

IN THE HIGH COURT OF JUDICATURE AT PATNA
SLA No.2 of 2016

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Most. Jagtarani kuar @ Most. Jagtarini Kuar Wife of late Yadunandan Prasad Gond Resident of Mauza- Bharatiganj, P.s Sasaram, District Rohtas.

.... Appellants

Versus

1. The State of Bihar.
2. Dasarath Sah son of Late Jaganath Sah Resident of Mauza- Bharatiganj, P.s Sasaram, District Rohtas.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Chhote Lal Mishra, Advocate

For the Respondent/s : Mr. Ajit Mishra, App

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-01-2016

I. A. No. 39 of 2016

The present interlocutory application under Section 5 of the Limitation Act, 1963 has been preferred for condoning the delay of eight days in filing the application under sub-Section (4) of Section 378 of the Code of Criminal Procedure, 1973 (for short 'CrPC') seeking leave to appeal against the judgment of acquittal dated 10.08.2015 passed by the learned Judicial Magistrate, 1st Class, Rohtas at Sasaram in Complaint Case No. 477 of 2006 corresponding to Trial No. 340 of 2015.

2. It has been contended that the petitioner is a poor lady and after the judgment of acquittal was passed, she approached her counsel in order to obtain the certified copy of the judgment and other relevant documents in order to challenge the

same before this Court. In the said process some delay was caused which was neither deliberate nor willful.

3. Upon hearing the learned counsel for the petitioner and after going through averments made in the interlocutory application the Court is satisfied that sufficient cause has been shown for delay caused in filing the application. Accordingly, the delay in filing the application is hereby condoned. The interlocutory application stands allowed.

SLA No. 02 of 2016.

4. By the present application under sub-Section (4) of Section 378 CrPC, the petitioner seeks leave to appeal against the judgment of acquittal dated 10.08.2015 passed by learned Judicial Magistrate, 1st Class, Rohtas at Sasaram in Complaint Case No. 477 of 2006, corresponding to T. R. No. 340 of 2015, whereby and whereunder he has acquitted the opposite party no. 2 for the offences under Sections 323 and 504 of the Indian Penal Code for want of cogent and reliable evidence.

5. It would be evident from perusal of the impugned judgment that the complainant has alleged that on 23rd April, 2006 at about 3 p.m., when she was at her home, courts Nazir with police personnel came to her house and pushed her out. They also pushed out her son and daughter-in-law from their house



and threw their belongings and other households items outside the house. They locked the house and took her thumb impression on a plain sheet of paper. It would further be evident that the complainant has alleged that on 11.05.2006 at about 8 a.m., accused persons opened west facing door of the complainant's house and after breaking the wall of the complainant's house they were placing a gate. When the complainant opposed them, they abused and beat her.

6. On receipt of the aforesaid complaint, the learned Chief Judicial Magistrate took cognizance of the offence on 12th May 2006 and made over the case under Section 192 CrPC to the Court of Magistrate for trial and disposal. The substance of accusation under Sections 323 and 504 of the Indian Penal Code was explained to the opposite party no. 2 on 26.09.2008 to which he pleaded not guilty and claimed to be tried. Accordingly, the trial commenced. During course of trial, three witnesses were examined on behalf of the complainant; they are C.W.-1 Rajendra Gond (Complainant's son), C.W. -2 Rajesh Prasad Gond (Complainant's Nephew) and C.W.-3 Jagtari Kuar (Complainant herself). After recording the evidence adduced on behalf of the complainant, the accused (opposite party no. 2) was examined under Section 313 CrPC in which he pleaded his innocence and false implication in

the case. After discussing the evidence led on behalf of the complainant, the trial Court has found that there is no cogent material to hold the opposite party no. 2 guilty and accordingly, acquitted him for the aforesaid offences.

7. Mr. Chhote Lal Mishra, learned counsel for the appellant has contended that the trial Court has not appreciated the evidence of the witnesses examined on behalf of the prosecution in correct perspective. They duly corroborated the prosecution case and the learned Magistrate ought to have held the opposite party no. 2 guilty for the offence under Section 323 and 504 of the Indian Penal Code.

8. I have heard learned counsel for the appellant and perused the impugned judgment and the materials on record. It would be evident from the impugned judgment that the C.W. 1 Rajendra Gond has stated in his examination-in-chief that he has filed the case against altogether 17 persons. Apparently, Rajendra Gond is not the complainant of the case. It is C.W. 3 Jagtarni Kuar, who is the complainant in the present case. He has further deposed that on 23 April, 2006 civil court's Nazir, peon and five police personnel entered into his house, took his signature and signature of his mother and thereafter, pushed them out of the house. He has deposed that accused Dasrath Sah was carrying '*kajrotta*' with him,



though in complaint petition there is no mention of accused Dashrath Sah. He has further stated that the accused Dasrath Sah put lock at his house whereas in the complaint petition it was claimed that court's Nazir and police personnel had locked the house. He has further deposed that on 11.05.2006, when he opposed the action of the accused persons, they beat him as well as his mother and daughter. The villagers intervened and prevented them otherwise the accused persons would have killed him. He has also deposed that the accused persons used firearm while removing the household items from the house. In the impugned judgment, the learned Magistrate has given a finding that such facts were not mentioned in the complaint petition. In cross-examination, he has stated that he went to the police station alone and his mother never went along with him at the police station.

9. The learned Magistrate has categorically held in the impugned judgment that it has been mentioned in the complaint petition that the complainant and other family members went to the police station immediately after the incident. The learned Magistrate has further observed that if the complainant and his family members were evicted from the house on the first date of occurrence, i.e., 23.04.2006, there was no occasion for the accused persons to have beaten and ousted them from the house on 11th

May, 2006. Learned Magistrate has also given a finding that the complainant and her family members were evicted from the house pursuant to the order passed by the Court. Analyzing the evidence of C.W. 2 Rajesh Gond, the learned Magistrate has held that his deposition does not inspire confidence and he has also doubted the deposition of C.W. 3 Jagtarni Kuar. The findings of the trial Court have been mentioned in paras 10 to 13 of the impugned judgment.

10. I find that the learned Magistrate has given clear, cogent and convincing reasons to disbelieve the evidence adduced by the complainant and her witnesses.

11. In that view of the matter, I find no merit in the present application. Accordingly, leave to appeal is refused.

12. The application stands dismissed.

(Ashwani Kumar Singh, J.)

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