

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.6 of 2017

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Shiv Kumar Sahu, Son of Late Mahabir Sahu, resident of Village -
Sahu Parwatta, P.S. - Parwatta, District - Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar.
2. Prem Nandan Sahu, Son of Late Ram Sewak Sahu.
3. Anant Sahu, Son of Late Mukund Sahu.
4. Parmendra Sahu, Son of Sri Jitendra Sahu.
All residents of Village - Sahu Parwatta, P.S. - Parwatta District -
Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vivekanand Vivek, Adv.
Mr. Rang Nath Pandey, Adv.
For the State : Mrs. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI

SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 01-05-2017

This is an application, under Section 378(4) of
the Code of Criminal Procedure, 1973, seeking leave to
appeal against the judgment and order, dated
20.08.2016, passed by the learned 2nd Additional Chief
Judicial Magistrate, Naugachia, Bhagalpur, in Complaint



Case No. 72 of 2002, whereby, he has recorded acquittal of respondent Nos. 2 to 4 of the offence punishable under Sections 341, 342, 323, 307, 504, 182, 211 and 120B/34 of the Indian Penal Code and Section 25(1-b)/26 of the Arms Act.

2. This application is barred by limitation and an application has been filed for condoning the delay in preferring the present application.

3. Delay stands condoned.

4. The materials available on record show that for an occurrence alleged to have taken place on 14.02.2002, a complaint case, bearing Complaint Case No. 72 of 2002, was filed on 15.03.2002.

5. It would be useful to take note of certain facts, which are evident from the record, before referring to the allegations made in the complaint case; leading to passing of judgment and order by the court below, which is being sought to be assailed in the present proceeding.

6. The petitioner was made an accused in Naugachia (Parwatta) P.S. Case No. 34 of 2002, registered for an occurrence taken place on 15.02.2002, disclosing commission of offence punishable under Section 25(1-b)/26 of the Arms Act. The case of the prosecution against the petitioner in said Naugachia (Parwatta) P.S.



Case No. 34 of 2002 was that he was apprehended with fire arms within the premises of the respondents. In that case, the police had submitted *charge-sheet* and on the basis of trial held, the petitioner has been sentenced imprisonment for a period of one and half years and a fine of Rs. 1,500/- for the proved offence punishable under Section 25(1-b)/26 of the Arms Act.

7. It is the case of the petitioner, as narrated by him in his complaint petition, that on 14.02.2002 (*i.e.*, one day before registration of Naugachia (Parwatta) P.S. Case No. 34 of 2002), the driver of respondent No. 1 (Premnandan Sahu) came and took him to *Dalan* of Premnandan Sahu, where all the accused persons were sitting. The accused persons asked the petitioner to disclose the names of such persons as accused of murder of his brother as they were suggesting. When the petitioner refused, they assaulted him variously and considering him to be dead, after locking him up in the room in the night, they left for sleeping. The next day (*i.e.* on 15.02.2002), when they found the petitioner alive, they hatched up a conspiracy to implicate the petitioner in a criminal case and got the said FIR of Naugachia (Parwatta) P.S. Case No. 34 of 2002 registered by planting fire arms. The petitioner was arrested



immediately. On the question of delay in filing the complaint case, his explanation is that since he was in jail, he could not file any case.

8. At the trial altogether three witnesses were examined by the prosecution, namely, Santosh Kumar Sahu (P.W.-1), Draupadi Sahu, the wife of the petitioner (P.W.-2) and the petitioner himself (P.W.-3). P.W.-1 deposed at the trial that some of the accused persons were taking the petitioner to the residence of respondent No. 2, namely, Premnandan Sahu, on 14.02.2002 and he had also seen the accused persons assaulting the petitioner variously. According to him, on the next morning he found the accused persons taking the petitioner with "3 not" and cartridges. He subsequently learnt that allegation of criminal trespass was made against the petitioner leading to registration of the First Information Report. Other prosecution witnesses, *i.e.*, the wife of the petitioner and the petitioner himself, also supported the case of the prosecution, as if all the three claiming to be the eye-witnesses, P.W.-3 being the victim himself.

9. It has been noted by the learned trial Court that the explanation of delay in lodging of the complaint case of nearly one month after the date of occurrence, on



the ground that he was in jail in connection with a false case, could not be accepted, since the said complaint case was filed when he was in jail. Learned trial Court has doubted the entire case of the prosecution as false and *mala fide*, since it was directed to frustrate the criminal case lodged against the petitionenr on 15.02.2002.

10. On perusal of the materials available on the record, I do not find any apparent error in the impugned judgment and order, recording acquittal of respondent Nos. 2 to 4, for more reasons than one. As has been noticed, P.W.-2, the wife of the petitioner, and P.W.-1, namely, Santosh Kumar Sahu, claimed to be the eye-witnesses of the occurrence. It has been recorded in the judgment of the trial Court that the police station is hardly 300 yards away from the place of occurrence. If, according to the witnesses, the occurrence had taken place in their presence, they could have easily informed the police on 14.02.2002 itself. Learned court below has concluded that the petitioner appears to have given the date of occurrence in a manner that his presence in the house of respondent No. 2, where he was apprehended, could be justified.

11. Acquittal of an accused reinforces the legal presumption of his innocence. A finding recording



acquittal by the Trial Court may require interference if the finding is palpably incorrect verging on perversity. In the present case, the manner in which the prosecution’s case has been built up, as noted above, creates apparent doubt. In such circumstance, no case for leave to appeal against the impugned judgment and order is made Out.

12. The present application seeking leave to appeal, in my view, is not at all *bona fide*. though, I had intended to impose exemplary cost for filing such frivolous application, I have restrained myself from doing so, in the facts and circumstances of the case.

13. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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