

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.480 of 2015

Arising Out of PS.Case No. -35 Year- 1981 Thana -C.B.I CASE District- PATNA

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1. Suresh Prasad Sah S/o Late Deep Naraian Sah R/o Village- Chak Nawada, P.S.-
Dalsingsarai, District- Samastipur, and
2. S.K. Amin @ Amin Ahmad, S/o- Late Abdul Azim, R/o Village- Maulavi Chak,
P.s.- Dalsingsarai, District- Samastipur

.... Appellants

Versus

1. The State through C.B.I., SPE, Patna

.... Respondent/s

with

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Criminal Appeal (SJ) No. 488 of 2015

Arising Out of PS.Case No. -35 Year- 1981 Thana -C.B.I CASE District- PATNA

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1. Arun Kumar Sinha Son of Gauri Shankar Prasad resident of Village Gudri Road
,Dalsingh Sarai, P.s Dalsingh Sarasi, District Samastipur.

.... Appellant/s

Versus

1. The Central Bureau of Investigation Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.480 of 2015)

For the Appellant/s : Mr. S.N.P. Sinha, Sr. Adv.
Mr. Prashant Kumar, Adv.
Mr. Angad Kunwar, Adv.
Miss. Rashmi Bharti, Adv.

For the Respondent/s : Mr. Sanjay Kumar, S.C., CBI
Mr. Bipin Kumar Sinha, Adv.

(In CR. APP (SJ) No.488 of 2015)

For the Appellant/s : Mr. Pankaj Kumar Sinha, Adv.
Mr. Kamal Kishore Jha, Adv.
Mr. Rounak Kumar Singh, Adv.

For the Respondent/s : Mr. Bipin Kumar Sinha, S.C., CBI

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 23-04-2018

As originated against the common judgment of conviction and sentence dated 16.07.2015 passed by Special Judge, CBI, Ist Patna in Special Case No.74 of 2011 arising out of RC No.35(A)/1981, on account thereof, both the Appeals have been heard analogously and are being decided by a common judgment.



All the appellants, namely, Arun Kumar Sinha, S.K. Amin and Suresh Prasad Sah have been found guilty for an offence punishable under Section 420 of the IPC, whereupon each one has been sentenced to undergo rigorous imprisonment for three years as well as fined appertaining to Rs.10,000/- in default thereof, to undergo rigorous imprisonment for six months additionally. However, the learned lower Court had directed both the sentences to run concurrently. How it could be, better known to the learned lower Court to say as, whenever there happens to be default clause, it happens to be in addition to the substantial sentence if not paid.

Facts of the case are forbidden as the same is not found essential at the present juncture on account of perceiving somewhat unwarranted activities at the end of learned Presiding Officer. From the order-sheet of the learned lower Court, it is evident that there happens to be some sort of dubious activities at the end of the learned lower Court which adversely affected not only upon the fairness at the trial but also found the finding recorded by the learned lower Court immiserable. For better appreciation, the same is incorporated in detail hereinafter.

During course of hearing arguments made by the respective parties, relevant orders sheet passed by the learned lower Court has been referred whereupon the learned counsel for the CBI has submitted that the learned Presiding Officer has done blunder which is found incurable and attracts stern action.

From the order-sheet, it is evident that the charge was framed on 24.08.2001 and trial proceeded thereafter, but it lingered for examination of the prosecution witnesses as well as for getting death report on account of death of respective accused and so, the intermediary event depict that the case hanged for



appearance for quite long time. It is further evident from ordersheet dated 23.06.2014 that the learned lower Court directed to run the case on day to day basis after a month, as prayed by the prosecution considering it oldest case being of the year 1981. It followed the trend to some extent, but later on, been disgraced. However, the proceeding sailed up to 8.5.2015 on which date direction was given to the prosecution to produce witness fixing 25.05.2015, next date. Then thereafter, no ordersheet is available on the record. The last ordersheet is of dated 16.07.2015, on which date judgment has been pronounced.

From the record, it is evident that the statement under Section 313 Cr.P.C of one set of accused was recorded by the learned lower Court on 18.06.2015 while statement of the other set of accused was recorded on dated 03.07.2015 having no ordersheet drawn for the same. These activities suggest some extraneous consideration, whereunder file has been kept out of main stream for such long time, and then, all on a sudden judgment has been delivered. It is apparent that there happens to be no ordersheet with regard to closure of prosecution case, recording of statement of accused u/s 313 Cr.P.C. entering into defence hearing of argument, fixing the date of judgment. Such procedure happens to be contrary to the mandate of law, and happens to be glaring example of miscarriage of justice. In the case of *ISSAC@ Kishore vs Ronald Cheriyan and Ors. reported in 2018(2) PLJR 57 (SC)*, it has been held –as follows :-

“9. [Section 386](#) Cr.P.C. defines the powers of the Appellate Court in dealing with the appeals. The powers enumerated thereon are vested in all courts, whether the High Court or subordinate courts, except that Clause (a) of the section is restricted to the powers of the High Court only, since an appeal against an order of acquittal lies only to that court, while Clause (b) of the section is not so restricted and embraces all courts. The power to direct the accused to be retried has been conferred on the High Court not only when it deals with an appeal against acquittal but also when it deals with an appeal against conviction. [Section 386](#) Cr.P.C. reads as under:-

"Section 386:- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public



Prosecutor if he appears, and in case of an appeal under Section 377 or Section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may :-

(a) In an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) In an appeal from a conviction:-

(i) Reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of Competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) Alter the finding, maintaining the sentence, or

(iii) With or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;"

10. Under [Section 386\(a\)](#) and (b)(i), the power to direct retrial has been conferred upon the Appellate Court when it deals either with an appeal against judgment of conviction or an appeal against acquittal (High Court). There is a difference between the powers of an Appellate Court under Clauses (a) and (b). Under Clause (b), the Court is required to touch the finding and sentence, but under Clause (a), the Court may reverse the order of acquittal and direct that further enquiry be made or the accused may be retried or may find him guilty and pass sentence on him according to law.

11. Normally, retrial should not be ordered when there is some infirmity rendering the trial defective. A retrial may be ordered when the original trial has not been satisfactory for particular reasons like..., appropriate charge not framed, evidence wrongly rejected which could have been admitted or evidence admitted which could have been rejected etc. Retrial cannot be ordered when there is a mere irregularity or where it does not cause any prejudice, the Appellate Court may not direct retrial. The power to order retrial should be exercised only in exceptional cases.

12. *In K. Chinnaswamy Ready v. State of Andhra Pradesh and Another, AIR 1962 SC 1788*, the accused had been convicted by the trial court. The Sessions Court took the view that an important piece of evidence held against the accused was inadmissible and acquitted him. The High Court in revision by the de facto complainant held that the evidence held to be inadmissible by the Sessions Court was admissible and set aside the acquittal directing the accused to be retried on the same charges. The Supreme Court agreed with the High Court that the acquittal deserved to be set aside. In para (7), this Court has spelt out what could be termed as exceptional circumstances which reads as under:-

"7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by



the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4)....."(underlining added)

The same principle was again reiterated in *Mahendra Pratap Singh v. Sarju Singh and Another* AIR 1968 SC 707.

13. In *Matukdhari Singh and others v. Janardan Prasad*, AIR 1966 SC 356, accused was tried for offences under Sections 420, 466, 406 and 465/471 IPC and acquitted. The trial court did not frame charge under Section 467 IPC regarding which there were prima facie materials available, that is an offence triable exclusively by the Sessions Court. The High Court, in appeal, set aside the acquittal and ordered retrial. The Supreme Court dismissed the appeal preferred before it. The court referred to earlier decisions in *Abinash Chandra Bose v. Bimal Krishna Sen and Another* AIR 1963 SC 316 and *Rajeshwar Prasad Misra v. State of West Bengal and Another* AIR 1965 SC 1887 with reference to the facts of those cases and emphasized that wide discretion available with the Appellate Court in ordering retrial.



The P.O. concerned would have been dealt with in judicial side itself but on account of begriming the institution, it looks expedient in the interest of justice that matter be dealt with administratively and for that, is referred before the Standing Committee.

Accordingly, the judgment impugned is set aside. Both the appeals are allowed. The matter is remitted back to the learned lower Court to proceed a fresh right from the stage persisting on 08.05.2015 and will proceed further, in accordance with law. Bail bond of appellants are cancelled directing them to surrender before the learned lower Court within fortnight failing which, the learned lower Court will proceed against the appellants in accordance with law.

If there happens to be presence of appellants with a prayer for bail then, in that circumstance, the learned lower Court will adjudicate the same in accordance with law.

The office is directed to place the relevant documents, ordersheet after preparing shadow file of L.C. record at once before the Hon'ble Standing Committee for the needful.

(Aditya Kumar Trivedi, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

