

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.248 of 2016

Arising Out of PS.Case No. -125 Year- 2009 Thana -LAXMIPUR District- JAMUI

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Birju Sah, Son of Sri Jagdeo Sah, a resident of Laxmipur Chowk, Police Station-
Laxmipur, District- Jamui.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : None

For the Respondent/s : Mr. S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-10-2016

The sole appellant has been convicted under Sections 504 and 506 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act'). He has been sentenced to undergo imprisonment for one year for each of the offences under which he has been convicted. However, all the sentences have been ordered to run concurrently.

While convicting and sentencing the appellant, the trial court itself has granted him interim bail in exercise of power conferred under sub-section (3) of Section 389 of the Code of

Criminal Procedure (for short 'the CrPC').

The judgment of conviction under Section 3(1)(x) of the Act as also sections 504 and 506 of the Indian Penal Code was recorded by the trial court on 30th January, 2016. The jurisdiction of the trial court for granting the interim bail in exercise of power under sub-section (3) of Section 389 of the CrPC is limited till date of filing the appeal. The limitation of filing of the appeal against the judgment of conviction is sixty days.

From perusal of the impugned judgment, it would appear that the certified copy of the judgment was supplied to the appellant within four days from the date of requisition made in this regard. It would also appear from the record that the appeal in the present case was filed on 20th April, 2016 with certain defects, that is, much beyond the prescribed period for filing an appeal. The defects pointed out by the Stamp Reporter were not removed by the appellant. Hence, the matter was placed before the Bench.

On 26th April, 2016, on the prayer of learned counsel for the appellant, this Court had granted him one week time to remove the defects pointed out by the Registry. Despite there being specific order, the same was not complied with. Once again, on 18th May, 2016, when the matter was taken up, learned counsel for the appellant submitted that since the appellant is neither in jail nor on

bail, he would surrender before the court below and, only thereafter, the appeal may be taken up on merit.

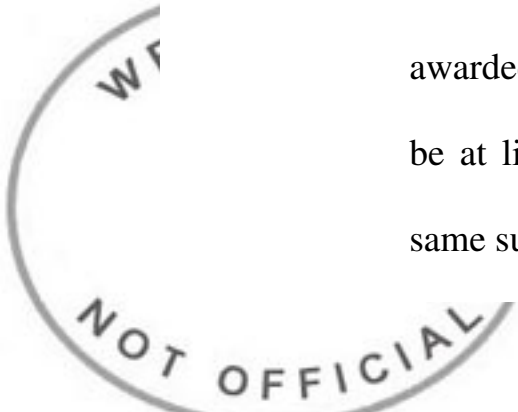
At the request of the learned counsel for the appellant, the appeal was directed to be listed after the annual vacation on 19th July, 2016. When the matter was again taken up by this Court, learned counsel for the appellant prayed for two weeks' time in order to comply with the undertaking given on 18th May, 2016. The Court allowed the prayer and directed the appeal to be listed after two weeks. Thereafter, the matter was taken up on 24th October, 2014, but despite repeated calls, the advocate for the appellant did not appear and, hence, the case was passed over for the day.

In this background, when the matter was listed today, again the advocate for the appellant failed to appear before the Court. Apparently, the appellant, after being convicted and sentenced and after being released on interim bail granted by the court for a limited period till filing of the appeal is misusing the privilege of bail.

Since a defective appeal cannot be admitted or taken up for hearing, it is dismissed as not maintainable. The interim bail granted to appellant by the court below is cancelled.

The Special Court-cum-Additional Sessions Judge-I,

Jamui is directed to take all coercive steps against the appellant in order to take him into custody so that he may serve out the sentence awarded to him. Once the appellant is taken into custody, he would be at liberty to file another appeal in accordance with law in the same subject matter.



(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	-----
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