

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CFA No. 36/1999

c/w

CCROS No. 43/1999

Krishan Gupta and others

.....Appellant(s)/Petitioner(s)

Through: Mr. Sanjeev Padha, Adv.

vs

D. D. Sadhotra and others

..... Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
26.03.2024

CFA No. 36/1999

1. Through the medium of this appeal, the defendant/appellant has called in question judgment and decree dated 22.09.1999 passed by 1st Additional District Judge, Jammu, whereby in a suit filed by the plaintiff/respondent for recovery of compensation on account of malicious prosecution, appellant and co-defendants have been directed to pay a compensation of Rs. 2 lacs to the plaintiff.
2. During the pendency of this appeal, both plaintiff/respondent No. 1 as well as appellant/defendant passed away and their legal heirs have brought on record in terms of various orders passed by this Court.
3. Learned counsel appearing for the legal heirs of the original defendant(deceased appellant) has contended that the judgment/decree under challenge cannot be executed against the legal heirs of appellant/defendant for the reason that the claim of compensation for

damages on account of malicious prosecution is a right personal to the plaintiff and the same can neither be continued by the legal heirs of the plaintiff nor can it be enforced against the legal heirs of the defendant.

4. Nobody has been appearing in this appeal on behalf of the legal heirs of the plaintiff/respondent. A notice for appearance was also issued to the learned counsel appearing for legal heirs of the plaintiff/respondent but despite service no body appeared. They are accordingly set *ex parte*.
5. Heard and considered.
6. Section 306 of the Indian Succession Act, 1925 is required to be noticed for determining the issue at hand. It reads as under:

“306. Demands and rights of action of or against deceased survive to and against executor or administrator.-All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code (45 of 1860), or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

7. From a perusal of the aforesaid provision, it is clear that all rights to prosecute or defend any action in favour of or against a person, at time of his death, survive to and against his legal representatives except causes of action for defamation, assault or other personal injuries not causing the death of the party, meaning thereby that causes of action for defamation and personal injuries do not survive after the death of the person in whose favour or against whom the said cause of action had arisen.

8. Cause of action for damages for malicious prosecution is a right to sue or defend falls within the parameters of personal injuries therefore, such right cannot be enforced by a person against legal representatives of the person who is responsible for lodging malicious prosecution against such person.
9. A similar issue came up for consideration before the Patna High Court in the case of **Imranuddin Khan and others v Waris Imam, 2008(3) BBCJ 349**. In the said case, a suit was filed for damages on the ground of malicious prosecution. The said suit was decreed against the defendants. The High Court, while considering the issue whether the cause of action would survive against one of the defendants/appellants, who had died in the meanwhile, the High Court held that the suit was filed for damages on ground of malicious prosecution, which is purely a personal liability. Therefore, in view of the maxim *actio personalis moritur-cum-persona*, the suit to the extent of deceased-defendant had abated and his heirs cannot be held liable to pay any damage for malicious prosecution.
10. Applying the aforesaid ratio to the facts of the instant case, in view of the death of appellant/defendant No. 1, the right to enforce the entitlement to damages on account of malicious prosecution against the legal heirs of the deceased-appellant does not survive.
11. In view of the above, the impugned judgment and decree to the extent of appellant(deceased-Sh. A. C. Gupta), is set aside.

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12. Through the medium of this appeal, the plaintiff has sought enhancement of compensation awarded in his favour by the trial court in terms of judgment and decree dated 22.09.1999.
13. As already stated, both appellant/plaintiff as well as defendant No. 1/respondent No. 1 died during the pendency of this appeal and their legal heirs have been brought on record.
14. Action for recovery of damages on account of malicious prosecution being personal in nature, with the death of the appellant/plaintiff, his legal heirs cannot seek enhancement of amount of compensation against the defendants. The cause of action in favour of the legal heirs of the appellants, does not survive. Therefore, the appeal has abated and is dismissed accordingly.



(SANJAY DHAR)
JUDGE

Jammu
26.03.2024
Rakesh PS

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/ No