

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.277 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- MUNGER

1. Uday Prasad Chaudhary
2. Shailendra Kumar Chaudhary
Both are son of Late Bhola Prasad Choudhary Resident of Village - Garhi Rampur,
P.S. - Naya Ram Nagar, District - Munger.

.... Petitioners

Versus

1. The State of Bihar.

.... Respondent

Appearance :

For the Petitioners : Mr. Deepak Kumar, Advocate

For the State : Mr. Abhay Kumar No. 1, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 10-11-2016

The petitioner no. 1 is a Constable in Bihar Police. Both the petitioners stood convicted of the offences punishable under Section 448, 385 and 504 of the Indian Penal Code, by the judgment and order, dated 23.01.2014, passed by the learned Judicial Magistrate, 1st Class, Munger, in Trial No. 697 of 2014, arising out of G. R. No. 256 of 2008. After having convicted the petitioners, learned Judicial Magistrate, 1st Class, Munger, has given them benefit of Section 3 of the Probation of Offenders Act, 1958, and has released them after due admonition, with a direction not to repeat it in future.

2. The appeal, preferred by the petitioners came to

be dismissed by the judgment and order, dated 14.01.2015, passed by the learned 3rd Additional Sessions Judge, Munger, upholding the judgment and order of the learned Trial Court, as noted above.

3. Heard Mr. Deepak Kumar, learned Counsel for the petitioners and Mr. Abhay Kumar No. 1, learned Additional Public Prosecutor, representing the State.

4. Learned Counsel appearing on behalf of the petitioners has submitted that evidently, the parties to the prosecution are closely related and a civil dispute between them is the reason behind launching of the criminal case. He has submitted that if the conviction is allowed to be sustained, the service of the petitioner no. 1, as Constable in Bihar Police, shall get adversely affected, which may have serious consequences.

5. Relying on a Supreme Court's decision, in the case of **Rajbir v. State of Haryana**, reported in **1985 (Supp) SCC 272**, learned Counsel for the petitioners has submitted that certain observations may be made by this Court, if this Court is not inclined to interfere with the judgments and orders of the Courts below, so that service of the petitioner no. 1 may not be adversely affected.

6. Paragraphs 4 and 5 of the Supreme Court's decision, in the case of **Rajbir** (supra), reads thus:

"4. From the judgment of the



High Court, it appears that though the sentence imposed for the offence under Section 323 of the Code was six months, the appellant and the co-accused had already suffered over one year's imprisonment. Ordinarily, in a situation as here, there would be no need to interfere. Learned Counsel for the appellant has, however, pressed the appeal as the appellant is in Government service and if the conviction and sentence are maintained, he would lose his service. Both the parties to the assault were close relations. There is no material on the record to indicate that the appellant had any previous conviction. In the absence of such evidence, we treat the appellant as a first offender. He is entitled to be admitted to the benefits of probation under Section 3 of the Probation of Offenders Act, 1958, taking into consideration the circumstances of the case, the nature of the offence and the character of the appellant. While maintaining his conviction, we direct that he shall be released on probation of good conduct under Section 4 of the Act. The Chief Judicial Magistrate, Bhiwani, before whom the appellant is directed to appear within four weeks from today shall release him after due admonition. We do not consider it necessary to direct him to enter into a bond in the facts of the case.

5. We are of the view that in the peculiar facts of the case, the conviction should not affect his service."

(Emphasis supplied)

7. On perusal of the materials on record, I do not feel inclined to interfere with the findings of facts recorded by the Courts below leading to conviction of the petitioners, of the offences punishable under Sections 448, 385 and 504 of the Indian Penal Code.

8. However, taking a cue from the decision of the Supreme Court, in the case of **Rajbir** (supra), as noted above, it is observed, in the background of the genesis of the occurrence, that the conviction of petitioner no. 1 by the judgments and orders of the Courts below, impugned in the present revision application, shall not adversely affect his service.

9. This application stands disposed of with the observations, as above.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-c

AFR/NAFR	AFR
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