



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRMs-41690 & 41689-2024  
in/and CRA-S-2306-SB-2009 (O&M)

Date of Decision: 18.03.2025

OM PARKASH

.....Appellant

Vs

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Amit Gupta, Advocate  
the applicant-appellant.

Mr. R.K.S. Brar, Additional AG, Haryana.

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**DEEPAK GUPTA, J.**

Appellant-Om Parkash was convicted by the Court of learned Special Judge (under Prevention of Corruption Act, 1998), Kurukshetra under Sections 7 & 13 of the Prevention of Corruption Act, 1998 [for short 'the Act'] vide judgment dated 16.09.2009 in a case arising out of FIR No.10 dated 01.06.2005 registered at Police Station SVB Ambala. He was sentenced to undergo rigorous imprisonment for a period of 2 years and pay fine of ₹1000/- with default sentence of 01 month under Section 7 of the Act. He was also sentenced to undergo rigorous imprisonment for a period of 03 years and to pay fine of ₹2000/- with default sentence of 01 month for committing offence under Section 13 of the Act. Both the sentences were directed to run concurrently.

2. Against the aforesaid conviction, the present appeal was filed. The sentence of the appellant was suspended vide order dated 05.10.2009. Appeal was admitted on 10.11.2009.

3. When the appeal was taken up for actual hearing on 15.05.2014, nobody put appearance for appellant and so, show cause notice was directed to be issued as to why bail granted to him be not cancelled.



4. Later on, application bearing CRM-41690-2024 has been moved by son of the appellant under Section 435 read with Section 528 of the BNSS, 2023 for granting leave to continue with appeal and for not treating the main appeal as abated. Application bearing CRM-41689-2024 has been moved to condone the delay of 5233 days in moving the application.

5. The applications have been moved by Kulwinder Singh Saini son of the appellant, submitting that his father Om Parkash has expired on 27.06.2015 after prolonged life threatening Cancer. Copy of death certificate is Annexure A-1. Applicant and other family members were not aware about the complexities of law and so, the delay was caused in filing the present application. It is contended that the conviction of the appellant has affected the service benefits and so, appeal be considered on merits.

6. During arguments, it has been pointed out by learned counsel for the appellant that delay of 5233 days has been wrongly calculated and in fact, the actual delay is of 3365 days.

7. Learned State counsel has opposed the application for condonation of delay [CRM-41689-2024] by submitting that application by the relative of the deceased appellant seeking leave to continue the appeal, may be filed only within 30 days from the date of death of accused/appellant, otherwise appeal has to abate on the death of the accused-appellant.

8. I have considered submissions of both the sides and appraised the record.

9. Section 394 of the Code of Criminal Procedure, 1973 (equivalent to Section 435 of Bhartiya Nagarik Suraksha Sanhita, 2023), reads as under:-

**“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."

10. It is evident on bare perusal of the aforesaid provision that in case the appellant dies during the pendency of the appeal against conviction and sentence of death or imprisonment, the application by any near relative for leave to continue the appeal, is to be moved within 30 days of the death. In case leave is not granted, the appeal is to abate on the death of accused.

11. In the present case, appellant has expired on 27.06.2015. The application for seeking permission to continue the appeal has been moved on 09.09.2024 i.e. after a period of more than 9 years and 2 months i.e. after total period of 3365 days. No cogent explanation has been furnished by the applicant for such a huge delay in moving the application seeking leave to continue the appeal.

12. In ***Hari Parsad Chhapolia Vs. Union of India, (2008) 7 SCC 690***, similar were the facts. Conviction was recorded, which was maintained by the High Court. Leave to appeal was granted by Hon'ble Supreme Court and matter was listed for hearing on 07.06.2007, when nobody appeared. Matter was adjourned to 12.07.2007, when it was informed that appellant had expired. Application to substitute the legal representatives of deceased appellant was moved only on 04.01.2018 on the ground that legal heirs of the deceased appellant were not aware that death of their father was to be intimated to the Court. Rejecting the contention, Hon'ble Supreme Court dismissed the application by holding that ignorance of legal representatives regarding substitution application and consequential failure to inform the counsel regarding death of the accused was without any substance and so appeal stood abated.



13. In the present case also, simply because the applicant was not aware about the complexities, that can hardly be a justifiable reason for moving the application for substitution after more than 09 years of the death of the appellant.

14. As such, both the applications [CRMs-41689 & 41690-2024] are hereby dismissed. The main appeal is also disposed of having abated.

**18.03.2025**

*Pry*

Whether speaking/reasoned : Yes  
Whether reportable : No

**(DEEPAK GUPTA)  
JUDGE**