

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.600 of 2016

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

=====

1. Keshav Kishore Prasad S/o Late Binda Sah Resident of Village- Narayanpur,
P.S.- Bheldi, District- Saran (Chhapra).

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Singh

For the Respondent/s : Mr. Md. Fahimuddin

=====

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER

ORAL

Date: 04-05-2017

Heard learned Counsel for the petitioner and
learned Additional Public prosecutor representing the State.

2. With the allegation that impersonating one
Gaurav Kumar, who was to appear for an examination held by
the Bihar Public Service Commission, on 02.06.2002, the
petitioner appeared as a candidate. He was, however, caught,
leading to registration of the First Information Report against
him for the offences punishable under Sections 419, 420, 465,
467, 468 and 120B of the Indian Penal Code. It was alleged
against him that he was found writing examination paper for
the said Gaurav Kumar. He was accordingly charged of the
said offences. The Trial Court found him guilty and sentenced



him to imprisonment for maximum period of three years for the offence punishable under Section 420 of the Indian Penal Code.

3. The Additional Sessions Judge III, Samastipur, by subsequent judgment and order, dated 20.04.2016, passed in Criminal Appeal No. 912 of 2014, acquitted the petitioner of the offences punishable under Sections 465, 467 and 468 of the Indian Penal Code. However, to the extent the conviction relating to the offences punishable under Sections 419 and 420 of the Indian Penal Code, the Appellate Court affirmed the findings of the learned Trial Court.

4. The petitioner, in the present revision application under Section 397 read with Section 401 of the Indian Penal Code, questions the legality of his conviction of the offences punishable under Sections 419 and 420 of the Indian Penal Code, on the ground that the findings are completely illegal, verging of perversity.

5. Learned Counsel for the petitioner has drawn my attention to the impugned judgment and has submitted that since the prosecution could not establish that the petitioner was found writing paper in the examination for Gaurav Kumar, the prosecution, as a natural corollary, failed to establish its case of petitioner's presence in the examination hall also and, therefore, his conviction of the



offences punishable under Section 419 and 420 of the Indian Penal Code is also bad.

6. I have perused the impugned judgment and order passed by the Appellate Court. The Appellate Court acquitted the petitioner of the charges of the offence punishable under Sections 465, 467 and 468 of the Indian Penal Code since at the trial, no answer sheet, used in the examination, was adduced as evidence.

7. As regards commission of offence punishable under Section 419 and 420 of the Indian Penal Code, the Appellate Court affirmed the finding of the learned Trial Court since the prosecution was able to prove the petitioner's presence in the examination hall, at the place fixed for said Gaurav Kumar.

8. The impugned judgment and order, seen in that background, cannot be said to be illegal and suffering from such error as to require interference by this Court, under Section 397 read with Section 401 of the Indian Penal Code.

9. Learned Counsel for the petitioner has, however, submitted that the petitioner may be given benefit of Sections 4 and 5 of the Probation of Offenders Act, 1958, in the background of special facts and circumstances of the case and age of the petitioner. He has submitted that conviction of the petitioner in the present case is an eye-opener for him and



a lenient view may be taken by this Court; more so, when the petitioner has already remained in custody for about nine-and-a-half months. He has no criminal history inasmuch as he has not been convicted in any other case, Mr. Singh, learned Counsel, appearing on behalf of the petitioner, submits. In addition, he submits that there is no question of the petitioner having been convicted at any point of time.

10. Considering the facts and circumstances of the case, without interfering with the finding recorded by the Appellate Court, I am of the view that this is a fit case where provisions of Sections 4 and 5 of the Probation of Offenders Act, 1958, should be applied.

11. In view of the discussions as above, the order of sentence imposed by the Appellate Court, is hereby modified by giving him benefit of Sections 4 and 5 of the Probation of Offenders Act, 1958, keeping in view the nature of offence and the character of the offender.

12. Accordingly, the petitioner shall be released on furnishing personal bond of Rs. 50,000/- and an undertaking that he will maintain good conduct for a period of two years from the date of the present order. In case of failure on the part of the petitioner to honour the undertaking, he shall be required to serve rest of the sentence.

13. This application stands disposed of with the



modification, as above.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.05.2017
Transmission Date	10.05.2017

