

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.762 of 2016**

Arising Out of PS. Case No.-47 Year-2010 Thana- CIVIL LINE District- Gaya

Nikki Kumari W/o Dharmendra Kumar, resident of Mohalla - Maranpur, P.S.-  
Civil Lines, District- Gaya.

... .. Petitioner

Versus

1. The State of Bihar
  2. Dharmendra Kumar S/o Late Karu Yadav.
  3. Kari Devi W/o Late Karu Yadav.
  4. Rudha Devi D/o Late Karu Yadav.
- 2 to 4 are resident of Mohalla- Maranpur, P.S.- Civil Lines, District- Gaya.

... .. Respondent

**Appearance :**

For the Petitioner/s : Mr.Sudhir Kumar Sinha  
For the Respondent/s : Mr.Sri Rajendra Singh Shastriji

**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**  
**ORAL JUDGMENT**

**Date : 07-08-2019**

No one appears on behalf of the petitioner, as last day also no one had appeared on behalf of the petitioner, adjournment had been granted and the case was directed to be posted today giving last indulgence to the petitioner. Today also nobody appears on behalf of the petitioner. As the case is of the year, 2016, this Court proceeds to dispose of the application on perusal of judgment and other materials available on the record.

2. This revision application has been directed against the judgment dated 26.4.2016 passed in Cr. Appeal No.58 of 2015, by which the learned Additional Sessions Judge-IVth, Gaya has affirmed the judgment dated 27.11.2015 passed by Sri Prakash



Kumar Sinha, Judicial Magistrate Ist Class, Gaya in G.R.No.526 of 2019, T.R.No.443 of 2015, convicting the appellants under Section 323 of the Indian Penal Code (hereinafter to be referred as 'the IPC') and releasing the Opposite Party Nos. 3 and 4 under Section 3 of the Probation of Offenders Act . The learned appellate court has modified the sentence of Opposite Party No.2 and allowed him also benefit of Section 3 of the Probation of Offenders Act.

3. Facts giving rise to this revision application in short is that the petitioner has filed a case under Section 341 and 323/34 of the IPC against the accused persons including the Opposite Party Nos. 2 to 4 , which was registered as Civil Lines P.S.Case No.47 of 2010. After investigation, charge-sheet has been submitted under Section 341, 323/34 of the IPC. Cognizance was taken. It further appears that evidence has been recorded and after conclusion of the trial the learned Magistrate has convicted the Opposite Party Nos. 2 to 4 under Section 323 of the IPC, however not found them guilty under Section 341 of the IPC and released the Opposite Party No.3 and 4 under Section 3 of the Probation of Offenders Act, considering their age and as they have no criminal antecedent and sentenced petitioner no.2 for S.I. for three months and fine of Rs.500/- and in default further sentence of 15 days.



4. Being aggrieved by the same, the Opposite Party Nos. 2 to 4 has moved before the Sessions Judge and filed an appeal bearing Cr. Appeal No.58 of 2015 and the learned Sessions Judge after considering the materials available on the record has confirmed conviction under Section 323 of the IPC of Opposite Party Nos. 2 to 4 and also confirmed the release of the Opposite Party Nos. 3 and 4 under Section 3 of the Probation of Offenders Act, however, instead of confirming sentence of Opposite Party No.2, directed him to be released on due admonition under Section 3 of Probation of Offenders Act.

5. Being aggrieved by the same, the present revision application has been filed by the petitioner on the ground that allowing Opposite Party Nos. 2 to 4 the benefit of probation of the Offences Act is against the provisions contained in the Code of Criminal Procedure Code as a case under Section 498(A) of the IPC and Section 307 of the IPC is also pending against Opposite Party Nos. 2 and 3 in different courts and also on the ground that allegation against the Opposite Party No.2 to 4 are serious in nature.

6. On perusal of this application as well as the judgment of the learned trial court as well as the appellate court, it appears that both the courts have convicted the Opposite Party Nos. 2 to 4



under Section 323 of the IPC and acquitted them from the charges under Section 341 of the IPC and further allowing the Opposite Party Nos. 3 and 4 to release under Section 3 of the Probation of Offenders Act. The above order has not been challenged by the petitioner before the learned appellate court and as such has taken finality. It further appears that in an appeal filed by the Opposite Party Nos. 2 to 4 the learned appellate court has also confirmed the order of the conviction under Section 323 of the IPC against the Opposite Party No.2 to 4 but instead of confirming the substantive sentence against the Opposite Party No.2 he has also allowed him benefit of Section 3 of the Probation of Offenders Act and directed him to be released on probation. There is absolutely nothing available on the record to show that the Opposite Party No.2 was having any previous conviction though the petitioner has come with a case that there is a case under Section 498(A) and 307 of the IPC against the Opposite Party Nos. 2 and 3 but merely pendency of the case will not debar the court from allowing the benefit of Section 3 and 4 of the Probation of the Offenders Act.

7. As I have discussed above, the petitioner has not moved against the conviction of the Opposite Party Nos. 2 to 4 under Section 323 of the IPC as well as acquittal under Section



341 of the IPC, as such on that point the judgment of the trial court has already taken finality .

8. In view of the discussions made above, I find no illegality in the judgment passed by the learned appellate court, as such this application appears to be devoid of merit, accordingly dismissed.

**(Vinod Kumar Sinha, J)**

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