

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1278 of 2017

Arising Out of PS. Case No.-18 Year-2010 Thana- PRATAPGANJ District- Supaul

Baidhyanath Jha, son of Late Manrakhan Jha Resident of Shripur, P.S. -
Pratapganj, District - Supaul.

... .. Appellant

Versus

1. The State of Bihar.
2. Md. Ishak son of Md. Hafid
3. Md. Sazzad son of Md. Majid
4. Md. Naushad son of Md. Ajiz
5. Md. Rozit son of Late Mehdi Mian
6. Md. Domi son of Md. Muslim
7. Md. Hasmat son of Kanik Mian
8. Md. Muslim son of Kanik Mian No. 2 to 8 are residents of Village -
Bhawanipur, Tola - Maran, P.S. - Pratapganj, Distt - Supaul.
9. Md. Ziarath Hussain son of Gultan Mian Resident of Village and P.O. -
Marauna, Dist - Supaul.
10. Ataul son of Not known of Village - Bichari Hulas, P.S. - Raghapur, District -
Supaul.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Arun Kumar Jha, Advocate
For the Respondent/s : Mr. Mayanand Jha, APP

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

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER

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

9 03-07-2018 Heard learned counsel appearing for appellant,

learned counsel appearing for respondents No. 2 to 10 and

learned Addl. Public Prosecutor for the State on the point of

admission and also on I.A. No. 2572 of 2017.

This appeal has been preferred by the appellant, who

is informant in Pratapganj P.S. Case No. 18 of 2010, against

Judgment of acquittal dated 21.08.2017 passed by learned



Presiding Officer, Fast Track Court No. II, Supaul in Sessions Trial No. 244 of 2012 by which and whereunder, the learned trial Court acquitted the respondents No. 2 to 10 from the charges framed against them for the offences punishable under Sections 364 and 120(B)/34 of the Indian Penal Code.

At the very outset, learned counsel appearing for appellant submits that the appellant did not get any notice or information regarding pendency of Sessions Trial No. 244 of 2012, as a result thereof, the appellant as well as other witnesses could not appear before the trial Court for their evidences, but the trial Court without taking notice of the aforesaid facts passed the Judgment of acquittal in favour of respondents No. 2 to 10. Learned counsel further submits that above stated Pratapganj P.S. Case No. 18 of 2010 was registered against the respondent Nos. 2 to 10 and others and Sessions Trial No. 230 of 2010 as well as Sessions Trial No. 244 of 2012 were emerged from the aforesaid Pratapganj P.S. Case No. 18 of 2010. He further submitted that the appellant got notice in Sessions Trial No. 230 of 2010 and deposed before the trial Court, but no notice was served upon him as well as other witnesses in Sessions Trial No. 244 of 2012.

Learned counsel appearing for respondents No. 2 to



10 refuted the above stated submissions arguing that the learned trial Court issued summons, bailable warrants as well as non-bailable warrants against the prosecution witnesses, including the appellant, but in spite of that they did not appear before the trial Court to depose in favour of the prosecution as a result thereof, the learned trial Court had no alternative except to close the prosecution case and pronounced the Judgment of acquittal.

The lower Court's record has already been received and from perusal of the lower Court's record, we find that learned trial Court issued processes against the prosecution witnesses, but there is nothing on the record to show that even a single process was ever served upon the informant and other prosecution witnesses. Furthermore, we find that the learned trial Court failed to take notice of the aforesaid facts and passed the impugned Judgment of acquittal. Therefore, in the aforesaid facts and circumstances, we are of the opinion that the impugned Judgment of acquittal cannot sustain in the eye of law and, accordingly, on the basis of aforesaid discussions, the impugned Judgment of acquittal dated 21.08.2017 is, hereby, set aside and the matter is remitted to the trial Court for retrial with direction to trial Court to take evidences of informant and other prosecution witnesses in accordance with law. The appellant



(Informant) is directed to appear before the trial Court within a month to get recording his evidence in the aforesaid Sessions Trial and the informant (Appellant) shall also ensure the presence of remaining non-official prosecution witnesses before the trial Court within a month from the date of completion of his examination. Furthermore, learned trial Court shall ensure the presence of official witnesses in accordance with law within two months after examination of all the non-official witnesses. Furthermore, the learned Sessions Judge, Supaul shall ensure that the Sessions Trial No. 244 of 2012 and Sessions Trial No. 230 of 2010 be heard and disposed of by the same Court on the same day.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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