation, police report was submitted indicting respondents 2 to 5 for offences punishable under Sections 419, 420, 467, 468, 471, 120-B and 34 of Indian Penal Code, 1860<sup>4</sup>. However, *vide* order dated 07.03.2020, the Court of XVIIth Additional Sessions Judge, Bhopal, M.P. discharged the accused respondents from offences punishable under Sections 419, 467, 468, 471, 120-B and 34 IPC and directed the trial to proceed under Section 420 IPC only. Aggrieved by the order dated 07.03.2020, the father of the appellant (i.e., the informant) filed Criminal Revision No. 1986 of 2020 before the High Court.

- 4.** During pendency of the revision, on 05.05.2021 the father of the appellant i.e., the revisionist died. The appellant, who was arrayed as a witness in the police report, filed IA No. 19769 of 2021 to continue the revision proceedings. The High Court by the impugned order dated 21.02.2024 rejected the

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<sup>2</sup> Cr.P.C.

<sup>3</sup> FIR

<sup>4</sup> IPC

application holding that there is no provision for substitution in a Criminal Revision and, therefore, the Revision would abate.

5. Aggrieved by the aforesaid order, the appellant filed an application under Section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023<sup>5</sup> (corresponding to Section 482 of Cr.P.C.) for recall of the order dated 21.02.2024. This application was dismissed by the second impugned order dated 31.08.2024. Aggrieved by the aforesaid orders dated 21.02.2024 and 31.08.2024, the appellant is before this Court.

### **Submissions**

6. In short, the submission on behalf of the appellant is that the appellant is a victim within the meaning of Section 2(wa)<sup>6</sup> of Cr.P.C. and is, therefore, entitled to continue the revision proceedings. In the alternative, it is submitted that a revision cannot abate. Once the Court entertains a revision, the Court has to test the legality and propriety of the order impugned before it. Therefore, the appropriate course for the High Court

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<sup>5</sup> BNSS

<sup>6</sup> Section 2 (wa) of CrPC. – “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.

was to decide the matter on merits and for an effective hearing to allow the appellant's counsel or an amicus to assist the Court.

7. On behalf of the State, written submissions have been filed accepting the rights of a victim to participate in the criminal justice process.
8. *Per contra*, on behalf of respondents 2 to 5, it has been contended that Section 394<sup>7</sup> of Cr.P.C. applies to appeals. There is no corresponding provision for continuance of a revision by the legal heirs. No doubt, a victim may file an appeal but, in absence of an enabling provision, he cannot be substituted as a revisionist. In such circumstances, the impugned orders call for no interference.
9. In addition to above, on behalf of respondents 2 to 5, it was submitted that respondents 2 to 5 were discharged of certain

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<sup>7</sup> **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.

offences for cogent reasons which do not suffer from any perversity or illegality.

### **Discussion**

- 10.** Before we set out to test the correctness of the orders impugned, it would be useful to first understand the concept of abatement. In **Black's Law Dictionary** abatement has been described as: (1) the act of eliminating or nullifying; (2) the suspension or defeat of a pending action for a reason unrelated to the merits of the claim; (3) the act of lessening or moderating; diminution in amount or degree; (4) the reduction of a legacy, general or specific, as a result of estate being insufficient to pay all debts and legacies; (5) the act of thrusting oneself tortiously into real estate after the owner dies and before the legal heir enters. In **P. Ramanatha Aiyar's Advanced Law Lexicon**, in the context of criminal law, abatement of proceedings connotes their termination without any decision on the merits and without the assent of the prosecutor; and abatement of the main action abates proceedings ancillary or collateral to it.
- 11.** In the context of a civil proceeding, if, on death of any party, either the right to sue, or to be sued, does not survive on the

surviving parties, the proceeding 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.

- 12.** Now, the issue which arises for our consideration is whether on death of the revisionist, the revision proceeding under Section 397 read with Section 401 of Cr.P.C. would abate. The answer to it would depend on the nature of the order

under challenge in the revision. If, for example, an accused has invoked the revisional power for testing the correctness of an order rejecting his discharge application, on his death, the revision proceeding would abate because the main trial would abate and, therefore, ancillary proceeding emanating therefrom would automatically abate. But where the main proceeding survives despite death of the revisionist, the revision may not abate owing to the nature of the revisional proceeding.

**13.** In *Praban Kumar Mitra Vs. State of West Bengal & Another*<sup>8</sup>, a Constitution Bench of this Court discussed the nature of revisional powers of a High Court under Section 439 of the old Code (i.e., Code of Criminal Procedure 1898), which is in *pari materia* Section 401<sup>9</sup> of the 1973 Code, read with

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<sup>8</sup> 1958 SCC OnLine SC 79: AIR 1959 SC 144: 1959 Cri LJ 256: 1959 Supp (1) SCR 63

<sup>9</sup> **401. High Court's powers of revision.**

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392. (2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence. (3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed. (5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

Section 435 of the old Code, which is in *pari materia* Section 397<sup>10</sup> of the 1973 Code. In that regard, it was held that the revisional power is a discretionary power which is to be exercised in aid of justice. Whether the High Court should exercise its revisional jurisdiction depends upon the facts and circumstances of that case and once it entertains an application for revision and issues a Rule, that Rule has to be heard and determined in accordance with law, whether or not the petitioner is alive or dead, or whether he is represented in court by a legal practitioner. For ready reference, the relevant portion of that judgment is extracted below:

“6. The revisional powers of the High Court vested in it by Section 439 of the Code, read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate Criminal Courts do not exceed

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<sup>10</sup> **397. Calling for records to exercise powers of revision.**

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation. - All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398. (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

their jurisdiction, or abuse their powers vested in them by the Court. On the other hand, as already indicated, a right of appeal is a statutory right which has got to be recognized by the Courts, and the right to appeal, where one exists, cannot be denied in exercise of the discretionary power even of the High Court. The legislature has, therefore, specifically provided, by Section 431<sup>11</sup> of the Code, the rules governing the right of substitution in case of death of an appellant, but there is no corresponding provision in Chapter XXXII, dealing with the question of abatement and the right of substitution in a criminal revision. We may assume that the Legislature was aware of the decision of the Bombay High Court, referred to above, when it enacted Section 431 for the first time in the Code of 1882. If the Legislature intended that all application in revision pending in a High Court, should be dealt with on the same footing as a pending appeal, it would have enacted accordingly. But in the absence of any such enactment, we may infer that the power of revision vested in the High Court under Chapter XXXII of the Code, was left untouched -- to be exercised according to the exigencies of each case. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case. It is not bound the other way, namely, to treat a pending application in revision as having abated by reason of the fact that there was a composite sentence of imprisonment and fine, as some of the single Judge decisions placed before us, would seem to indicate. The High Court has been left complete

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<sup>11</sup> **Section 431 of Old Code:** Every appeal under section 417 or section 417A shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

discretion to deal with a pending matter on the death of the petitioner in accordance with the requirements of justice. The petitioner in the High Court may have been an accused person who has been convicted and sentenced, or he may have been a complainant who may have been directed under s. 250 of the Code to pay compensation to an accused person upon his discharge or acquittal. Whether it was an accused person or it was a complainant who has moved the High Court in its revisional jurisdiction, if the High Court has issued a Rule, that Rule has to be heard and determined in accordance with law, whether or not the petitioner in the High Court is alive or dead, or whether he is represented in court by a legal practitioner. In hearing and determining cases under Section 439 of the Code, the High Court discharges its statutory function of supervising the administration of justice on the criminal side. Hence, the considerations applying to abatement of an appeal, may not apply to the case of revisional applications.....”

(Emphasis supplied)

**14.** In *Honnaiah T.H. Vs. State of Karnataka & Others*<sup>12</sup> on the issue of locus to maintain a revision under Cr.P.C., it was observed:

“16. The challenge to the maintainability of the revision at the instance of the appellant impugning an order passed during the pendency of the trial must also be rejected. The revisional jurisdiction of a High Court under Section 397 read with Section 401 of the CrPC, is a

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<sup>12</sup> (2022) SCC OnLine SC 1001

discretionary jurisdiction that can be exercised by the revisional court suo motu so as to examine the correctness, legality or propriety of an order recorded or passed by the trial court or the inferior court. As the power of revision can be exercised by the High Court even suo motu, there can be no bar on a third party invoking the revisional jurisdiction and inviting the attention of the High Court that an occasion to exercise the power has arisen. Holding a revision petition instituted by a complainant maintainable, Justice Santosh Hegde writing for this Court in *K Pandurangan v. SSR Velusamy and another*<sup>13</sup> observed:

“6. So far as the first question as to the maintainability of the revision at the instance of the complainant is concerned, we think the said argument has only to be noted to be rejected. Under the provisions of the Code of Criminal Procedure, 1973, the court has *suo motu* power of revision, if that be so, the question of the same being invoked at the instance of an out- sider would not make any difference because ultimately it is the power of revision which is already vested with the High Court statutorily that is being exercised by the High Court. Therefore, whether the same is done by itself or at the instance of a third party will not affect such power of the High Court. In this regard, we may note the following judgment of this Court in the case of *Nadir Khan v. State (Delhi Admn).*”

(Emphasis supplied)

- 15.** The legal principles deducible from the afore-quoted extracts may be summarised thus:

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<sup>13</sup> (2003) 8 SCC 625

(a) revisional power under Cr.P.C. is a discretionary power, the exercise of which cannot be claimed as of right;

(b) exercise of revisional power is not entirely dependent on who petitions the Court, inasmuch as it can be exercised *suo motu*;

(c) the role of the revisionist is essentially that of a person who invites attention of the Court that an occasion to exercise the revisional power has arisen;

(d) once a Rule is issued, ordinarily, that Rule has to be heard and determined in accordance with law, whether or not the petitioner is alive or dead, or whether he is represented in court by a legal practitioner; and

(e) the Court while exercising revisional power discharges a statutory function of supervising the administration of justice on the criminal side and in furtherance thereof examines the correctness, legality or propriety of an order passed by the court subordinate to it.

**16.** However, when a court is vested with discretionary power, discretion must be exercised judiciously, based on sound legal principles governing the scope of that power. Though the strict rule of locus may not apply for invocation of that power, the court must be circumspect in entertaining petitions at the behest of complete strangers to the dispute, otherwise the discretionary power may become a tool in the hands of those who, though have suffered no injury, have an axe to grind. Therefore, in our view, to ensure that revisional power is not abused by those who have an axe to grind, the definition of a victim, contained in Section 2(wa) of the Code, may be used as a guide to determine whether a revision should be entertained at the instance of the person who has invoked the revisional power.

**17.** Since strict rule of locus does not apply to a revision proceeding, on death of a revisionist, the law of abatement that applies to an appeal does not apply to a revision proceeding, more particularly when revision is not at the instance of an accused. However, where the revision is at the instance of an accused/convict, the revisional court may refuse to continue the proceedings on his death, *inter alia*,

where (a) the revisional proceeding emanates from an order passed during trial; or (b) the revisional proceeding is against an order of conviction, or affirmance of conviction. In situation (a) (supra), on death of accused the trial would abate and so would ancillary proceedings emanating therefrom. In situation (b) (supra), the sentence or fine cannot be executed against a dead person, therefore, in absence of any application from a person seeking leave to pursue the revision, the court may terminate the proceedings as having abated. However, where the revision is at the instance of an informant or a complainant, on his death, the proceedings will not abate and, therefore, revisional court may exercise its discretion and proceed to test the correctness, legality or propriety of an order passed by the court subordinate to it.

- 18.** In so far as substitution in place of the deceased revisionist is concerned, there is no specific provision in the Code for substitution. Therefore, no one can claim substitution as of right. However, what is important is that there is no provision for abatement as well, as is there for an appeal (see Section 394). Hence, once a revision is entertained, in our

view, the Court exercising revisional power has discretion to proceed with the revision and test the correctness, legality or propriety of the order under challenge before it, regardless of the death of the person who had invoked the revisional jurisdiction. However, while doing so, the Court may, in its discretion, allow a person to assist it in discharge of its statutory functions provided that person has no conflict of interest. In that context, a victim of the crime would ordinarily be the most suitable person to provide assistance because of his interest in overturning a decision that went against him. Therefore, when revisional powers are invoked by a victim of the crime, and he dies during pendency of the revision, other victims of that crime, who fall within the scope of its definition, as provided in Section 2 (wa) of Cr.P.C., may be allowed to assist the Court in effectively discharging its statutory function. In that regard, the Court would be well within its jurisdiction in granting leave to such a person to pursue the revision. However, in absence of a provision for substitution, though a person may not have a legal right to claim substitution as a revisionist, there is no legal restriction on revisional court's power in allowing a

person to assist the Court in furthering the cause of justice, more particularly, when strict rule of locus does not apply to a criminal revision.

- 19.** In light of the discussion above, the impugned order of the High Court dismissing the revision as having abated on death of the revisionist is held unsustainable in law. More so, because the trial against the accused-respondents is pending.
  
- 20.** As far as rejection of the application of the appellant to assist the Court as a substitute for the deceased revisionist is concerned, suffice it to say that the original revisionist (i.e., the informant) had alleged that the accused had set up a fabricated sale deed to stake a false claim to his property. Challenge in the revision was to an order of discharge of the accused from offences other than cheating. Since on revisionist's death, his son (i.e., the appellant herein) would inherit an interest in the property, in our view, the appellant is a victim of the crime and, therefore, has vital interest in the outcome of the proceeding. Hence, in our view, the revisional court could have allowed him to assist the court in the capacity of a victim of the crime.

**21.** For the foregoing reasons, the order of the High Court dismissing the revision as abated, and the order rejecting the application of the appellant, are liable to be set aside and are, hereby, set aside. The appeals are allowed. Revision No. 1986 of 2020 is restored on the file of the High Court. The appellant shall be at liberty to assist the revisional court in the capacity of a victim of the crime, and the revision shall be decided expeditiously, in accordance with the law.

**22.** It is made clear that we have not expressed any opinion on the merits of the order under challenge in the revision proceeding. The revision shall be decided on its own merit without being influenced by any observation made herein above.

**23.** Pending application(s), if any, stand disposed of.

.....**J.**  
**(Sanjay Karol)**

.....**J.**  
**(Manoj Misra)**

**New Delhi;**  
**December 19, 2025**