

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.237 OF 2012

SK. TAMISUDDIN

APPELLANT(S)

VERSUS

JOY JOSEPH CREADO & ANR.

RESPONDENT(S)

O R D E R

1. A complaint was filed by one-Sairabee through her Special Power of Attorney Holder, Sk. Tamisuddin, the appellant herein, under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 IPC. Sairabee died while the trial was in progress. The appellant after the death of Sairabee filed an application before the learned trial Court to continue the prosecution as her legal heir (son). The said application was allowed by the learned trial Court.

2. In a quashing petition, the High Court by the impugned order took the view that the initiation of the complaint by the Special Power of Attorney of Sairabee was invalid and that the continuance of the proceedings after

the death of Sairabee by the said Power of Attorney would not be permissible. Hence the proceedings against the accused-respondents were quashed by the High Court.

3. We have heard the learned counsels for the parties.

4. We have considered the decision of this Court in *A.C. Narayanan vs. State of Maharashtra and Another*¹, wherein this Court has clearly held that a complaint filed by the power of attorney would be maintainable in law. If that is so, the initial complaint filed by the appellant on behalf of Sairabee as the complainant would not be invalid in law as held by the High Court in the order under challenge. After the death of Sairabee, the application filed by the appellant was to continue the criminal prosecution as the legal heir of the deceased Sairabee, the High Court seems to have understood this application to be for continuance of the criminal prosecution in his capacity as a Power of Attorney. The competence of the legal heir of a person aggrieved to continue a criminal complaint is

not in doubt. The High Court therefore, in our considered view, ought to have allowed the continuance of the proceedings as prayed by the appellant and ought not to have quashed the proceedings as it has been done.

5. We, therefore, set aside the order of the High Court and direct for commencement of the trial against accused-respondent No.1 from the stage at which the trial was interdicted by the High Court by the Order under challenge.

6. The appeal is consequently allowed in the above terms.

....., J.
(RANJAN GOGOI)

....., J.
(NAVIN SINHA)

....., J.
(K.M. JOSEPH)

NEW DELHI
SEPTEMBER 25, 2018

ITEM NO.103

COURT NO.2

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 237/2012

SK.TAMISUDDIN

Appellant(s)

VERSUS

JOY JOSEPH CREADO & ANR.

Respondent(s)

Date : 25-09-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s) Mr. Shivaji M. Jadhav, AOR
Mr. Nicholas Choudhury, Adv.
Mr. Gautam Prabhakar, Adv.

For Respondent(s) Mr. Prasenjit Keswani, Adv.
Mr. Raghvendra Pratap Singh, Adv.
Mrs. V. D. Khanna, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

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

(NEETU KHAJURIA)
COURT MASTER

(ASHA SONI)
ASSISTANT REGISTRAR

(Signed order is placed on the file.)