

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.941 of 2014

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1. Pratima Kumari (Devi) Wife of Ashutosh Kumar
 2. Ashutosh Kumar Son of Late Brijnandan Prasad Both resident of Village - Shahpur, P.S. Shahpur, District Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

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with

Criminal Appeal (SJ) No.401 of 2014

Arising Out of PS.Case No. -1532 Year- 2010 Thana -BHOJPUR COMPLAINT CASE District-
BHOJPUR

- =====
1. Md. Shamshad son of Late Maksood Resident of Village / Mohalla - Azimabad, Police Station - Azimabad, District - Bhojpur

.... Appellant/s

Versus

1. The State of Bihar
2. Pratima Kumari (Devi) wife of Ashutosh Kumar, A.N.M., P.H.C., Shahpur, District - Bhojpur
3. Ashutosh Kumar son of Late Brijnandan Prasad Resident of village - Shahpur, District - Bhojpur
4. Dr. Prem Lal Chaudhary son of Late Ruplal Chaudhary, Medical Officer, P.H.C., Shahpur, District - Bhojpur

.... Respondent/s

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Appearance :

(In CR. REV. No.941 of 2014)

For the Petitioner/s : Mr. Dharmendra Kumar

For the Respondent/s : Mr. Binod Kumar (App)

(In CR. APP (SJ) No.401 of 2014)

For the Appellant/s : Mr. Sanjay Kumar

For the Opposite Party : Mr. Dharmendra Kumar

For the State : Mr. Anil Prasad Singh.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

4 11-11-2016

Heard the parties.

2. The petitioners of Criminal Revision No. 941 of



2014, were put on trial in the Court of learned Judicial Magistrate-1st Class, Ara, which arose out of a complaint petition filed by Md. Shamshad, in the Court of learned Chief Judicial Magistrate, Ara, registered as Complaint Case No. 1532(c) of 2010, on the charge of commission of offence punishable under Section 323 of the Indian Penal Code.

3. Learned Judicial Magistrate-1st Class, Ara, vide his judgment and order, dated 13.02.2013 passed in Trial No. 5908 of 2010, held the petitioners guilty of offence punishable under Section 323 of the Indian Penal Code and sentenced petitioner No. 1, to simple imprisonment for a period of one month and petitioner No. 2, to simple imprisonment for a period of three months. The petitioners, thereafter, preferred appeal in the Court of learned Sessions Judge, Bhojpur at Ara, giving rise to Criminal Appeal No. 04 of 2013. The said appeal came to be finally disposed of by a judgment and order, dated 16.04.2014, passed by learned Adhoc Additional District & Sessions Judge –V, Bhojpur at Ara. The Appellate Court upheld the judgment of conviction. However, considering the mitigating circumstances, the Court modified the Trial Court order by giving the petitioners, benefit of Probation of Offenders Act, and they were accordingly released after giving them due admonition under Section 3 of the Probation of

Offenders Act.

4. In Criminal Revision No. 941 of 2014, the petitioners are aggrieved by their conviction recorded by the Trial Court and subsequent judgment passed by learned Adhoc District & Sessions Judge-V, Bhojpur at Ara, dated 16.04.2014, in Criminal Appeal No. 04 of 2013, whereby their conviction has been upheld.

5. Criminal Appeal (SJ) No. 401 of 2014, has been filed by the complainant under Section 11(2) of the Probation of Offenders Act, 1958 against the same judgment and order, dated 16.04.2014, passed in Criminal Appeal No. 04 of 2013 by learned Adhoc Additional District & Sessions Judge –V, Bhojpur at Ara, to the extent the sentence of imprisonment has been modified to their release on admonition by giving them benefit of Section 3 of the Probation of Offenders Act.

6. This is the background, why both these cases have been heard together with the consent of the parties and are being disposed of by the present common judgment and order.

7. Learned counsel, appearing on behalf of the petitioners in Criminal Revision No. 941 of 2014, has not been able to convince me that concurrent finding of facts recorded by the Court below, can be said to be perverse, the same being without evidence or contrary to the evidence on record. In my



opinion, it is a settled proposition of law that in exercise of jurisdiction under Section 397 and 401 of the Code of Criminal Procedure, 1973 (Cr. P.C.), this Court may interfere, only if the concurrent findings recorded by the Courts below are found to be patently illegal and not at all sustainable. I do not find any such reason available in the present case.

8. Coming to the Criminal Appeal (SJ) No. 401 of 2014, learned Counsel appearing on behalf of the appellant has submitted that the Appellate Court has erroneously given the benefit of Section 3 of the Probation of Offenders Act to the petitioners, without calling for report from the Probation Officer, which according to him is mandatory. I do not find any substance in the said submission. There is no dispute that the accused persons had no criminal antecedent. Accused Dr. Prem Lal Choudhary (respondent No. 4 of Criminal Appeal No. 401 of 2014), was posted as Medical Officer at Shahpur in the district of Bhojpur when some complication had arisen after administering polio vaccine on the complainant's son, which appears to have given rise to some altercation and scuffle. In the background of the nature of accusation, the grant of benefit under Section 3 of the Offenders Act, cannot be said to be unjustifiable.

9. I, accordingly, do not find any merit in either of the

cases. Accordingly, Criminal Revisions No. 941 of 2014 and Criminal Appeal (SJ) No. 401 of 2014, stand dismissed.

(Chakradhari Sharan Singh, J)

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