

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1253 of 2017

Arising Out of PS.Case No. -52 Year- 2014 Thana -BIHPUR District- BHAGALPUR

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Nilesh Kumar @ Nilesh Kumar Singh, Son of Nagina Singh @ Lagina Singh, R/o
Village- Jairampur, P.S.- Bihpur, District- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar.
2. Amarjit Chaudhuri @ Pikku Chaudhuri @ Tikku Chaudhuri, Son of Late Nitya
Nand Chaudhuri @ Nityanand Chaudhuri, R/o Village- Sonbarsa, P.S.- Bihpur,
District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amrendra Kumar, Advocate.
For the Respondent/s : Mr. Sharda Nand Mishra, Advocate.
Mr. Deepak Kumar, Advocate.
Mr. Dhananjay Kumar Gupta, Advocated.

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

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 07-02-2018

1. Heard learned counsel appearing for the appellant,
learned counsel appearing for the respondent no. 2 as well as learned
Additional Public Prosecutor for the State.

2. This criminal appeal has been preferred against the
Judgment of acquittal dated 04.08.2017 passed in Sessions Trial No.
114 of 2015, by which and whereunder, the learned Ist Additional
Sessions Judge, Naugachia, Bhagalpur, acquitted the respondent no. 2
of the charges framed against him under Sections 304B and 201/34 of



the Indian Penal Code.

3. Learned counsel for the appellant submits that the learned trial court without ascertaining the service of summon upon the informant, closed the prosecution case in very hurried manner and acquitted the respondent no.2. He also submits that the learned trial court did not take any pain to get the informant and other witnesses examined in course of trial and, therefore, the impugned Judgment of acquittal cannot be sustained in the eye of law.

4. On the other hand, learned counsel appearing for the respondent no. 2 supports the impugned Judgment of acquittal arguing that, in course of trial, not a single prosecution witness supported the prosecution story and moreover, summons has been issued to informant, but even after getting the knowledge of pendency of the case, he did not appear before the trial court and, therefore, after showing the record to learned Public Prosecutor, the learned trial court closed the prosecution case and passed the impugned Judgment of acquittal.

5. Having heard the contentions of both the parties, we went through the record. From perusal of the Lower Court Records, we find that Bihpur P.S. Case No. 52 of 2014 for the offence punishable under Sections 498A, 304(B) and 201/34 of the Indian Penal Code was registered against respondent no. 2 and others on the



basis of the written report submitted by informant, Nilesh Kumar Singh, who happens to be the brother-in-law of the deceased. Further we find that after investigation police submitted charge sheet against respondent no. 2 and others. After submission of charge sheet, the cognizance of the offence was taken and subsequently, the respondent no. 2 was put upon the trial. However, we find that the charge against respondent no. 2 was framed on 03.02.2017 and the learned trial court ordered to issue summons to witnesses. However, the office of the learned trial court complied the order of the court on 15.03.2017, but the learned trial Judge without waiting service report closed the prosecution case on 26.07.2017 and thereafter passed the Judgment of acquittal on 04.08.2017. It is obvious from the aforesaid facts that no notice was ever served upon the informant nor the learned trial court took any coercive steps to procure the attendance of informant.

6. In view of the aforesaid facts and circumstances, we think it proper to dispose of this appeal on admission stage itself and, accordingly, the impugned Judgment of acquittal dated 04.08.2017 passed in Sessions Trial No. 114 of 2015 is hereby set aside and the case is remitted back to the court of Ist Additional Sessions Judge, Naugachia, Bhagalpur, to proceed with the trial afresh in the aforesaid Sessions case in accordance with law after ensuring the service of summons upon the informant and pass a fresh Judgment. The



respondent no.2 shall surrender before the court below and execute the fresh bail bonds of Rs.10,000/- with two sureties of like amount each to the satisfaction of the learned trial court. The Lower Court Records be returned to the concerned court immediately.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	09.02.2018
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