

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.659 of 2014

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1. Sardar Mahendra Singh @ Mahendra Singh S/o Late Sardar Kalyan Singh
2. Sardar Ranjeet Singh S/o Sardar Mahendra Singh Both residents of Punjabi Colony, Gardanibagh, P.S. Gardanibagh, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Advocate
Mr. Uma Kant Tiwary, Advocate

For the Respondent/s : Mr. Ajay Kr. Jha (App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

5 08-11-2016 Heard the parties.

2. The petitioners stood convicted by a judgment and order, dated 25.01.2008 of the offences punishable under Sections 341 and 323 read with section 34 of the Indian Penal Code, passed by learned Judicial Magistrate -1st Class, Patna. However, considering the fact that the petitioners had no history of previous conviction, instead of imposing sentence, learned Trial Court released them on admonition. The petitioners, thereafter, preferred appeal, which gave rise to Criminal Appeal No. 53 of 2008, which came to be finally disposed of by learned 1st Additional Sessions Judge, Patna, vide his judgment and order, dated 23.06.2014, whereby he upheld the judgment and order of learned Trial Court

and dismissed the appeal ,

3. The present application under Section 397 read with Section 401 of the Code of Criminal Procedure,1973 (Cr. P.C.), has been preferred by the petitioners being aggrieved by the judgment and order passed by learned 1st Additional Sessions Judge, Patna.

4. Mr. Yogendra Mishra, learned counsel, appearing on behalf of the petitioners has submitted that the findings recorded by learned Trial Court, holding the petitioners guilty of the offences punishable under Sections 341 and 323 read with Section 34 of the Indian Penal Code are perverse. According to him, there is no evidence on record to prove the commission of offences punishable under Section 341 of the Indian Penal Code inasmuch as there is no evidence to the effect that the petitioners had obstructed the informant in order to prevent him from proceeding in any direction in which he/they had a right to proceed or they were willing to proceed. According to him, in the absence of such evidence, offences under Section 341 of the Indian Penal Code, cannot be constituted and finding recorded by both the Courts to this extent is perverse.

5. Coming to the conviction of the petitioners under Section 323 of the Indian Penal Code, Mr. Mishra has submitted



that it is evident from the materials on record that a civil suit was filed in respect of the house of one Sardar Khajan Singh, in the Court of learned Sub Judge – VIII, which house was purchased by the petitioners and it was in course of execution of the decree passed in that some occurrence had taken place and the informant, who was in possession of the house, made false allegation of assault and attempt to forcibly take possession of the house, against these petitioners. He has also submitted that the prosecution miserably failed to prove any injury caused on the informant or any other person in the said incident inasmuch as no injury report was produced or proved at the trial. It is, accordingly, his submission that the findings being perverse, this is an exceptional circumstance, where the Court in exercise of powers under Section 397 read with Section 401 of the Cr.P.C., needs to interfere with the concurrent finding of facts recorded by the learned Trial Court and the Appellate Court.

6. I have perused the materials on record and have taken into account the submissions advanced on behalf of the petitioners. The petitioners were put on trial with the charge of commission of offences punishable under Sections 341, 323 and 504/34 of the Indian Penal Code. Upon appreciation of evidence adduced at the trial, learned Trial Court held the petitioners, not



guilty of the offences punishable under Section 504 of the Indian Penal Code. Learned Trial Court, however, found them guilty of commission of offences punishable under Sections 341 and 323 read with Section 34 of the Indian Penal Code. Upon careful examination of the evidence on record, I find that the prosecution witnesses supported the allegation of assault made by these petitioners. I do not find any substance in submissions made on behalf of the petitioners that the charge for commission of offences punishable under Section 323 of the Indian Penal Code could not be said to be proved in the absence of any proof of injury sustained by the informant. Section 323 prescribes punishment for voluntarily causing hurt. "Hurt" has been defined under Section 319 of the Indian Penal Code as "*whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.*"

7. In order to prove an offence punishable under Section 323 of the Indian Penal Code, in my view, no injury is required to be proved at the trial as even proof of "bodily pain" will be sufficient to establish an offence under Section 323 of the Indian Penal Code. However, from the evidence on record, I find that the witnesses deposed in their examination-in-chief that the informant P.W. -1, was beaten up by the petitioners. The beating up of the

informant, as is evident from the evidence, was not through single blow. The informant was apparently beaten up with several blows. Without putting restraint, within the meaning of Section 339 of the Indian Penal Code, it would not have been possible for a person to cause hurt in the manner, as proved at the trial by the witnesses. In any view of the matter, the concurrent findings recorded by the learned Court below does not suffer from any perversity, warranting this Court's interference in exercise of power under Section 397 read with Section 401 of the Cr.P.C.. I accordingly do not find any merit in this application and the same is, therefore, rejected.

(Chakradhari Sharan Singh, J)

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