

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.276 of 2015

Arising Out of PS.Case No. -1 Year- 2008 Thana -C.B.I CASE District- PATNA

Prabeen Kumar, son of Krishna Nand Sharma, resident of 63E, Road No. 12,
Rajendra Nagar, P.S.- Kadam Kuan, District- Patna Appellant
Versus

The State of Bihar through Central Bureau of Investigation Respondent

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ravi Bhardwaj, Advocate
For the Respondent/s : Mr. Bipin Kumar Sinha, Standing Counsel, CBI

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-07-2015

In the instant appeal filed under Section 341 of the Code of Criminal Procedure, 1973, the appellant has challenged part of the judgment and order dated 31.03.2015 passed by the learned Special Judge, C.B.I.-III, Patna in Special Case No. 3 of 2008 arising out of R.C. No. 01(A) of 2008/CBI/ACB-VIII/New Delhi, whereby the learned Special Judge has dismissed the application filed by the appellant under Section 340 of the Code of Criminal Procedure (For short 'the Code').

Admittedly, the appellant was made accused in connection with the aforesaid police case and on conclusion of investigation, the C.B.I. had submitted charge sheet against him under Sections 7 and 13(1) (d) read with Section 13(2) of the

Prevention of Corruption Act, 1988 (For short 'the P.C. Act'). He was charged under the aforesaid sections of the P.C. Act and was put on trial. In course of trial altogether 26 witnesses were examined on behalf of the prosecution and after the prosecution case was closed, the appellant was examined under Section 313 of the Code. However, no defence witness was examined during trial.

In the said case, the appellant filed six applications on different dates under Section 340 of the Code for holding inquiry against P.W. 11 Kalpesh Kumar Sinha, P.W. 12 Vishwajit Kumar, P.W.14 Deepak Kumar Tanwar, P.W. 19 Pawan Kumar, P.W.24 Saurabh Tripathi and P.W. 26 V.P.S. Mann for intentionally giving false evidence before the court during trial.

By the impugned judgment dated 31st March, 2015, the learned Special Judge CBI-III, Patna, convicted the appellant under Section 7 of the P.C. Act and sentenced him to undergo R.I. for three years and to pay a fine of Rs. 10,000/- and in default thereof to undergo S.I. for a further period of two months. The appellant has also been convicted for the charge under Section 13(2) read with 13(1)(d) of the P.C. Act and sentenced to undergo R.I. for five years and to pay a fine of Rs. 20,000/- and in default thereof to undergo S.I. for a further period of two months. However, the trial Judge has directed that both the sentences shall run concurrently.

It would appear from the record that the trial Judge has

relied on the deposition of P.Ws. 11, 12, 14, 19, 24 and 26 for holding the appellant guilty under the charges mentioned hereinabove.

In that view of the matter, the court below has rejected all the six applications filed by the appellant for holding inquiry against the aforesaid witnesses for intentionally giving false evidence during trial.

In my opinion, once the trial Court has relied on the evidence of the aforesaid witnesses for holding the appellant guilty under Section 7 and 13(2) read with 13(1)(d) of the P.C. Act, no illegality can be found with the order rejecting the applications filed by the appellant for holding inquiry against the prosecution witnesses in terms of Section 340 of the Code.

In that view of the matter, I find no merit in this appeal. Accordingly, the appeal is dismissed.

It is made clear that in case the appellant succeeds in appeal against the impugned judgment of conviction and order of sentence, he would be at liberty to seek his remedy in accordance with law.

(Ashwani Kumar Singh, J.)

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