

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.394 of 2016

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Indu Sharma, W/o Akhilesh Kumar Sharma, R/o House No. 37, Chandan Villa, Road No. 10, Patel Nagar, P.S. Shastri Nagar, Distt. - Patna

.... Appellant/s

Versus

The State of Bihar through Vigilance, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Hemant Kumar -Advocate

For the Respondent/s : Mr. Ramakant Sharma-(L.O.I/C Vig.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

09 06-03-2017 Heard learned counsel for the appellant as well as learned counsel for the Vigilance.

By the order impugned dated 18.05.2016 passed in Special Case No.02 of 2012, the learned lower Court had rejected the prayer made on behalf of appellant in terms of Rule-11(g) of the Bihar Special Court Rules, 2010.

From the show-cause (Annexure-5), more particularly Paragraph-17, speaks about the plea having raised on behalf of appellant challenging the mode of valuation at the end of the Vigilance and further, referring **2006(6) SCC 613**, it has stated that revaluation be effected with the assistance of an expert.

From the order impugned, it is evident that learned lower Court failed to acknowledge the aforesaid Paragraph-17 and further, also failed to take proper response with regard thereto.



There also happens to be some sort of negligence on the part of both the parties as, none of them referred Paragraph-17 during intervening period before the Court to apprise the real situation as well as contention. Apart from this, the order impugned also suggests that another petition has been filed on 16.01.2014 and on account thereof, considering the same beyond the period of limitation, been rejected by the order impugned.

During course of argument as well as going through the order impugned, it is evident that appearance of the appellant before the learned lower Court was effected on 09.05.2012, while Annexure-5 was filed on 27.07.2012. Although, neither the order impugned speaks any kind of relaxation having been given by the learned lower Court and further, whether Annexure-5 was entertained or not. In likewise manner, the appellant also failed to substantiate the same.

After all, in terms of Rule-11 of the Special Court Rule, the time so allotted, in favour of the delinquent happens to be 45 days from the date of appearance. Furthermore, it speaks that on the date of appearance, copy of the relevant document is to be filed over which, learned counsel for the appellant has submitted that the same was not furnished and on account thereof, delay was caused and in corresponding manner,



the delay in filing show-cause has been condoned.

The learned lower Court will visualize the aforesaid event after going through the relevant order sheets minutely and in case finds that the show-cause has not been entertained condoning the delay, then in that event, the appellant will have no leg to stand, but in case finds that delay has already been condoned and further, Annexure-5 had already been legally entertained, then in that event, the Paragraph-17 got bearing on that very score, the order impugned would not justify its prevalence.

That being so, instant appeal is disposed of in terms of observation as made hereinabove.

(Aditya Kumar Trivedi, J)

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