

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.607 of 2017

Arising Out of PS. Case No.-78 Year-1996 Thana- MALSALAMI District- Patna

Vivekanand Sharma Son of Late Maheshwaranand, Resident o f Mohalla-
Marfganj Hal di Patti Police Station- Malsalami, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Narayan Singh
For the Respondent/s : Mr. Sri Zainul Abedin

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 07-12-2018 This revision application has been preferred against the order dated 04.04.2016 passed in Criminal Appeal No. 138/2001, whereby and whereunder, the learned Additional District -VI, Patna City has dismissed the appeal filed by the appellant , against the judgment passed in Tr. No. 665/2000in Malsalami P.S. Case No. 78/96, in which, the petitioner stood convicted under Section 39/44 of the Electricitiy Act and was sentenced to undergo simple imprisonment of one year on the ground of non prosecution by the petitioner.

The ground taken for assailing the order passed by the earned Additional District -VI, Patna City is that the appeal filed by the petitioner was a statutory appeal and the learned Appellate Court ought not have dismissed the same only on the ground of non – prosecution by the petitioner especially when



the appeal was admitted, notice was issued to opposite party and lower court records were received. At best the appellate court might have appointed the *Amicus Curiae* and after hearing the case, should have disposed of the same. As such, the order passed by the learned Appellate Court is not sustainable in the eye of law.

Heard learned counsel for the State.

It appears from perusal of record that learned Appellate Court has dismissed the appeal of the appellant on the ground that the appeal was filed in the year 2001 and and it is more than ten years old and in view of the direction to dispose of the case, which are more than ten years old and since, the petitioner was not making any enquiry, thus the appeal was dismissed.

The appeal is a right given to a person and that right is statutory right and that cannot be taken away in a very mechanical way especially when the appeal was admitted and the records were received. The best course open to the Court either to issue notice to the petitioner or to appoint *Amicus Curiae* and hear the case but instead of doing so he has dismissed the appeal of the petitioner for non prosecution, which does not appear to be sustainable in the eye of law.



Accordingly, this revision application is allowed order dated order dated 04.04.2016 passed by learned Additional District -VI, Patna City in Criminal Appeal No. 138/2001, is hereby set aside. The matter is remitted back to the Appellate Court, who will hear both the partis and, thereafter, shall pass an appropriate judgment in accordance with law within a period of three months from the date of receipt/production of copy of this order.

Needless to say, the petitioner shall cooperate in expeditious disposal of trial.

(Vinod Kumar Sinha, J)

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