

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.886 of 2019

In
SLA No.34 of 2019

Arising Out of PS. Case No.-2 Year-2011 Thana- PAROO District- Muzaffarpur

Nand Kishore Mishra aged about 72 years (Male) Son of Raj Mangal Mishra
Resident of Village/ Mohalla- Kolhua, Police Station- Kolhua, District-
Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Pramod Mishra Son of Raj Mangal Mishra Resident of Village/ Mohalla-
Kolhua, Police Station- Kolhua, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vijay Kumar @ Vijay Kr. Singh
For the Respondent/s : Mr. S.N.Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)

5 21-10-2019 Heard learned counsel appearing for appellant as

well as learned Additional Public Prosecutor for the State on the

point of admission.

This criminal appeal has been preferred against
judgment of acquittal dated 29.3.2019 passed by Judicial
Magistrate 1st Class, Muzaffarpur(West) in G.R. 02/2011/Tr. no.
450/2019, by which and whereunder learned trial court
acquitted the respondent No. 2 from the charges framed against
him under Sections 420, 467 and 468 of the Indian Penal Code.



In our view, the present appeal is not maintainable before this Court because the proviso of Section 372 of the Cr.P.C. gives right to victim to file appeal against judgment of acquittal and the aforesaid proviso of Section 372 says that appeal against acquittal shall lie to the court to which an appeal, ordinarily, lies against the order of conviction and sentence. Furthermore, Sub-clause (3) of Section 374 of the Cr.P.C. says that an appeal shall lie before the Sessions court against the judgment of conviction if the sentence is up to seven years.

However, in course of hearing, learned counsel appearing for appellant seeks permission to withdraw this appeal with liberty to file appeal against the impugned judgment of acquittal before the appropriate court.

In view of the aforesaid facts as well as submissions, this appeal stands dismissed as withdrawn with liberty to appellant to file appeal before the appropriate forum.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Spd/-

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