



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 7<sup>TH</sup> DAY OF AUGUST 2025 / 16TH SRAVANA, 1947

CRL.REV.PET NO. 206 OF 2020

AGAINST THE ORDER DATED 14/1/2020 IN C.M.P.NO.1512/19  
IN CC NO.787 OF 2011 OF JUDICIAL MAGISTRATE OF FIRST CLASS  
-I,ATTINGAL

REVISION PETITIONER/ACCUSED/COUNTER PETITIONERS:

- 1      SUKUMARAN  
         AGED 60 YEARS  
         S/O. GOPALAN, S.R.BHAVAN, MUDAPURAM DESOM,  
         KIZHUVILAM VILLAGE, THIRUVANANTHAPURAM-695 304.
- 2      SIDDARTHAN  
         AGED 61 YEARS  
         S/O. GOPALAN, S.L.NIVAS, MUDAPURAM DESOM,  
         KIZHUVILAM VILLAGE, THIRUVANANTHAPURAM-695 304.
- 3      RAJENDRAN  
         AGED 60 YEARS  
         S/O. KUNJUKRISHNAN, RAMESH BHAVAN, MUDAPURAM  
         DESOM, KIZHUVILAM VILLAGE,  
         THIRUVANANTHAPURAM-695 304.

BY ADV SHRI.M.DINESH

RESPONDENTS/PETITIONER & ADDITIONAL COMPLAINANT:

- 1      STATE OF KERALA  
         REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT  
         OF KERALA, ERNAKULAM-682 031.



2       SIVAKUMARI  
         W/O. MOHANDAS, SAVITHRI BHAVAN,  
         MUTTAPPALAM DESOM, AZHOOR VILLAGE,  
         AZHOOR P.O., THIRUVANANTHAPURAM-695 305.

         BY ADV SRI.R.N.SANDEEP  
         SRI.E.C.BINEESH-SR.PP

         THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 07.08.2025, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:



**"C.R."**

## **ORDER**

Can a non-legal heir of a complainant in a complaint case be permitted to continue the prosecution on the death of the complainant when his legal heirs are alive and have not come forward to prosecute the case? - This is the interesting question involved in this criminal revision petition.

2. The revision petitioners are the accused in C.C.No.787 of 2011 on the files of the Judicial First-Class Magistrate Court-I, Attingal (for short, 'the trial court'). The said case arose out of a protest complaint filed by the deceased brother of the respondent No.2, namely Sri.Sudarsanan. The offences alleged are punishable under Sections 395, 465, 467, 468, 471 r/w Section 34 of IPC.

3. Originally, the brother of the respondent No.2 filed a private complaint as Crl.M.P. No. 5151 of 2009 before the trial court against the petitioners. The trial court forwarded the said complaint to the Chirayinkeezhu Police under Section



156(3) of Cr.P.C. The police registered the crime as Crime No.48 of 2010. After investigation, the police filed a negative final report and referred the case on 20.01.2010. The complainant filed a protest complaint before the trial court. The trial court received the complaint on file, numbered it as C.C.No.787 of 2011, took cognizance of the offences and issued process to the petitioners. The petitioners appeared before the trial court. During the pendency of the proceedings before the trial court, the complainant died on 14.02.2019. Thereafter, the respondent No.2 herein, who is the sister of the deceased complainant, filed a petition as C.M.P.No.1512 of 2019 invoking Section 302 of Cr.P.C. to prosecute the case. The revision petitioners objected to the said petition mainly on the ground that the daughter of the complainant is alive and hence his sister has no *locus standi* to file a petition to prosecute the case. The trial court overruled the said objection and allowed the petition as per the order dated 14.01.2020. This revision petition has been filed by the petitioners challenging the said order.



4. I have heard Sri.M.Dinesh, the learned counsel for the revision petitioners, Sri.R.N.Sandeep, the learned counsel for respondent No.2 and Sri.E.C.Bineesh, the learned Senior Public Prosecutor.

5. The learned counsel for the petitioners submitted that the daughter of the deceased complainant, who is his legal heir under the Hindu Succession Act, is alive and hence the respondent No.2, who is not a legal heir, has no *locus standi* to file a petition to prosecute the case. The learned counsel for the petitioners further submitted that since the legal heir of the deceased complainant has not come forward with a petition under Section 302 of Cr.P.C. to prosecute the complaint, the petition filed by the non-legal heir is not maintainable.

6. Per contra, the learned counsel for the respondent No.2 and the learned Senior Public Prosecutor submitted that, going by Section 302 of Cr.P.C., the Court can permit any person to prosecute the case on the death of the complainant



and hence the impugned order does not warrant any interference.

7. There is no specific provision in Cr. P.C., which permits a legal heir or legal representative of the deceased complainant in a complaint case to be substituted for prosecuting the case. In a case instituted on a police report, even if the de facto complainant dies, no question of abatement arises as the prosecutor conducts the trial. As per sub-section (1) of Section 256 of Cr. P.C., in trials of summons cases instituted otherwise than on a police report, if the complainant is absent, the Magistrate shall acquit the accused unless, for some reason, he thinks it proper to adjourn the hearing of the case to some other day. Under sub-section (2), the provisions of sub-section (1) are made applicable to cases where the non-appearance of the complainant is due to his death. Thus, in trials of summons cases instituted otherwise than on a police report, even in the event of the death of a complainant, the Magistrate may proceed with the case provided the complainant is



represented by a pleader or by the officer conducting the prosecution. In trials of warrant cases instituted otherwise than on a police report, if the complainant is absent and charges are not framed, a Magistrate may discharge the accused under Section 249 of Cr.P.C. However, the said provision is attracted only if the case is compoundable and cognizable. This provision only deals with the absence of the complainant. There is no reference regarding the death of the complainant, as in Section 256. The discharge of the accused is at the discretion of the Magistrate. Thus, in the trial of summons case or the trial of warrant case instituted otherwise than on a police report, it is not mandatory that the Magistrate/court shall acquit/discharge the accused on the death of the complainant.

8. Though there is no specific provision in Cr.P.C to substitute a new complainant in a complaint case in the place of the deceased complainant, the Magistrate/court has power under Section 302 to permit any person to continue the prosecution. Section 302 of Cr.P.C. reads as under:



*"302. **Permission to conduct prosecution.** (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission.*

*Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.*

*(2) Any person conducting the prosecution may do so personally or by a pleader."*

*(emphasis supplied)*

9. A three-Judge Bench of the Supreme Court had occasion to consider Sections 247 and 495 of Cr.P.C, 1898 (*pari materia* provision to Sections 256 and 302 of Cr.P.C., 1973) in **Ashwin Nanubhai Vyas v. State of Maharashtra and Another** (AIR 1967 SC 983). It was held that though the Court cannot substitute a new complainant, it has got power under Section 495 of Cr.P.C, 1898 (Section 302 of Cr.P.C., 1973) to authorise conduct of prosecution by any person. A two-Judge Bench in **Balasaheb K. Thackeray and Another v. Venkat alias Babru and Another** [(2006) 5





SCC 530] considered the question whether legal heirs of a deceased complainant can be permitted to continue prosecution after the death of the complainant. Referring to Sections 256 and 302 of Cr.P.C., it was held that the legal heirs have the right to continue the prosecution after the complainant's death. In **Jimmy Jahangir Madan v. Bolly Cariyappa Hindley** [(2004) 12 SCC 509], referring to the judgment in **Ashwin** (supra), it was held that heirs of the complainant can be allowed to file a petition under Section 302 of Cr.P.C to continue the prosecution. The dictum in **Ashwin** (supra) and **Balasaheb** (supra) was followed by the Supreme Court in **Rashida Kamaluddin Syed and Another v. Shaikh Saheblal Mardan (dead) through legal heirs and Another** [(2007) 3 SCC 548] and in **Chand Devi Daga v. Manju K. Humatani** [2017 (4) KLT OnLine 2086 (SC)] and reiterated that the legal heirs of a deceased complainant has the right to continue the prosecution under Section 302 of Cr.P.C. A Division Bench of this Court in **K.Chathukutty and Others v. K.S. Prasanna Venkitesan and Another** (2007 (1) KHC



139) took the same view and held that even though there is no provision in Cr.P.C. for impleading or substituting a person in the place of the appellant or complainant, as Section 302 provides for permission to conduct prosecution, the legal heirs of the deceased appellant are to be permitted to come on record as additional appellants and prosecute the proceedings.

10. The learned counsel for the revision petitioners submitted that the complainant in this case, being a 'victim' as defined under Cr.P.C., his legal heir alone is entitled to prosecute the case on his death. As per Section 2(wa) of Cr. P.C., the '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/her guardian or legal heir. The submission of the learned counsel for the petitioners is that, going by the said definition of the victim, only a person who has suffered any loss or injury at the hands of the accused persons or his/her legal heir alone can be a complainant. I cannot subscribe to



the said argument.

11. Section 190 of Cr.P.C empowers the Magistrate to take cognizance of an offence based on a complaint, a police report or information received from any person other than a police officer. Section 2(d) of Cr.P.C defines the term "complaint" as "any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report". However, the term 'complainant' has not been defined in Cr.P.C. The term 'complainant' can only mean that person who presents the complaint and has been examined as a complainant under Section 200 of Cr.P.C.

12. It is well settled that the concept of *locus standi* of the complainant is alien to criminal jurisprudence except when the statute specifically provides [**A.R.Antulay v. Ram Das Srinivas Nayak and Another**, (AIR 1984 SC 718)]. Section 190 of Cr.P.C permits anyone to approach the



Magistrate with a complaint without prescribing any qualification of the complainant except for offences against marriage and defamation, for which exceptions are provided under Sections 198 and 199 of Cr.P.C. Any member of society, as opposed to only the person who suffers harm, can set the criminal law in motion. The reason for this principle is that since crime is against society, any person can initiate the criminal law process. Thus, a person other than a victim can also be a complainant. When any person other than the victim is entitled to file a complaint, there seems to be no valid reason to contend that any person other than the legal heir of the complainant is disentitled from prosecuting the case on his death.

13. As stated already, Section 302 of Cr.P.C. empowers a Magistrate to permit "any person" to prosecute the complaint. The word "any person" cannot be interpreted to mean the legal heirs of the deceased complainant only. Even a non-legal heir of a complainant in a complaint case can be permitted to continue the prosecution on the death of the



complainant, although his legal heirs are alive and have not come forward to prosecute the case. However, it is the discretion of the Court to grant such a permission, taking into consideration the facts and circumstances of each case and the interest of the person who sought permission to prosecute the case.

The word 'any person' in Section 302 would undoubtedly include the sister of the deceased complainant in a case such as this. Therefore, the contention of the petitioners that since the legal heir of the deceased complainant has not come forward with a petition under Section 302 of Cr.P.C. to prosecute the complaint, the petition filed by the non-legal heir is not maintainable cannot be accepted. The trial Court has rightly allowed the petition. I see no illegality or impropriety in the impugned order. Accordingly, this criminal revision petition is dismissed.

Sd/-  
**DR. KAUSER EDAPPAGATH**  
**JUDGE**