

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.18 of 2015

Arising Out of PS.Case No. 19 Year- 1997 Thana -Vigilance District- PATNA

The State of Bihar, through Shashi Shankar Kumar, Dy. S.P., Vigilance, Investigation Bureau, Bihar, Patna S/o Shree Ashok Kumar Yadav, Resident of Madhurapur, P.S Narayanpur, District Bhagalpur.

.... Appellant

Versus

Wakil Singh @ Wakil Sinha S/o late Jagdeep Singh R/o Village Gangauli, PS Masraf, District Chhapra (Saran.)

.... Respondent

Appearance :

For Appellant : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Santosh Kumar Pandey, Advocate

For the Respondent : Mr.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 21-01-2016

The State of Bihar, through Vigilance Investigation Bureau, has preferred the present appeal, under Section 378(1) read with Section 378(3) of the Code of Criminal Procedure, 1973, assailing the judgment and order, dated 27.06.2012, passed by the learned Special Judge, Vigilance II, Patna, in Special Case No. 10 of 1997, arising out of Vigilance PS Case No. 19 of 1997, whereby he has recorded acquittal of the sole

respondent. The respondent stood charged with the offence punishable under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. It transpires from the record that against a contract awarded to the co-accused, Rajendra Prasad, he (i.e., Rajendra Prasad) had deposited few Time Deposits, Passbook and National Savings Certificates in the office of the Irrigation Division, Araria. According to the prosecution's case, even before completion of the work to be executed by the said contractor, those documents were returned illegally to the said contractor in connivance with the accused persons including the respondent, who was, at the relevant point of time, posted as Accounts Clerk in the office of the Executive Engineer, Irrigation Division, Araria. The occurrence is said to have taken place between 1992-1994. Allegedly, the respondent misled the then Executive Engineer, in connivance with the contractor, to pass an order for return of the said items for illegal personal gain. These aspects were detected in an enquiry held by Dwarka Shankar Prasad, Police Inspector, Vigilance Investigation Bureau, Patna (informant), who, in his report, found, *inter alia*, that despite a direction by the Executive Engineer, Irrigation Division, Araria, to deposit these documents, the contractor failed to deposit the same. The Executive Engineer, Kapildeo Prasad, and the contractor, Rajendra Prasad, were also made accused on the basis of the report of the

informant in Vigilance PS Case No. 19/97 disclosing commission of offences under Sections 406, 420, 467, 468, 471, 477 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act').

3. On completion of investigation, *charge-sheet* came to be submitted and cognizance was taken by the competent court, whereafter charges were also framed against the respondent. For returning the documents kept in the office of the Executive Engineer, Irrigation Division, Araria, by obtaining illegal order from the Executive Engineer for illegal pecuniary gain by abusing his position and post, the respondent was charged with the offence punishable under Section 13(2) read with Section 13(1)(d) of the Act. For obtaining order from the Executive Engineer by concealment and misrepresentation for returning the documents without completion of the work, he was charged with the offence punishable under Sections 420 and 406 IPC. In addition thereto, he was charged of the offence punishable under Sections 467, 468 and 471 IPC for forging certain documents in order to the contractor to return the Time Deposit, Passbook and National Savings Certificates, kept as security. He was also charged with the commission of offence under Section 120B IPC of conspiracy. Since the respondent denied the charges, the trial against him commenced.

4. At the trial, altogether 3 witnesses were examined.

5. Upon scrutinizing the evidence of the prosecution witnesses and the materials on record, the Special Judge, Vigilance, found that the prosecution had failed to prove that the documents, as mentioned above, were, in fact, returned by the respondent to the Contractor, Rajendra Prasad, and, accordingly, recorded acquittal of the respondent by the judgment, which is impugned in the present appeal.

6. Mr. Rama Kant Sharma, learned Senior Counsel, appearing on behalf of the appellant, assailing the impugned judgment, has submitted that the learned trial Court has failed to appreciate the evidence adduced at the trial and has contended that the evidence adduced were sufficient to establish the charges framed against the respondent.

7. We have perused the impugned judgment and order passed by the learned Special Judge, Vigilance II, Patna, and we have scrutinized the materials on record. We do not find any infirmity in the conclusion arrived at by the learned Special Judge in the judgment and order under appeal, wherein he has held that there is no witness to prove the charge that it was the respondent, who had returned the documents to the Contractor.

8. Mr. Rama Kant Sharma, learned Senior Counsel appearing for the appellant, has not been able to draw our

attention to any clinching or concrete evidence on record on the basis of which, the charges framed against the respondent could be said to have been conclusively proved beyond all reasonable doubts which the learned trial Court overlooked or failed to appraise.

It is settled principle of law that judgment and order recording acquittal of an accused by a trial Court can be interfered with in appeal only when it is shown that findings of the trial Court are perverse and the view taken by it could not be reasonably possible view. We do not feel persuaded by the submissions advanced on behalf of the appellant and we are of the considered view that the impugned judgment and order do not suffer from any such infirmity requiring interference by this Court in appeal.

9. This appeal, therefore, does not merit admission and stands accordingly dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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