

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.8 of 2018

Arising Out of Case No.-147 Year-1999 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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Arun Kumar Gupta Son of Shio Narayan Prasad Sah resident of Village -
Pildauri, P.S. - Sultanganj, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Mahendra Sah, Son of Late Ram Prasad Sah, resident of Village - Pildauri,
P.S. - Sultanganj, District - Bhagalpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ramchandra Sahni, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 27-08-2019

Heard learned counsel for the petitioner and learned APP
for the State.

2. Despite notice being validly served on opposite party
no. 2, nobody appeared when the matter was taken up and heard.

3. The petitioner has moved the Court under Sections
397 and 401 of the Code of Criminal Procedure, 1973 for setting
aside the judgment dated 27.07.2017 passed in Criminal Appeal
No. 10 of 2015 by the 3rd Additional District and Sessions Judge,
Bhagalpur by which the judgment and order of conviction and
sentence dated 28.11.2014 passed by the Judicial Magistrate, 1st
Class, Bhagalpur in Tr. No. 34 of 2014, arising out of Complaint
Case No. 147 of 1999, has been upheld.



4. The petitioner was accused in complaint case filed by the opposite party no. 2 of breaking the wall and entering into his house and committing theft. Upon trial, he was convicted under Sections 379 and 448 of the Indian Penal Code. However, giving the benefit of Section 3 of the Probation of Offenders Act, 1958 (hereinafter referred to as the 'Act'), he was released after due admonition. Challenge to the same by the petitioner in Criminal Appeal No. 10 of 2015 was also rejected by judgment dated 27.07.2017 passed by the 3rd Additional District and Sessions Judge, Bhagalpur.

5. Learned counsel for the petitioner submitted that there are no independent witnesses and further that the so called wall which is said to have been broken belonged to the petitioner and, thus, it is not believable that he would have broken his own wall. It was further submitted that there are no independent witnesses as all the witnesses are family members and, thus, interested. Learned counsel submitted that initially the opposite party no. 2 had filed a complaint before the police which, upon enquiry, was found to be untrue as witnesses had stated that the wall was broken by the opposite party no. 2 and his family members themselves and not by the petitioner.



6. At this juncture, when the Court put a query to learned counsel for the petitioner as to whether such fact was ever brought before the Trial Court or the Appellate Court, the answer is in the negative.

7. Learned APP submitted that the Trial Court as well as the Appellate Court's orders are well considered on every point and based on materials before the Court, especially deposition of witnesses. It was submitted that during cross-examination also the witnesses have stuck to their version and, thus, the conviction of the petitioner is sound, both in law as well as on facts. It was further submitted that the Court in its revisional jurisdiction would not go into the factual aspect which was never produced, either before the Trial Court or the Appellate Court. It was further submitted that ultimately the petitioner has been given the benefit under Section 3 of the Act and released after due admonition, which was an indulgence shown by the trial Court as his guilt had already been proved during full-fledged trial in which he had full opportunity to defend himself.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any ground to warrant interference in the judgments, of either the Trial Court or the Appellate Court, in its revisional



jurisdiction as the same are based on cogent material and well considered.

9. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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