

**ORDERS ON APPLICATION UNDER SEC.256(2) OF
Cr.P.C., AND SEC.5 OF LIMITATION ACT**

The Counsel appearing on behalf of proposed Lrs of Respondent filed these applications under the above provisions and prayed this Court to condone the delay of 291 days in filing the application under Section 256(2) of Cr.P.C., and permit the proposed Lrs Respondent to contest this matter.

2. The husband of deceased Respondent sworn to affidavit, wherein he contended that he is the Lrs of deceased Respondent and conversant with the facts of this case. Further, contended that the judgment was passed by the 33rd ACMM, Bengaluru, in C.C.No.54891/2018 on 3.7.2024 and thereafter the Appellant has challenged the said judgment before this Court.

3. Further contended in the affidavit that his wife was the Complainant in C.C.No.54891/2018, filed a private complaint against the Appellant under Section 138 of Negotiable Instruments Act, who expired on 11.11.2023. He was not aware about challenging the judgment of the Trial Court and after came to know about the said fact by receiving

summons, he filed the present applications. Non-filing of the application under Section 256(2) of Cr.P.C., within a period of limitation is not intentional one, but for the bonafide reasons stated above. He has got a good case on merits and if the delay is not condoned, he will be put to great hardship and irreparable loss. Therefore, he prayed to allow both the applications.

4. Further, contended by the Counsel for the proposed Respondent in the application filed under Section 256(2) of Cr.P.C., that allow the proposed Lrs of Respondent to come on record in the place of deceased Respondent as the Appellant has intentionally cheated the deceased Complainant and caused financial loss to her etc.

5. The above applications have been resisted by the Counsel for the Appellant on the ground that the proposed Respondent has suppressed the several material facts and filed these applications. The proposed Lrs of the Respondent was very well aware of the pendency of the private complaint filed by his wife in C.C.No.54891/2018 and also aware about the passing of the judgment in the said case on 3.7.2024. Even after service of summons, the proposed Lrs of Respondent has failed to come on record and has

filed application under Section 256(2) of Cr.P.C. The proposed Respondent has not properly explained and shown cause in condoning the delay in filing the applications. The proposed Lrs of Respondent used to attend before the Trial Court on all dates of hearing, but he did not notice the notice of the Trial Court with regard to death of his wife. He filed the present applications without showing sufficient cause in filing the same. He further contended that the proposed Respondent is a Government Servant and he is aware about the Court proceedings. The proposed Respondent has not produced any documents to indicate that he is the husband of the deceased Respondent. The judgment passed in favour of the dead person attains nullity and the same is liable to be dismissed. Therefore, he prayed to dismiss both the applications.

6. Heard both sides.

7. Now the points that would emerge for the consideration of this Court are as follows:

1) Whether the applications filed by the proposed Respondent deserves to be allowed?

2) What order?

8. *My findings on the above points are as under:*

Point No.1 : In the Affirmative.

***Point No.2 : As per final order for
the following:***

REASONS

9. **Point No.1:-**

The present appeal has been preferred by the Appellant against the deceased Respondent to set aside the judgment and sentence passed by the Trial Court in C.C.No.54891/2018 dtd: 3.7.2024. It is an admitted fact that the Appellant herein is the Accused before the Trial Court in C.C.No.54891/2018. It is also not at all in dispute that the wife of proposed Respondent had filed the said C.C.No.54891/2018 against the present Appellant under Section 138 of the Negotiable Instrument Act. It is also not at all in dispute that the present Appellant has been convicted by the Trial Court in the said case.

10. It is the argument of the Learned Counsel for the Appellant is that, more procedural irregularity committed by the Trial Court and the Trial Court should have permitted the Complainant to file necessary applications to bring the Lrs of Complainant after report of death of Complainant.

Even the Lrs of the Complainant should have filed application to bring him as a Lrs of the Complainant before the Trial Court itself. The judgment passed by the Trial Court against the dead person, as such the judgment became nullity. Even the proposed Respondent has not produced any documents to show that he is the Lrs of deceased Respondent and as such both the applications are liable to be dismissed.

11. It is the argument of the Learned Counsel for the proposed Respondent is that, immediately after expiry of the Complainant he filed a memo reporting the death of Complainant with copy of Death Certificate. Therefore, there is no fault on the part of the proposed Respondent. After receipt of the appeal memo, proposed Respondent appeared and filed the present applications, therefore, the applications are liable to be allowed.

12. In this case, though the Appellant knowing about the death of Respondent during the pendency of C.C.No.54891/2018 without bringing the Lrs of Respondent has filed the present appeal against the deceased Respondent. Further, on careful perusal of order sheet of C.C.No.54891/2018 dtd: 6.2.2024 it is clear that after hearing the argument on behalf of

Complainant and the Accused the matter has been posted by the Trial Court for judgment and at that stage of the proceedings the Counsel for the Complainant had filed a memo stating that Complainant has been expired and in this connection he has filed copy of Death Certificate. The Trial Court should have directed the Counsel for Complainant to file a necessary application to bring the Lrs of deceased Complainant. However, the Trial Court simply again posted the matter for judgment and on 3.7.2023 passed the judgment. Even the Counsel for the Complainant should have filed an application under Section 256(2) of Cr.P.C., to bring the Lrs of the Complainant on record. Anyhow, this Court is of the opinion that immediately after death of the Complainant, the Counsel for the Complainant has informed the Trial Court about the death of Complainant. When the Accused/ Appellant was knowing about the death of Complainant/ Respondent during the pendency of the C.C.No.54891/2018, he should have brought the Lrs of Respondent at the time of filing of the appeal itself. Therefore, this Court is of the opinion that merely because some irregularity in bringing the Lrs of Complainant on record before the Trial Court itself the

Lrs of Respondent cannot be denied to come on record in the place of deceased Respondent. Therefore, the present applications shall have to be allowed in the interest of justice and equity.

13. Admittedly, as discussed above, immediately after the death of Complainant, the counsel for Appellant reported to the Trial Court on 6.2.2024 by filing a memo with copy of Death Certificate. The Trial Court should have brought the Lrs of Respondent after receipt of the Death Certificate. Even the proposed Respondent should have filed application under Section 256(2) of Cr.P.C., along with memo reporting the death of Complainant.

14. Anyhow, at the time of filing the said memo, already argument on both side on merits was over and the Trial Court without considering the said memo, after giving seven adjournments passed the impugned judgment. Therefore, by considering the above circumstances, this Court is of the opinion that the present applications shall have to be allowed in the interest of justice and equity.

15. Regarding the delay in filing the application under Section 256(2) of Cr.P.C., is concerned, the

proposed Respondent immediately after receipt of the notice of the appeal memo and the interim orders approached this Court by filing the delay condonation application under Section 5 of Limitation Act and he has properly explained the delay of 291 days in filing the application under Section 256(2) of Cr.P.C.

16. The Appellant is very much contended in the objection that the proposed Respondent has not produced any documents to show that he is the husband of deceased Respondent. Admittedly, the proposed Respondent along with the above applications has produced copies of Death Certificate and copy of Adhaar Card of the deceased Respondent and as well as copy of his Adhaar Card. On perusal of the same, it indicates that the proposed Respondent is the husband of deceased Respondent.

17. Therefore, if these applications are not allowed and the proposed Respondent is not permitted to come on record, definitely, the proposed Respondent will be put to great hardship and irreparable loss. On the other hand, no loss or injustice would cause to the Appellant. Accordingly, this Court opines that the proposed Respondent has made out sufficient grounds to allow both the

applications. **Hence, I answer Point No.1 in the Affirmative.**

18. Point No.2:

In view of the findings on the above point, the applications filed by the proposed Respondent deserves to be allowed. Accordingly, I proceed to pass the following:

ORDER

The applications under Section 256(2) of Cr.P.C., and under Section 5 of Limitation Act filed by the proposed Respondent are hereby allowed.

The proposed Respondent is permitted to come on record as Lrs of deceased Respondent.

The Counsel for Appellant to carry out necessary amendment in the cause title of the appeal memo.

[Sri. Sreepada N]
*LXXII Addl.City Civil & Sessions
Judge, Bengaluru. (CCH-73)*