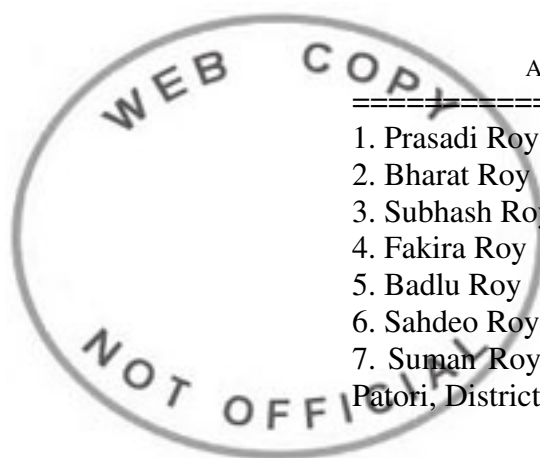




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.478 of 2015

Arising Out of PS.Case No. -62 Year- 1994 Thana -PATORI District- SAMASTIPUR

- 1. Prasadi Roy Son of Repat Roy
- 2. Bharat Roy Son of Repat Roy
- 3. Subhash Roy Son of Repat Roy
- 4. Fakira Roy Son of Sube Lal Roy
- 5. Badlu Roy Son of Ram Lagan Roy
- 6. Sahdeo Roy Son of Lago Roy
- 7. Suman Roy Son of Radhey Roy All are resident of village - Dhamauri, P.S. Patori, District - Samastipur

.... Appellant/s

Versus

- 1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Mr. Nilesh Kumar, Adv.
For the Respondent/s : Mr. Sujeet Kr.Singh(App)

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 28-08-2015

In the instant appeal an interlocutory application bearing I.A. No. 1276 of 2015 has been filed for modification of the order of this Court dated 14.08.2015 to the extent of correction in cause title as well as in designation of the trial court.

2. The appeal was admitted by this Court and records of the lower court were called for by order dated 14.08.2015 and by the same order the appellants were directed to be released on bail during pendency of the appeal to the satisfaction of the learned 2nd Additional Sessions Judge, Samastipur in Sessions Trial No. 206 of 1998.



3. It has been contended by the learned counsel for the appellants that in paragraph 1 in aggrieved portion as well as in the prayer portion of memo of appeal the designation of the trial court has wrongly been mentioned as '2nd Additional Sessions Judge, Samastipur' in place of '2nd Assistant Sessions Judge, Samastipur'. It has further been submitted that due to the aforesaid mistakes, the appellants could not be released on bail.

4. On a careful perusal of the memo of appeal, I find that this appeal under sections 374(2) and 389(1) of the Code of Criminal Procedure (for short 'the Code') is directed against the judgment and order dated 20.07.2015 passed by the learned 2nd Assistant Sessions Judge, Samastipur in Sessions Trial No.206 of 1998 arising out of Patori P.S.Case No. 62 of 1994, whereby the learned Assistant Sessions Judge, Samastipur has convicted the appellants under sections 147, 149, 323, 448, 307/149 and 148/34 of the Indian Penal Code and vide order dated 25.07.2015 the appellants have been sentenced for the offences under which they have been convicted.

5. In the memo of appeal in paragraph 1 as also in the prayer portion it has been mentioned that the appellants have been convicted and sentenced under the aforesaid provisions of the Penal Code by the learned 2nd Additional Sessions Judge, Samastipur.

6. While admitting the appeal, this fact was not brought to the notice of the Court that the order has been passed by a court of Assistant Sessions Judge. Accordingly, vide order dated 14.08.2015 the appellants were granted bail on the premise that the appeal is against the judgment and order passed by a court of Additional Sessions Judge.

7. Apparently, the instant appeal has been inadvertently admitted by this Court. Section 374 of the Code lays down forum for filing appeals by the accused persons against an order of conviction, which reads as under :-

“374. Appeals from convictions.

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial; may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made

or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session.”

8. A bare perusal of the provisions prescribed under section 374 of the Code would make it clear that three different forums have been laid down in respect of the trials held by different courts, i.e.

(i) If a trial is held by the High Court in its extraordinary original criminal Jurisdiction, an appeal would lie to the Supreme Court and not a Bench of Judges of the High Court;

(ii) If a trial is held by a Sessions Judge or an Additional Sessions Judge or by any other court in which a sentence of imprisonment of more than seven years has been passed, an appeal would lie to the High Court; and

(iii) If a trial is held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first or second class (except cases falling under sub section (2) of section 374 or in cases falling under sections 325 and 360, an appeal will lie to the court of session.

9. In the instant case, trial has been held by a court of Assistant Sessions Judge and the maximum sentence awarded to the convicts is four years. Hence, the appeal would lie before the Court of Sessions and not before this Court in view of the provisions prescribed under sub-section (3) of Section 374 of the Code. However, the fact of the matter is that on wrong advice of the Counsel an appeal has been filed before this Court. The Stamp

Reporter also failed to point out the defect in filing the appeal. Due to oversight, the appeal has been admitted and bail has been granted to the appellants by this Court. The matter is pending before this Court since 12.08.2015, the date on which the present appeal has been filed.

10. Considering all these aspects as also all the relevant provisions of the Code, I am not inclined to accede to the prayer made by the learned counsel for the appellants. Accordingly, I.A. No. 1276 of 2015 is dismissed. Further, the appeal itself being not maintainable before this Court, I recall my earlier order dated 14.08.2015 passed in the present appeal and dismiss the appeal. The appellants will, however, be at liberty to file an appeal before the learned Sessions Judge, Samastipur and the period spent by the appellants in contesting the present proceeding before this Court would be excluded in considering the delay.

11. The learned Registrar General is directed to take necessary steps so that such defective applications are not placed under the heading "For Admission" before the Bench.

(Ashwani Kumar Singh, J)

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