

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.789 of 2017

Arising Out of PS. Case No.-437 Year-2012 Thana- SIWAN MUFFASIL District- Siwan

Md. Dastgir @ Dastgir Ahmad, Son of Md. Masiuddin Ahmed, Resident of
Village- Chakiya, P.S.- Mahadewa O.P., District- Siwan.

... .. Appellant/s

Versus

1. The State of Bihar,
2. Md. Serajuddin, Son of Late Jamil Ansari,
3. Md. Irshad, Son of Md. Serajuddin,
4. Md. Umr Ali, Son of Md. Serajuddin,
5. Majda Khatoon, W/o Serajuddin,
6. Nazia Khatoon, D/o Md. Serajuddin, All 1 to 6 Resident of village- Chakiya,
P.S.- Mahdewa O.P., District- Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ranjeet Kumar, Advocate.
For the Res. No. 2 to 6	:	Mr. Ravi Bhushan Verma, Advocate.
For the State	:	Ms. Shashi Bala Verma, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 10-10-2018

1. Heard learned counsel for the appellant, learned
Additional Public Prosecutor for the State and learned counsel
appearing for the respondent nos. 2 to 6 on I.A. No. 2149 of 2017
as well as on the point of admission.

2. I.A. No. 2149 of 2017 has been filed under Section
378(3) of the Criminal Procedure Code for grant of leave to file
this criminal appeal.



3. The appellant is informant of the present case and he is aggrieved person and, therefore, the leave to file this criminal appeal is granted and, accordingly, I.A. No. 2149 of 2017 stands disposed of.

4. In our view, this criminal appeal can be disposed of on admission stage itself.

5. The appellant has challenged the impugned Judgment of acquittal dated 03.04.2017 passed by the learned 5th Additional Sessions Judge, Siwan, in Sessions Case No. 12 of 2015, by which and whereunder, the learned Additional Sessions Judge acquitted the respondent nos. 2 to 6 from the charges framed against them for the offences punishable under Sections 323, 341, 325, 307/34 and 504 of the Indian Penal Code. The sole ground of challenging the impugned Judgment of acquittal is none service of process upon the prosecution witnesses.

6. Learned counsel appearing for the appellant submits that no process was ever served upon the prosecution witnesses, as a result of which, they could not appear before the trial court to depose in support of prosecution case and, as a matter of fact, the learned trial court without obtaining service report of summons and other process closed the prosecution case and pronounced the Judgment of acquittal.



7. On the other hand, learned counsel for the respondent nos. 2 to 6 submits that the learned trial court issued summonses several times and furthermore, the learned trial court issued summonses to prosecution witnesses through concerned Superintendent of Police and as a matter of fact, the informant (appellant) as well as his witnesses were aware about the pendency of the aforesaid case but they intentionally and deliberately did not appear before the trial court to depose in the said case and taking note of the aforesaid fact, the learned trial court closed the prosecution case and pronounced the Judgment of acquittal as not a single witness, except P.W.1, came forward to support the prosecution case and so far as P.W.1 is concerned, he admitted that he had not seen the alleged occurrence rather he had heard about the alleged occurrence.

8. Having heard the contention of both parties, we went through the impugned Judgment as well as Lower Court Records, we find that respondent nos. 2 to 6 were charged on 09.02.2015 and on the same day, the learned trial court ordered for issuance of summonses to charge sheet witnesses. However, the Lower Court Records reveals that the summonses were issued on 12.02.2015 but, even, after grant of several adjournments neither witnesses appeared nor any service report was received to the court below.



However, vide order dated 08.06.2015, the learned trial court issued bailable warrants against the prosecution witnesses and the order of the court below was complied with by the office on 09.06.2015 but again no execution report was received in the court below. Furthermore, record reveals that on 14.09.2015, one prosecution witness was examined and his cross-examination was completed on 27.10.2015. Furthermore, record reveals that again, the learned trial court ordered for issuance of summonses to charge sheet witness no. 1 and 2 through Superintendent of police and the order of the learned trial court was complied with by the office on 21.10.2016. However, neither any prosecution witness appeared nor any service report was received, Thereafter, the learned trial court directed his office to obtain service report from the Superintendent of Police and the office issued a letter to Superintendent of Police for sending the service report but no reply of Superintendent of Police was received. However, again the summonses were issued to witnesses through Superintendent of Police but again neither witnesses turned up nor any service report was received and all the aforesaid steps of the learned trial court went in vain. Subsequently, learned trial court closed the prosecution case and passed the impugned Judgment of acquittal. The aforesaid facts clearly goes to show that before closure of the



prosecution case, the learned trial court did not get any service report of summonses issued against the prosecution witnesses nor any execution report of warrants of arrest was placed before the trial court and, therefore, we find that the trial court closed the prosecution case without obtaining any service report of summonses as well as execution report of warrants of arrest which is not in accordance with law. We do not find anything on the record on the basis of which we could presume that the prosecution witnesses were aware about the stage of Sessions Case No. 12 of 2015. Therefore, in our view, the learned trial court committed an error in closing the prosecution case and acquitting the respondent nos. 2 to 6 without getting any service report as well as execution report. In the aforesaid circumstances, we have no option except to set aside the impugned Judgment of acquittal and sent back the case to the court of Additional Sessions Judge-V, Siwan, for re-trial.

9. On the basis of the aforesaid discussions, this criminal appeal is allowed on admission stage itself and in the result, the impugned Judgment of acquittal is, hereby, set aside and Sessions Case No. 12 of 2015 is sent back to the Additional Sessions Judge-V, Siwan for re-trial with direction to him to give proper opportunity to prosecution to examine his witnesses and to



conclude the trial of respondent nos. 2 to 6 in accordance with law within a period of six months from the date of receipt of Lower Court Records. However, the appellant is also directed to appear before the trial court within eight weeks and produce his witnesses within the period as fixed by the learned trial court itself. The office is directed to send the Lower Court Records to the concerned court without any delay.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	N.A
CAV DATE	N.A.
Uploading Date	12.10.2018
Transmission Date	12.10.2018

