

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.199 of 2000

(Against the Judgment of conviction and Order of sentence dated 25.04.2000 passed by the Special Judge, South Bihar in Special Case No. 18 of 1991 arising out of R.C. Case No. 11 of 1991)

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Birendra Kumar Sinha son of late Kamala Prasad Sinha resident of Road No. 24 Mohalla rajiv Nagar, P.S. Digha Town Dist. Patna

.... Appellant/s

Versus

State of Bihar Thru.C.B.I. (South Bihar) Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chitranjan Sinha, Sr. Adv.

Mrs. Shikha Singh, Adv.

For the C.B.I : Mr. Sanjay Kumar SC, C.B.I

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 24-06-2016

1. The Appellant has been convicted and sentenced to undergo Rigorous Imprisonment for six months under Section 418, one year under Section 420 and one year under Section 477A of the Indian Penal Code and has further been convicted and sentenced to undergo Rigorous Imprisonment for one year and six months under Section 13(1)(c) punishable under Section 13(2), one year and six months under section 13(1)(d) read with 12(2) of the Prevention of Corruption act with direction to run the sentence concurrently by judgment of conviction and order of sentence dated 25.04.2000 passed by the Special Judge, South Bihar Patna in Special Case No. 18 of 1991 arising out of R.C. Case No. 11 of 1991.

2. The case of the prosecution is that while the Appellant was Sub-Accountant in Central Bank of India between July, 1990-October, 1990 he withdrew Rs. 10,000/- excess without debiting it from his account and also withdrew Rs. 13,000/- from his account even though there was no credit balance in his account.

3. During trial the prosecution examined seven witnesses out of whom P.Ws 1-5 are official witnesses whereas P.W. 6 has examined the documents and P.W 7 is the Investigating Officer.

4. The main plea of the Appellant is that P.W. 6 who had examined the ledger, in which figure '1' was prefixed so as to increase the amount by Rs. 10,000/- was unable to give a firm opinion as to who had made the interpolation. However, admittedly the Appellant was the sole beneficiary of such increase in the amount and therefore the needle of suspicion would definitely point to him. But the next admitted position is that Appellant immediately deposited Rs. 10,000/- when the question of excess withdrawal was brought to light.

5. Learned counsel for the Appellant cites a decision of the Hon'ble Supreme Court reported in **AIR 2012 SC 3790** in the matter of **N.K. Illiyas v. State of Kerala**. In similar circumstances the Hon'ble Supreme Court held the following :

“2. We have heard the learned counsel for the

parties and also gone through the records. We are of the opinion that the evidence against the appellant points to an offence of temporary embezzlement only for a few days and no case whatsoever under the Prevention of Corruption Act, 1985 can even be remotely made out. The conviction of the appellants under the provisions of the Corruption Act is thus wholly unwarranted.

3. We are further of the opinion that the offences under the IPC alleged against the appellant are so trivial and have caused no harm and are in fact no offences in the eye of the law and the benefit of Section 95 of the Indian Penal Code is thus available to the appellant. Admittedly, a sum of Rs. 1839/- had been deposited in the post office before the due date i.e. 4th March, 1992 and that no loss had been caused to the Department, even if it is assumed that a false entry had been made in the record to show the payment on the 10th February, 1992.”

6. On the other hand the counsel for the C.B.I submits that since the Appellant had temporarily embezzled the amount of Rs. 24,000/- he should be granted no leniency.

7. On going through the evidence of the prosecution and considering that the Appellant was the sole beneficiary and it was he who was in control of the records one can deduce with some certainty that he had manipulated the record. Hence I find no reason for setting aside the conviction of the Appellant under Sections 420 and 418 IPC. However, considering that the Appellant did not convert to his own use the credited cash which amount was immediately remitted to the Department and the decision of the Hon'ble Apex Court his

conviction under the provisions of P.C Act is hereby set aside. The period of sentence is modified to the extent of period already undergone by him.

8. With the aforesaid modification in conviction and sentence, the Appeal is dismissed.

(Anjana Prakash, J)

Prakash/-

AFR/NAFR	
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