

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.842 of 2017

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

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1. Arun Kumar Gupta S/o Late Tej Narayan Prasad Sah
2. Dhananjay Kumar Gupta S/o Late Tej Narayan Prasad Sah
3. Awadhesh Kumar Gupta S/o Late Tej Narayan Prasad Sah
4. Satish Kumar Gupta @ Bauaji S/o Arun Kumar Gupta
5. Pramod Kumar S/o Late Ram Bilas Sah all residents of village - Sarsaula Khurd,
P.S. & District - Sheohar.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Vikramdeo Singh, Advocate.
Mr. Mahendra Thakur, Advocate.
For the Respondents : Mr. Ajay Kumar-I, APP.
For the O.P. : Mr. Alok Kumar Alok, Advocate.
Mr. Santosh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 20-11-2017

Heard learned counsel for the petitioners and learned
counsel for the State.

2. The petitioners have preferred this revision application
against the judgment and order dated 18.07.2017 passed by the
learned Sessions Judge, Sheohar in Cr. Appeal No. 08/017, whereby
he has uphold the conviction of the accused persons/the petitioners
passed by the trial court, S.D.J.M., Sheohar whereby the accused
persons were convicted under Sections 323, 341 and 379 of the Indian
Penal Code and awarded sentence of simple imprisonment of one year



and fine of Rs. 500/- under Section 323 of the Indian Penal Code, in default of payment of fine further simple imprisonment for one month. Whereas for committing the offence under Section 341 of the Indian Penal Code awarded simple imprisonment of one month and a fine of Rs. 100/- and in case of default making payment of fine further simple imprisonment of seven days and sentenced two years of simple imprisonment for committing offence under Section 379 of the Indian Penal Code as well as fine of Rs. 5000/- and in default of payment of fine further simple imprisonment of two months and also directed that 80 percent of fine shall be given to the informant to compensate the loss suffered by him.

3. Learned counsel for the petitioners challenged the conviction under Section 379 and other Sections of the Indian Penal Code that both sides claim title over the Pond from which theft of fishes alleged to have been committed. Prior to the occurrence, a proceeding under Section 145 Cr.P.C. was undergoing between the parties which was decided in the year 2012 in favour of the informant but admittedly no title suit relating to the Pond is pending or ever filed by the either side.

4. Learned counsel for the petitioners submits that since the accused persons are co-sharers and claim their share in the Pond so taking fish worth Rs. 12,000/- do not constitute any offence of



theft. Alternatively, learned counsel for the petitioners submits that in case the conviction is upheld the sentence may be modified in the background of the fact that both sides are claiming title and possession over the pond so the accused persons are also claiming the share in the Pond and the petitioners have remained in custody for one month approximately besides they have also undergone the rigor of trial since the year 2008 for approximately nine years.

5. Learned counsel for the informant submits that possession of the Pond was with the informant therefore, dishonestly taking the fishes from the Pond constitute offence of theft and this was proved in evidence by the prosecution during the trial consequently no miscarriage of justice done in the case by both the courts.

6. Having considered rival submissions and on perusal of case the Court finds that there is no error in the concurrent finds of the court below. The case of the prosecution is that the accused persons forcibly fished out fishes, two quintals in quantity worth Rs. 12000/- from the Pond and in the process also assaulted the informant side. This is an admitted position that proceeding under Section 145 Cr.P.C. was undergoing between the parties much prior to the occurrence and the possession has also been found in favour of the informant though, in the year 2012 initiation of such possession is



declared from the date of proceeding so ingredients of theft is made out hence no illegality in the conclusion drawn by both the courts below as far as establishing the charge under Sections 323, 341 and 379 of the Indian Penal Code is concerned. However, the case is of the year 2008 already nine years have passed since then. So the sentence awarded to the petitioner for all the aforesaid offences is modified to the period already undergone but the fine under Section 379 of the Indian Penal Code is increased to Rs. 15000/- out of which 80% of the fine amount will go to the informant.

6. With the aforesaid modification in the sentence, the conviction is upheld. Accordingly, this application is disposed of.

(Arun Kumar, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.11.2017
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