

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.31 of 2017

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Md. Ibrar Ali, S/o- Late Ahmad Ali, resident of Village- Bharandua,
P.S.- Chenari, District- Rohtas.

.... Appellant/s

Versus

1. The State of Bihar.
2. Sahnawaz Ansari.
3. Arshad Ansari.
4. Neyaz Ansari.

All S/o Hawaldar Ansari, All resident of Village- Pebandi, P.S.-
Chenari, District- Rohtas at Sasaram.

.... Opposite Party/s

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Appearance :

For the Appellant/s : Mr. Ashutosh Tripathy, Adv.

For the State : Mr. Binod Bihari Singh, APP

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

ORAL JUDGMENT & ORDER

Date: 27-07-2017

Reg. I.A. No. 1400 of 2017 :

This interlocutory application has been filed
seeking condonation of delay of 21 days in filing of SLA No.
31 of 2017.

2. For the reasons, mentioned in the interlocutory
application, the delay in filing of this appeal is, hereby,



condoned.

3. Accordingly, I.A. No. 1400 of 2017 stands disposed of.

Reg. SLA No. 31 of 2017 :

The present application has been filed seeking Leave to Appeal against judgment and order, dated 27.02.2017, passed in Complaint Case No. 746 of 2012 (Trial No. 125 of 2016) by learned Additional Chief Judicial Magistrate-II, Civil Court, Sasaram, whereby, he has recorded acquittal of opposite party Nos. 2 to 4 of the offence punishable under Section 417 read with Section 34 of the Indian Penal Code.

2. It was the case of the prosecution that complainant's son, namely, Tasleem Ali, C.W.-3, was, at the relevant point of time, pursuing engineering course in Birsa Institute of Technology, Ranchi, when respondent No. 2, namely, Sahnawaz Ansari, was pursuing his engineering course from Anamalai Institute, Chennai. Respondent No. 2 persuade and convinced the complainant's son to take admission in Analamai Institute, which was better institute. The complainant was asked to send his son with a sum of Rs. 1,50,000/-, which the complainant deposited in the account of his son, C.W.-3, on different dates. Allegedly, the said C.W.-3 handed over the money to respondent No. 2 after



withdrawing it from ATM. Respondent No. 2 did not get the complainant's son admitted in the said institute and asked him to give further amount of Rs. 1,00,000/- to his other brothers, who are respondent Nos. 3 and 4 here, which he did. The admission of complainant's son could not materialize in the year 2009. Some mediation was also held with the intervention of persons known to both the parties. When the accused persons refused to return the amount in the year 2012 and abused the complainant, when he made demand for the money, a complaint petition came to be filed in the year 2012.

3. What is noticeable from the impugned judgment and order is that there were three witnesses examined at the trial. The complaint was examined as C.W.-1, whereas, his son was examined as C.W.-3. One Gilbas Ali was examined as C.W.-2, who deposed in his evidence that six years ago when he was at the shop of the complainant, the complainant had given amount of Rs. 1,00,000/- to respondent No. 4, the brother of respondent No. 2, who had persuaded the complainant's son, *i.e.*, C.W.-3, to get admitted in Anamalai Institute.

4. Learned court below noticed apparent contradiction in the statement of C.W.-2 and in the depositions of other witnesses. Though, C.W.-2 deposed



that a sum of Rs. 1,00,000/- was given to respondent No. 4, he did not whisper anything about the rest of the amount, *i.e.*, Rs. 50,000/-. The Court held, on the basis of evidence, that there was no proof of giving of money to the accused persons by the complainant. In an appeal, preferred against judgment and order of acquittal, the Court is not required to re-appreciate the evidence, which have been appreciated by the trial Court. On analysis of the evidence, adduced at the trial, *i.e.*, depositions of only three witnesses, *i.e.*, the complainant, his son and one C.W.-2, the Court rightly held that the prosecution could not establish the case beyond all reasonable doubt.

5. I do not find it to be a fit case to grant leave to appeal against the judgment and order impugned.

6. This appeal is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.07.2017
Transmission Date	N/A

