

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.09 of 2016

Arising Out of PS.Case No. -48 Year- 2010 Thana –Raxaul (Haraiya) District-
EASTCHAMPARAN(MOTIHARI)

=====

The State Of Bihar

.... Appellant/s

Versus

Mithilesh Tiwary, Son of Sahdeo Tiwary, resident of Village-Gadiyani, P.S.
Pokhariya, District-Parsa, Nepal

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashwani Kumar Sinha, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date: 02-05-2016

The State of Bihar, has preferred this appeal, under Section 378 (1) and (3) of the Code of Criminal Procedure, 1973, assailing the judgment and order, dated 06.10.2012, passed by the learned Additional Adhoc District and Sessions Judge-I, East Champaran, Motihari in Session Case No. 485 of 2010 arising out of Raxaul (Haraiya) P.S. case No. 48 of 2010, whereby he has recorded acquittal of the sole respondent, who stood charged for the offences punishable under Sections 489A, 489B and 489C of the Indian Penal Code, giving him benefit of doubt.

2. The First Information Report was registered on the basis of written report of one Sujit Pal, Assistant Commandant, 13th



Batalian of Seema Surakasha Bal (SSB), E-Coy, Pantoka, according to which, he received a confidential information to the effect that a person was coming from Nepal with fake currency notes, each of 1000/- denominations, totaling Rs. 1 lac and that he would be handing it over to a person at a place behind Dunkan Hospital, Raxaul. Acting on the said confidential information, the informant constituted a *special team* and reached near Dunkan Hospital to intercept the said person. On 31.03.2010, at 17.15 hours, a young man was found in suspicious condition and, seeing the team of SSB, he started fleeing away. He was chased and, upon search, 101 fake Indian currency notes each of 1000/- denominations were recovered from his pocket. On query, the person disclosed his name as Mithilesh Tiwari. He is said to have subsequently confessed his guilt, and the confessional statement was recorded by the informant. Thereafter, the informant forwarded the said accused to the local police Station along with fake Indian currency notes, the seizure list and the confessional statement. Based on the said report, the said Raxaul (Haraiya) P.S. Case No. 48 of 2010 was registered on 01.04.2010.

3. The police, upon completion of investigation, submitted charge-sheet, whereafter cognizance was taken. Subsequently, charges under Sections 489A, 489B and 489C of the Indian Penal



Code were framed against the said accused, who is respondent in the present appeal. He pleaded innocence and accordingly trial against him commenced. From the judgment under appeal, it transpires that altogether 12 witnesses were examined out of which P.W.1 (Jagdish Mandal), P.W.2 (Ganesh Kumar) and P.W.3 (Niraj Kumar) did not support the prosecution case and accordingly, they were declared to be hostile to the prosecution.

4. P.W.4 to P.W.10, who were the members of the *Special Team* of SSB, supported the case of the prosecution. The informant was examined as P.W.7, who, in the cross-examination, deposed that he had prepared the seizure list on 31.03.2010 at about 5.30 P.M. He also deposed that at the place of occurrence, there were many people found passing through. P.W.9 also said that the seizure list was prepared at the place of occurrence. P.W.4, an Inspector of SSB also deposed that the seizure list was prepared at the place of occurrence by the Informant.

5. What we find from the impugned judgment and order is that the seizure list was not found to have been prepared on 31.03.2010, but on 01.04.2010. Learned trial Court, therefore, recorded a finding that the seizure list was apparently not prepared on 31.03.2010 at the place of occurrence, but it was prepared some where else on 01.04.2010. Further, the seizure list did not disclose the place,

where it was prepared. Learned trial Court, accordingly, concluded that the truthfulness of the seizure list, which was proved by the prosecution itself was doubtful.

6. It further appears from the judgment and order, under appeal, that no seizure list prepared, at the spot by the informant, could be proved by the prosecution. Learned trial Court also took note of the fact that independent witnesses, who were running their shops near the place of occurrence, did not, in their deposition, support the case of the prosecution.

7. Mr. Ashwani Kumar Sinha, learned Public Prosecutor appearing on behalf of the appellant, has submitted that learned trial Court has failed to appreciate oral and documentary evidence available on record, while recording acquittal of the respondent. According to him, the evidence, available on record, clearly proved the recovery of fake currency from the possession of the respondent inasmuch as the prosecution witness Nos. 4 to 12 fully supported the case of the prosecution. He has submitted that learned trial Court wrongly brushed aside the evidence available on record, which proved the guilt of the respondent and recorded acquittal on technical ground that the seizure was prepared on a subsequent date at an unidentified place.

8. No dispute has been raised, on behalf of the appellant,



that no seizure list, said to have been prepared at the place of occurrence by the informant on 31.03.2010, was proved at the trial, though it was the specific case of the prosecution that seizure list was prepared on 31.03.2010 itself. Based on the evidence that the seizure list was prepared on 01.04.2010, without specifying the place where such seizure list was prepared, learned trial Court rightly concluded that the truthfulness of the said document was under serious doubt.

9. Upon perusal of records and considering the submissions advanced on behalf of the appellant-State of Bihar, we find that as a matter of fact, no offence under Section 489A of the Indian Penal Code is made out against the respondent in the absence of any allegation that respondent was involved in counterfeiting, or knowingly performed any part of the process of counterfeiting of the currency notes. The charge against the respondent could be proved beyond all reasonable doubts only if the seizure from his possession could be proved beyond all such doubt.

10. In the present case, we have noticed that admittedly, the seizure was made on 31.03.2010, whereas the seizure list was prepared on 01.04.2010. This seizure list does not disclose the place, where it was prepared. This casts a serious doubt over the case of the prosecution. We do not find any infirmity in the judgment and order under appeal, whereby learned trial Court has recorded acquittal of the

respondent giving him benefit of doubt to the respondent.

11. Further, it is well established principle that an appellate Court, is required to be slow in disturbing the findings of a trial Court recording acquittal of an accused and interference with an order recording acquittal is required only if the findings are perverse and could not be a reasonably possible findings on the basis of the evidence on record.

12. The view taken by the learned trial Court cannot be said to be not a reasonably possible view.

13. We do not find any merits in this appeal. This appeal does not deserve admission and is, accordingly, dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

ArunKumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.05.2016
Transmission Date	05.05.2016