

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.182 of 2015**

Arising Out of PS.Case No. -82 Year- 2012 Thana -BHABHU(KAIMUR) COMPLAIN C District-
BHABHUA (KAIMUR)

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Lallan Pasi, son of Sri Baijnath Pasi, resident of Village-Medha, P.S.-Ramgarh,
District - Kaimur (Bhabhua).

.... Appellant/s

Versus

1. The State of Bihar.
2. Narayan Seth @ Pakhru Seth, son of Moti Seth, Resident of Village - Masadhi,
P.S. - Ramgarh, District -Kaimur (Bhabhua).

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ravindra Kumar-Advocate

For the Respondent/s : Mr. A. K. Sinha-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 07-02-2018

None appears on behalf of appellant. This appeal is against the judgment of acquittal dated 02.08.2014 passed by the Additional Sessions Judge-1st, Kaimur at Bhabhua relating to S.C./S.T. Case No.486 of 2010/ 51 of 2010 arising out of Complaint Case No.82(C) of 2012.

2. At an earlier occasion while going through the record, it has been found that though vide order dated 07.05.2015, instant appeal was admitted, but the same was contrary to the spirit of Section 378 (4) of the Cr.P.C. as no leave petition was there and that being so, vide order dated 10.10.2017 as well as order dated 13.10.2017, appellant was directed to file petition for grant of leave



and the same has been filed. The Rules of the High Court at Patna, Chapter-XII, Rule-50, 51 also require exercise of aforesaid eventuality. Because of the fact that neither leave was prayed for nor leave was granted on account thereof, apart from having admission, instant memo of appeal suffers from inherent defect. The subsequent step having taken by the appellant/ complainant under the guise of order dated 10.10.2017 and 13.10.2017, would amount to revival of the appeal pre-admission stage, as ordered taking into account the principle decided by the Apex Court, allowing application of inherent power.

3. Thus, the matter has been gone through.

4. On account of dispute having arisen over filling of earth which the appellant/ complainant claimed to be over his land, protested over which, the accused, who happens to be husband of Mukhiya, abused by calling his caste name, followed with another activity at his end by way of filing petition before the Circle Officer for measurement of the land, which was done and then thereafter, the Circle Officer had directed to take proper step as provided under law, kept silence. On the other hand, on the alleged date of occurrence while he was removing soil, it has been alleged that respondent no.2/ accused along with some unknown person came, abused by his caste name and on protest, fired having a narrow escape and then thereafter, they have assaulted, torn cloth. On hue and cry, villagers came,



whereupon they managed to escape and for that, Complaint Case No.1180 of 2008 was filed and the same was sent to the local police for registration and investigation under Section 156(3) of the Cr.P.C. on the basis of which, Rohtas (Dehri) S.C./S.T. P.S. Case No.63 of 2008 was registered wherein after investigation, final form was submitted, which was accepted and on the basis of the protest having been filed on behalf of appellant/ complainant, Complaint Case No.82 of 2012 was registered, which ultimately met with the result, subject matter of instant appeal.

5. It is settled principle of law that whenever there happens to be judgment of acquittal and if, after perusal of the record, alternative findings could be drawn up, then in that circumstance, the judgment of acquittal would not be interfered with. From the evidence of witnesses which the learned lower Court had also taken into consideration discloses the fact that for the purpose of filling of road, the accused was putting soil as was entrusted with the aforesaid job. The learned lower Court had also taken into consideration the aforesaid fact and in the aforesaid background, the other activities as alleged, have been found under the garb of revengeful action due to presence of contradictory evidence of PWs, consequent thereupon, is not a fit case wherein the judgment impugned attracts interference.

6. Consequent thereupon, there happens to be no justifiable occasion to grant leave as a result of which, refused. That



being so, this appeal lacks merit and is accordingly, dismissed.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	08.02.2018
Transmission Date	08.02.2018

