

MISC. CASE NO. 1 OF 2020
Ref. : Complaint Case No. 1 of 2019

11.09.2020

[1] Perused the administrative note dated 11.09.2020 wherein and whereunder Deputy Registrar, Manipur Lokayukta submitted a report that the Director (Inquiry), Manipur Lokayukta had furnished a report from the office of the Superintendent Central Jail No. 8/9, Tihar, New Delhi being No. F.8&9/SCJ-8&/AS (UT)/2020/ dated 10.09.2020 that UTP Mutum Shyamo Singh, S/o Late M. Amutombi expired on 18.06.2020. Perused the said report dated 10.09.2020 as well as the Death Certificate issued by South Delhi Municipal Corporation that Mutum Shyamo Singh (Respondent No. 1) expired on 18.06.2020 and also the Sworn affidavit of the applicant, Smt. Mutum Ongbi Sobita, W/o (L) Dr. M. Shyamo Singh, (Respondent No. 1) that the Respondent No. 1 (her husband) expired on 18.06.2020 while he was in the judicial custody i.e. Tihar Jail, New Delhi. On such perusal, we are of the considered view that Respondent No. 1, Dr. M. Shyamo Singh expired on 18.06.2020.

[2] On the death of the Respondent No. 1, Dr. M. Shyamo Singh, his wife, the present applicant namely Smt. Mutum Ongbi Sobita has filed the present application praying for deleting the name of the Respondent No. 1 in the present complaint case as he expired during the pendency of the present complaint i.e. on 18.06.2020.

[3] On 24.08.2020, we already put the pointed question to Mr. S. Biswajit Meitei, learned counsel appearing for the Respondent No. 1 as to whether none appearance of any person on behalf of Respondent No. 1 in the further proceeding of the present complaint will cause any prejudice to the Respondent No.1 and the present applicant i.e. her wife/ legal heirs in the event of passing any composite orders for sentence and fine against the Respondent No. 1, Dr. M. Shyamo Singh or not? Today, Mr. S Bishwajit Meitei submitted in a very unequivocal term that

the name of the Respondent No. 1 be deleted from being a party in the present complaint whatever may be the consequences of such deletion and passing of composite order stated above.

[4] In this regard, we are compelled to make an observation while passing the order for deleting the name of the Respondent No. 1 from being a party to the complaint on the prayer of Smt. Mutum Ongbi Sobita, wife of the Respondent No.1 in the following paras in the appropriate place.

[5] The Inquiry Wing of Manipur Lokayukta after conducting a Preliminary inquiry submitted a report with the observation and finding that at the conclusion portion of the report that Dr. M. Shyamo Singh, the then Director, JNIMS (Respondent No. 1) in collusion with Dr. L. Fimate, the then Head of Dept. Forensic Medicine, JNIMS and Dr. G. Angam had deliberately misled the Government of Manipur that the HPLC machine is a mandatory requirement for MCI recognition and purchased the said machine after obtaining Cabinet's approval at an escalated price. Thus, they had incurred a huge amount of Govt. money unnecessarily on the pretext of purchasing HPLC machine at an escalated price but the HPLC machine is not listed at all in the minimum requirement of MCI. Dr. G. Angam, who is neither an employee nor a representative of the firm i.e. M/s Indian Instrument Manufacturing Company, Kolkata in collusion with Dr. M. Shyamo Singh had received the cheque bearing No. 64022 for an amount of Rs. 72,87,787/- only on behalf of the firm from the Cashier, JNIMS and also that Dr. L. Fimate, Respondent No. 3 in collusion with Dr. G. Angam, Respondent No. 2 and Dr. M. Shyamo Singh, Respondent No. 1 had cheated the Government of Manipur thereby causing a loss of huge amount of Government money which otherwise could have been avoided. On receipt of the said Preliminary

report of the Inquiry wing, the Lokayukta passed an order dated 06.07.2020 that we are of the considered view that an opportunity of being heard should be given to the Opposite Parties to decide as to whether there exists a prima facie case or not against the Opposite parties for investigation as provided under Section 20(3) of the Manipur Lokayukta Act, 2014 and issued notice to the opposite parties for their appearance and also for submitting the show-cause statement/statement of defence. As stated above, on behalf of Dr. M. Shyamo Singh, his wife Smt. Mutum Ongbi Sobita, the present applicant through her counsel appeared before us and filed the present application for deleting the name of the Respondent No. 1 from being one of the respondents/opposite parties in the present complaint as Dr. M. Shyamo Singh had expired on 18.06.2020 in the Central Jail, Tihar, New Delhi.

[6] At this stage, we cannot speculate what would be the findings of the investigating agency for the acts mentioned above committed by the respondents/opposite parties. The alleged actions of the Respondents, if proved, will be the offences punishable under Prevention of Corruption Act, 1986. Offences and penalties under the Prevention of Corruption Act are clearly mentioned in Chapter III of the Act which consists of 11 (eleven) Sections in number viz. Section 7 to Section 16. Under Prevention of Corruption Act, 1988, composite order for sentence and fine could be passed. In such case, there may be a hypothesis at this stage that the investigating agency after completing the inquiry may submit a charge sheet against the respondents/opposite parties for the offences punishable under Prevention of Corruption Act and also that the Special Court of the Manipur Lokayukta after conducting a full length trial may convict the opposite parties/respondents by passing a composite order of sentence and fine. It may not be out of place to mention here

that mere deleting the name of the Respondent No.1 in the present complaint will not be a bar to the investigating agency to investigate the case fully against the Respondents including the Respondent No. 1, Dr. M. Shyamo Singh.

[7] Composite orders which includes sentence and fine against the convict are of two types as paradigm – (i) Composite order No. 1 – Sentence and fine. (ii) Composite order No. 2 – sentence and fine, in default of payment of fine offender will be imprisoned for certain period. So in the second type of composite order for sentence and fine, in the default of payment of fine, the offender will be imprisoned for certain period but what would be the condition if the first example of composite order i.e. sentence for imprisonment and fine in which there is no indication that in the default of payment of fine the offender shall be imprisoned for certain period, imposed to the respondent No. 1, Dr. M. Shyamo Singh.

[8] There is provision for levy of fine under Section 421 of Code of Criminal Procedure, 1973. The relevant portion of Section 421 of the Cr.P.C. is quoted hereunder :

"421. Warrant for levy of fine. - (1) when an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may –

(a) Issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender.

(b) Issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender

has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it had made an order for the payment of expenses or compensation out of the fine under Section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of Sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

Corresponding Law: S. 386 of Act V of 1898."

Under Section 421 of the Cr.P.C., warrant could be issued to the Collector of a District authorizing him to realise the amount of fine as arrear of the land revenue from the movable and immovable property or both from the defaulter (offender).

[9] Again, Section 71 of the Indian Penal Code, 1860 mentioned that where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment or more than one of such of his offence, unless it be so expressly provided; where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, and the offender shall not

be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

[10] Section 349, Cr.P.C. provides for abatement of the appeal filed by the offender against the conviction. Section 394 of the Cr.P.C. reads as follows :

"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.

Corresponding Law: S 431 of Act V of 1898."

Section 349, Cr.P.C. clearly provides that every appeal under that Chapter except an appeal for sentence for fine shall finally abate on the death of the appellant. Thus an appeal files against the sentence of fine shall not be abated on the death of the appellant.

On conjoint reading of Sections 394 and 421 of Cr.P.C. and Section 71 of the IPC, it appears that the appeal filed against the composite order for sentence and fine only would not be abated as a whole inasmuch as sentence portion of fine will not be abated and the fine could be recovered from the property of the offender /appellant.

[11] The Apex Court in **Ramesan –vs- State of Kerala (2020) 3 SCC 45** have discussed the abatement of the appeal against a composite order of sentence and fine as provided under Section 394(2) of Cr.P.C. The ratio decidendi of **Ramesan's case (supra)** is that in the case of an

appeal against the composite order for sentence and fine in which there is not order that in the default of fine the offender will be imprisoned for certain period, appeal will not be abated as a whole inasmuch as the appeal will be continued against the sentence portion of the fine only which could be recovered from the assets of the appellant/accused in the hand of heirs. Paras 16, 17, 18, 19 and 20 of the SCC in **Ramesan's case (supra)** reads as follows :

"16. The above judgment categorically laid down that even if sentence of fine is imposed along with the sentence of imprisonment under Section 431, such appeal shall not abate. The similar expression, which was used in Section 431 i.e. "except an appeal from the sentence of fine "has been used in Section 394 CrPc. Thus, the appeal in the present case where the accused was sentenced for imprisonment as well as for fine has to be treated as an appeal against fine and was not to abate and the High Court did not commit any error in deciding the appeal on merits.

17. This Court had occasion to consider Section 394 CrPC in **Lakshmi Shanker Srivastana v. State (Delhi Admn.)**. In the above case, the accused was sentenced to suffer rigorous imprisonment for 18 months on each count and a fine of Rs. 200. The accused had died during pendency of the appeal in this Court and argument was raised that in view of the above, the appeal abates and cannot be proceeded with. Such argument was noticed in para 4, which is to the following effect: (SCC pp. 230-3)

4. Mr. H.R. Khanna, learned counsel who appeared for the respondent raised a preliminary objection. It was urged that the appellant died during the pendency of this appeal and, therefore, the appeal abates and cannot be proceeded with. Simultaneously it was urged that if the appeal were not to abate on the only ground that the appellant was also sentence to pay a fine of Rs. 200 and therefore, it may be said that right to property of the legal representatives may be adversely affected and, therefore, they would be entitled to continue the appeal, the respondent State is prepared to concede that the sentence of fine may be set aside."

18. In the above case, a leave was obtained under the proviso to Section 394 (2) by legal heirs to continue the appeal. This Court had overruled the primary objection that appeal should abate although relying on the proviso to Section 394 (2). The principle regarding non-abatement of the appeal from a sentence of fine as contained in Section 431 CrPC, 1898 as well Section 394 of the

present CrPC is the same. A similar legislative scheme has been contained, which was occurring in Section 431 CrPC, 1898, hence, judgment of this Court regarding interpretation of Section 431 CrPC as has been done by this Court in Bondada Gajapathi Rao and Harnam Singh shall squarely apply to the interpretation of Section 394 CrPC.

19. We, thus, conclude that the appeal filed by accused Ramesan in the High Court was not to abate on death of the accused. The High Court rightly did not direct for abatement of appeal and proceeded to consider the appeal on merits. The appeal before the High Court being against sentence of fine was required to be heard against the sentence of fine despite death of the appellant-accused.

20. Although, we have upheld the view of the High Court that appeal filed by the accused was not to abate and was required to be heard and decided on merits but there is one aspect of hearing of the appeal before the High Court, which needs to be noted. From the judgment of the High Court, it does not appear that after the death of the appellant-accused, his legal heirs were given opportunity to proceed with the appeal against the sentence of fine. The judgment of the High Court does not also mention that any council has appeared for the legal heirs. The High court ought to have given an opportunity to the legal heirs of the accused to make their submissions against the sentence of fine, which fine could have been very well recovered from the assets of the accused in the hands of the legal heirs.

[12] From the foregoing discussions, the present application for deleting the name of Respondent No.1, Dr. M. Shyamo Singh from being a party in the complaint case is allowed with the above observations and findings. The present application is disposed of accordingly.

[13] Deputy Registrar, Manipur Lokayukta is directed to furnish a copy of this order to the parties,

Sd/-
MEMBER

Sd/-
CHAIRPERSON