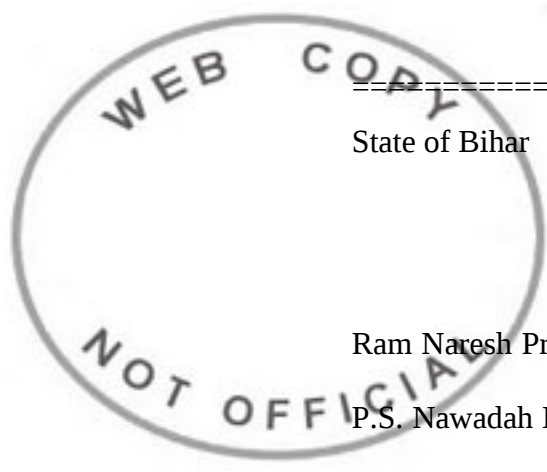




IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.9 of 1993

State of Bihar

.... Appellant/s

Versus

Ram Naresh Prasad Singh, son of Kalesh Haran Singh, resident of Village Pakaria,
P.S. Nawadah Muffasil, District Nawadah, at present Medical Clerk Sadar Hospital
Nawadah, District Nawadah

.... Respondent/s

With

Criminal Revision No. 44 of 1993

Mathura Prasad Barnawal son of Gopi Barnawal, resident of Village Doranda, P.S.
Rajdhanwar, District Giridih. At present In-charge Medical Officer Referral
Hospital Simariya, District Hazaribagh

.... Petitioner/s

Versus

Ram Naresh Prasad Singh son of Kalesh Haran Singh, resident of Village Pakaria,
P.S. Nawadah Muffasil, District Nawadah, at present Medical Clerk Sadar Hospital
Nawadah, District Nawadah

.... Opp. Party/s

Appearance :

For the Appellant : Mr. A. K. Sinha, APP and
Mr. S. C. Mishra, APP

For the Respondent : Mr. Akhileshwar Prasad Singh Sr. Advocate with
Mr. Surya Swetabh, Advocate

For the Informant : Mr. R. K. Shukla, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 23-03-2015

Heard learned counsel for the parties.

2. Both the Government Appeal and Criminal Revision arise out of judgment dated 25.11.1992 passed by 2nd Additional Sessions Judge, Nawada in Criminal Appeal No. 11 of 1992/15 of 1992 whereunder sole respondent has been acquitted of the charge under Section 409 of the Indian Penal Code though he misappropriated a sum of Rs. 25,000/- which amount he had withdrawn at the instance of the informant from Nawada Branch of the State Bank of India but never entrusted the same to the informant.

3. From perusal of the impugned judgment it appears that the sole respondent was acquitted of the aforesaid charge on the ground that no sanction for prosecution of the respondent was obtained from the Government. It is submitted on behalf of the State and the informant that the respondent at



the relevant time served as Clerk in the office of the Primary Health Centre, Sirdala was deputed by the informant, In-charge of the said Centre to withdraw the amount from Nawada Branch of the State Bank of India. The respondent having withdrawn the amount did not deposit the same with the informant.

4. It appears initially respondent was acquitted of the aforesaid charge under judgment dated 12.11.1986 against which Government filed Appeal which was allowed, matter was remitted back whereafter trial court passed judgment and order dated 10.08.1992 convicting the respondent of the aforesaid charge against which Criminal Appeal No. 11 of 1992/15 of 1992 was filed by the respondent and the Appellate Court under impugned judgment dated 25.11.1992 acquitted the sole respondent of the aforesaid charge on the ground that sanction for prosecution of the respondent having not been granted, his trial and subsequent conviction is not in accordance with law.

5. Appreciating the submission of the State that sole respondent is not a Government Servant appointed by the State and sanction for his prosecution from the Government was not at all necessary, the Appeal and Revision were

admitted for hearing, matter has remained pending from the year 1993 till date. Meanwhile, sole respondent has superannuated from service and is getting pension.

6. Appreciating the passage of time from the date of his acquittal recorded under order dated 25.11.1992 till date and the fact that the incident took place in the year 1979, we are of the view that his acquittal recorded on the ground of lack of sanction for prosecution, if set aside, will cause much injustice to the respondent who besides having remained in jail for some time has also advanced in age and if the matter is remanded for de novo trial will not serve the cause of justice as the witnesses to prove the charge may also have disappeared at this distance of time.

7. Accordingly, appreciating the passage of time for which this prosecution including appeal remained pending, we are not setting aside the impugned judgment, both the Government Appeal and Criminal Revision are dismissed.

(V.N. Sinha, J)

(Ahsanuddin Amanullah, J)

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