

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1083 of 2018

Arising Out of PS. Case No.-10 Year-2012 Thana- NATHNAGAR District- Bhagalpur

Niranjan Prasad Sah

... .. Appellant

Versus

The State of Bihar and Anr

... .. Respondents

Appearance :

For the Appellant : Mr. Indeshwari Prasad Mandal, Adv.
For the Respondents : Mr. Bipin Kumar, A.P.P

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

8 07-02-2019 Heard the parties on the point of admission and
perused the record.

Initially, the present appeal was filed before learned Single Judge bearing Cr. App (SJ) No. 1710 of 2018 but subsequently, learned Single Judge of this Court vide order dated 11.07.2018 directed the appellant to address this appeal before the Division Bench and in pursuant to the aforesaid order dated 11.07.2018, the appellant converted the present appeal into Cr. App(DB) No. 1083 of 2018 and thereafter, the said appeal has been listed before us for hearing on the point of admission.



It would appear from perusal of the record that the present appeal has been preferred against the Judgment dated 09.03.2018 passed by learned 2nd Additional Sessions Judge, Bhagalpur in Cr. App. No. 38 of 2017 by which and whereunder, the learned 2nd Additional Sessions Judge, Bhagalpur set aside the Judgment of Conviction and Sentence Order dated 04.03.2017 passed by learned Additional Chief Judicial Magistrate, XIII, Bhagalpur in G.R. No. 129 of 2012 and, accordingly, acquitted the respondent no. 2 from the charges framed against him for the offences punishable under Section 420/34 and 467/34 of the Indian Penal code.

It is evident from the above stated fact that the present appeal has been preferred against the Judgment of acquittal passed by an Appellate Court. Section 393 of Cr.P.C says that “Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the case provided for in section 377, section 378, sub-section (4) of section 384 or Chapter XXX.” The bare perusal of Section 393 of the Cr.P.C goes to show that the aforesaid section does not permit to entertain an appeal against judgments and orders passed by an Appellate Court, except the conditions as mentioned in the aforesaid section itself. Therefore, in our view, this appeal is not



maintainable against the impugned judgment dated 09.03.2018 passed in Cr. App. No. 38 of 2017.

However, in course of hearing, learned counsel appearing for the appellant seeks permission to convert the present appeal into criminal revision.

In view of the aforesaid submission, the appellant is permitted to convert this appeal into criminal revision within four weeks.

The office should list this matter before appropriate bench under appropriate heading after four weeks if the conversion is made in accordance with law and rules.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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