

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.368 of 2018

Arising Out of PS. Case No.-202 Year-2016 Thana- BHAGWANPUR District- Vaishali

Rakesh Kumar Son of Amresh Ray, Resident of village- Mirapur, P.S.- Sakra,
District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Pramod Kumar, Son of Deep Narayan Sahni, Resident of Village- Hospital Road, Ward No. 16, P.S.- Khagariya, District Khagariya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. S. N. P. Sinha, Sr. Advocate with
Mr. Jitendra Narain Sinha, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 01-08-2019

Heard Mr. S.N.P. Sinha, learned senior counsel along with Mr. Jitendra Narain Sinha, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned APP for the State.

2. The petitioner has moved the Court under Sections 397 and 401 of the Code of Criminal Procedure, 1973 against the judgment and order dated 12.03.218 passed in Criminal Appeal No. 2 of 2018 by the Sessions Judge, Vaishali at Hajipur by which he has affirmed the judgment and order of conviction and sentence dated 04.01.2018 passed in Bhagwanpur PS Case No. 202 of 2016,



GR No. 4680 of 2016, TR No. 1351 of 2017 by the Additional Chief Judicial Magistrate-III, Vaishali at Hajipur.

3. The petitioner along with 4-5 others were accused in Bhagwanpur PS Case No. 202 of 2016 and faced trial under Section 393 of the Indian Penal Code. The allegation was that 5-6 armed persons had come in a Bolero vehicle and had stopped the Scorpio car of the informant in which he was travelling with his family and the petitioner is said to have pulled out the driver of the Scorpio and was sitting on the driver seat and when the police came other accused fled away in the Bolero whereas the petitioner was caught from the Scorpio.

4. Learned counsel for the petitioner submitted that in the FIR the allegation was that 5-6 armed persons were travelling in the Bolero which had stopped the Scorpio of the informant, but only three persons have been made accused. It was submitted that though the police have claimed that other two accused were caught and the Bolero seized but neither there is seizure of any vehicle nor of any fire arms. Learned counsel submitted that it was a simple case of road rage when there was altercation between the parties and because the petitioner had got down from his vehicle and was standing there, he was caught. It was submitted that had the petitioner been involved or wanted to commit any crime, he



would not have remained there and would have fled away and the fact that he was found at the spot and the police had arrested him shows that he had not committed any crime. It was further submitted that it is not alleged in the FIR that the petitioner was trying to run away. It was submitted that the petitioner has no criminal antecedent and has already undergone imprisonment for over one year and six months out of the total sentence of three years and fine of Rs. 4,000/-.

5. Learned APP submitted that the petitioner was caught from inside the Scorpio of the informant and, thus, he cannot plead innocence. It was submitted that the witnesses have also deposed with regard to the role of the petitioner in the crime.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the judgments of the Courts below are based on materials which are worth relying upon and proper appreciation of the same. However, in the background of there being a plausible explanation with regard to the presence of the petitioner where he was caught and the fact that he has no criminal antecedent and also that he has already undergone incarceration of over one year and six months, without interfering in the order of conviction, the Court is inclined to modify the sentence.



7. Accordingly, the application stands disposed off upholding the conviction of the petitioner but modifying the order of the Courts below with regard to the sentence to period of imprisonment already undergone. The fine of Rs. 4,000/- is also waived. The petitioner stands discharged of the liability of his bail bonds.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	
U	
T	

