

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.707 of 2016

Arising out of P.S. Case No. 28 Year 2004 Thana Sonbarsa District- SITAMARHI

1. Bachcha Singh
2. Ram Nath Singh @ Ramnath Bind

Both sons of late Ram Sewak Singh, resident of village- Khairwa, P.S.- Sitamarhi,
District- Sitamarhi.

.... Petitioners

Versus

The State of Bihar

... Respondent

Appearance :

For the Petitioners : Mr. Pushpendra Kumar Singh, Advocate.

For the State : Mr. Sanjay Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-10-2016

I.A. No. 1392 of 2016:

This interlocutory application has been filed by the petitioners for condonation of delay of about two years in filing the instant revision application.

2. The petitioners were convicted by the Sub Divisional Judicial Magistrate, Sitamarhi Sadar, by Judgment and order dated 4th April, 2011 passed in G.R. No. 439 of 2004/T.R. No. 1359 of 2011 for the offence punishable under Section 323 of the Indian Penal Code. The appeal preferred against the judgment of the Sub Divisional Judicial Magistrate, Sitamarhi Sadar, was dismissed by the learned Adhoc Additional District & Sessions Judge-I,

Sitamarhi, vide Judgment dated 24th July, 2014 passed in Cr. Appeal No. 72 of 2011/22 of 2013.

3. Despite dismissal of the appeal, the petitioners failed to surrender before the court in order to serve out the sentence. Almost after a lapse of two years from the date of judgment, they were arrested by the Police on 12th of July, 2016 and were produced before the court, whereafter, they were remanded to judicial custody. It is only after their remand to judicial custody, the instant revision application has been filed before this Court on 21st of July, 2016.

4. Learned counsel appearing for the petitioners submits that while convicting and sentencing the petitioners, the learned Sub Divisional Judicial Magistrate, Sitamarhi Sadar, had himself granted them interim bail in exercise of power conferred under sub section (3) of Section 389 of the Code of Criminal Procedure. The appellate court while admitting the appeal, had confirmed the interim bail granted to the petitioners. The Advocate, who was entrusted with the pairvi of the case, did not even inform the petitioners about the outcome of the appeal filed by the petitioners and they could know about the fate of their appeal only after they were apprehended by the Police.

5. Regard being had to the explanation submitted by the learned counsel for the petitioners, the delay caused in filing the revision application is condoned.

6. Accordingly, the interlocutory application stands allowed.

Cr. Revision No. 707 of 2016:

Heard Mr. Pushpendra Kumar Singh, learned counsel for the petitioners. Despite repeated calls nobody appears on behalf of the State.

2. This revision application under Sections 397 and 401 of the Code of Criminal Procedure is directed against the Judgment and order dated 24th of July, 2014 passed by the learned Adhoc Additional District & Sessions Judge-I, Sitamarhi, in Criminal Appeal No. 72 of 2011/22 of 2013 whereby he has dismissed the appeal filed by the petitioners and two others and affirmed the judgment of conviction and order of sentence dated 4th of April, 2011 passed by the learned Sub Divisional Judicial Magistrate, Sadar Sitamarhi, in Trial No. 1359 of 2011 arising out of Sonbarsa P.S. Case No. 28 of 2004 by which the petitioners and two others were convicted for the charge punishable under Section 323 of the Indian Penal Code and sentenced to undergo simple imprisonment for six months and to pay compensation of Rs.1,000/- each to the informant/injured, as she suffered from injuries and also received medical treatment by the reason of the act done by the convicts.

3. At the outset, learned counsel for the petitioners submits that in view of the findings recorded by the trial court and the



appellate court, he would like to confine his argument only on the point of sentence. He has submitted that the informant of the case and the accused persons are close agnates. The bone of contention between the parties was a piece of plot over which, both the parties were claiming their right, title and possession. The alleged offence took place in the month of March, 2003. The petitioners have faced the rigors of trial for almost eight years as the judgment of the trial Magistrate was pronounced on 4th of April, 2011 and the appeal was decided three years thereafter on 24th July, 2014. He has contended that the trial Magistrate and the appellate court ought to have released the petitioners on probation, as the petitioners have no criminal antecedent and have a permanent abode.

4. I have heard learned counsel for the petitioners and perused the record. Admittedly, it is a case of simple hurt and the petitioners and two others have been convicted for the offence punishable under Section 323 of the Indian Penal Code. Section 323 of the Indian Penal Code prescribes punishment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

5. From perusal of the record, it appears that though argument was advanced on behalf of the petitioners that they should be released on entering a bond on probation of good conduct, the learned Magistrate has rejected the said prayer by observing that

since the convicts have assaulted a lady they were not entitled to be released on probation of good conduct. The appellate court has not made any discussion on the question of sentence.

6. In my opinion the approach of the courts below in considering the case of the petitioners on the question of sentence was not proper. In view of the nature of the offence and there being no other adverse report regarding character of the petitioners, an opportunity ought to have been given to the petitioners to reform themselves by releasing them on entering a bond on probation of good conduct instead of incarcerating them into prison and associate themselves with hardened criminals, as the function of probation is to effect improvement in character of the convict. It is a substitute to imprisonment. The *non-obstante* clause in Section 4 of the Probation of Offenders Act is a clear manifestation of the intention of legislature that the provisions of the Act would have an overriding effect notwithstanding any other law for the time being in force.

7. However, since the petitioners have already remained in custody for more than three months, at this stage, I deem it fit and proper that while dismissing of the revision application, the sentence awarded to the petitioners be reduced to the period already undergone.

8. Accordingly, the challenge to the impugned judgment passed by the appellate court is dismissed on merits, but the

sentence of simple imprisonment for six months awarded by the courts below against the petitioners is reduced to the period already undergone, but the revisionists would pay compensation amount of Rs.1,000/- to the complainant, as awarded by the courts below.

9. In case the amount of compensation is not deposited by the revisionists before the trial court, they will undergo an additional imprisonment for 15 days.

10. The revision application stands dismissed with modification of sentence.

11. The copy of this judgment be communicated to the trial Magistrate and the appellate court forthwith.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N/A.
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