IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.474 of 2017
Arising Out of PS.Case No. -null Year- null Thana -null District- ARRARIA

==========

Mahesh Jha, S/o Late Maulai Jha, Resident of Village Belbari, P.S. Sikty (Bardaha O.P.) District Araria

.... Petitioner

Versus

The State of Bihar

.... Respondent

==========

Appearance :
For the Petitioner : Mr. Anil Prasad Singh, Advocate
Mr. Vijay Kishore Bharti, Advocate
For the State : Mr. Dashrath Mehta, APP

==========

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date: 10-10-2017

Heard learned counsel for the parties.

2. This revision is directed against judgment dated 28.02.2017, passed by learned 3rd Additional Sessions Judge, Araria in Criminal Appeal No.016 of 2001 whereby he upheld the conviction and sentence dated 16.02.2001 and 17.02.2001, passed by learned Assistant Sessions Judge, Araria in S.T. No.135 of 1998. The petitioner was convicted under Section 224 of the Indian Penal Code and sentenced to undergo SI of two years.

3. Learned counsel appearing on behalf of the petitioner submits that there is apparent error in the concurrent finding of both the courts as there is no evidence on record to show that any resistance was made by the petitioner to get himself released from the custody, so no offence is attracted under Section 224 of the Indian Penal Code against the petitioner. Second contention is that there was

WEB COPY

no charge against the petitioner as he was not wanted in any other case. There is no evidence on record to show that he was wanted in which particular case, so there was no any authority to the *Chowkidar* even to apprehend him. Three prosecution witnesses have been examined in this case out of whom Chandranand Paswan (PW1), the *Chowkidar*, is a hearsay witness. The only sole material witness of the prosecution is Devanand Manjhi (PW2) who is said to have apprehended the petitioner in this case whereas PW3 is a formal witness who has only proved the writing of the *fardbeyan* and signature. In this case neither the informant nor the IO have been examined besides other prosecution witnesses, so non-examination of the IO has also prejudiced the case of the petitioner. Devanand Manjhi (PW2), who is said to have apprehended the petitioner, has admitted in paragraph-9 of his evidence in the cross-examination that he has had no knowledge that in which case Mahesh Jha was wanted. His evidence also discloses that he was released by other co-accused and no resistance was made by the petitioner. Learned counsel for he petitioner has also placed reliance in the case of *King-Emperor v. Lachhu Kamara*, reported in *51 Cr.L.J. 679*. In the said case the Division Bench of the Orissa High Court decided that if the accused is taken away forcibly by others, it cannot be held that accused intentionally escaped from the custody. Contrary to that the learned

WEB COPY

counsel appearing on behalf of the State submits that in the FIR it is itself mentioned that the police party had gone out to apprehend accused in the case registered under Sections 302, 328 and 395 of the Indian Penal Code so the prosecution has not proved the case beyond all reasonable doubt.

4. Having considered rival submissions and on perusal of the records, the Court finds that only one material witness has been examined, i.e., Devanand Majhi (PW2), the *Chowkidar*, who is said to have apprehended the petitioner. Another witness PW1 is a hearsay witness. The Court has gone through the entire evidence but does not find any material or any evidence on record to prove that the petitioner was charged with any offence or wanted in any case, even the reference of the case is neither mentioned in the FIR nor in deposition of any witness. There is complete absence of such evidence rather the person who apprehended him, the local *Chowkidar*, examined as PW2 categorically admits in paragraph-9 of his examination that he has had no knowledge that in which case Majesh Jha was apprehended. According to Section 224 of the Indian Penal Code, a person who is charged with any offence or of which he has been convicted, or escapes or attempts to escape from any custody intentionally offers any resistance or any illegal obstruction to the lawful apprehension only then he is said to have committed the

WEB COPY

offence; so two ingredients are most important to attract this particular offence against a person; first, he must be charged with any particular offence or he is convicted in a case or makes an attempt to escape from lawful custody or keeps any obstruction or resistance while being apprehended. As earlier observed, there is complete lack of evidence on record to show that the petitioner was charged with any offence or was convicted in a case, so on this account too this offence is not attracted. There is no evidence at all that the petitioner himself made any resistance or obstruction in order to get himself released from the custody of PW2, a local *Chowkidar*. Both the courts have failed to notice this aspect of the case which resulted into miscarriage of justice, so for lack of the evidence in respect of the charge proving the case beyond reasonable doubt, petitioner is acquitted from the charge under Section 224 of the Indian Penal Code. Since he is already on bail, therefore, he is discharged from the liabilities of his bail bond.

5. The criminal revision application stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.10.2017
Transmission Date	12.10.2017

WEB COPY