

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1557 of 2018

Arising Out of PS. Case No.-319 Year-2011 Thana- DEHRI TOWN District- Rohtas

Shyam Bihari Prasad Son of Brij Bihari Prasad. resident of Village- Mahabir
Bigha, Pali Road Dehri, P.O. and P.S.- Dihri, District- Rohtas Bihar
... Appellant

Versus

1. The State Of Bihar
2. Pankaj Singh, Son of Kameshwar Singh
3. Sintu Singh, Son of Kameshwar Singh. Sl.No. 2 and 3 are resident of
Village- New Diliya, Dihri, P.O. and P.S.- Dihri, District- Rohtas Bihar
4. Nishant Singh, Son of Amrendra Singh, resident of Village- Dihri, P.O. and
P.S.- Dihri, District- Rohtas Bihar
5. Ram Swarup Singh, Son of Parmeshwar Singh, resident of Village-
Sanathua, P.S.- Rishiup, District- Aurangabad Bihar

... Respondents

Appearance :

For the Appellant	:	Mr. N.K. Agrawal, Sr. Adv. with M/s Manoj Kumar, Raj Narayan Mishra & Kshem Sharma, Advs.
For the State	:	Mr. Binay Krishna, Spl.P.P.
For Respondents 2 to 5	:	Mr. Vikramdeo Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

7 27-06-2019 Heard learned counsel for the appellant, learned

Special Public Prosecutor along with the learned counsel for
respondents no. 2 to 5, who on their own appeared before
notice.

2. Appellant, who happens to be the informant, has
challenged the judgment of acquittal, dated 26.02.2018, passed
by Additional District & Sessions Judge 1st-cum-Special Judge,
Scheduled Castes and Scheduled Tribes (Prevention of
Atrocities) Act, 1989, Rohtas at Sasaram, relating to Dehri



Town P.S. Case No. 319 of 2011, Trial No. 62 of 2011 (State vrs. Pankaj Singh & Others), whereby and whereunder the learned lower Court has acquitted the respondents no. 2 to 5 giving benefit of doubt.

3. After going through the judgment impugned, as well as after hearing the respective learned counsels along with the learned Special Public Prosecutor, it looks imperative to decide this appeal at the admission stage itself on the ground of some sort of wrong appreciation/perception of the law having at the end of the learned lower Court, which could be properly adjudicated upon without calling for the lower Court record.

4. So far maintainability of this appeal is concerned, whatever privilege has been given to the victim by way of an amendment in the Criminal Procedure Code in the year 2008 relating to Section 372 of the Criminal Procedure Code, commanding the ambit, scope of Section 378 of the Criminal Procedure Code did not find applicable with regard to an appeal having been filed in accordance with Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. For better appreciation, Section 14A is quoted below :

“14A. Appeals.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2



of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973(2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.”

5. In order to properly acknowledge the enforcement of Section 14A, Section 4 of the Criminal Procedure Code is to be taken note of whereupon is quoted below :



“4. Trial of offences under the Indian Penal Code and other laws.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.”

6. It is needless to say that Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is a Special Act and time without number its validity has been tested. In the background of proper acknowledgment of Special Law guiding the procedure so prescribed thereunder, is found duly recognizable in accordance with Section 4(2) of the Criminal Procedure Code. When the same is duly recognizable then Section 14A carrying 2011(1) P.L.J.R., 1097 non-obstante clause, excludes the applicability of Criminal Procedure Code. So far mode of filing of an appeal is concerned, which, as is evident, irrespective of stage or the nature of the order save and except being an interlocutory order has been classified as an appealable order and that being so, the judgment impugned is



found an appealable order without having any kind of rigor over its maintainability in terms of Section 378 of the Criminal Procedure Code.

7. Then coming to the matter in hand, from the order, impugned, it is evident that learned lower Court has put reliance over the principle so laid down in a judgment reported in **2017(3) PCCR, 233 (Ganesh Jha @ Lalan Jha, vrs. the State of Bihar)** and, further, it has also been incorporated in the judgment impugned, that in the aforesaid judgment there happens to be reference of notification, dated 09.08.2015 which the learned lower Court would have corrected as was persisting error in the background of specific discloser in the earlier paragraph. When the judgment **Ganesh Jha @ Lalan Jha (supra)** has been gone through, it is evident that the Bench has relied upon the principle decided by the Division Bench reported in Smt. Ram Deni Devi vrs. the State of Bihar reported in 2011(1) P.L.J.R., 1097 and the same was very much clear from paragraph 7 of the judgment. So, the typographical error in the paragraph 8 as 09.08.2015 should have been seen by the learned lower Court in the background of paragraph 7. For better appreciation, the same is given below :

“7. Though the State Government in terms of Section



9 of the Act had relaxed the embargo so couched in terms of Rule-7, allowing A.S.I., S.I. of police to be competent to investigate the case under Notification dated 03rd June, 2002 and the same was published in official gazette of the State of Bihar dated 09th August, 2008 giving its retrospective effect since the day 31.03.1995, which happens to be the subject matter of adjudication in Smt. Ram Deni Devi and others vs. State of Bihar and others reported in 2011(1) P.L.J.R. 1097, wherein it has been concluded:-

“8. It may be noted that Section 9 of the Act of 1989 confers power upon the State Government to empower any government officer to exercise the power of a police officer by notification in the Official Gazette. It is, therefore, imperative that such notification has to be published in the Official Gazette of the State. Any notification issued in exercise of the said power unless published in the Official Gazette of the State would not be effective. In the present case though the impugned Notification was issued on 3rd June 2002 it was not published in the Official Gazette until 9th August 2008. It must, therefore, be



held that the impugned Notification became effective from the date of its publication in the Official Gazette i.e. on and from 9th August 2008.”

“18. For the aforesaid reasons, we declare that the impugned Patna High Court CR. APP (SJ) No.12 of 2015 dt.01-12-20176 Notification dated 3rd June 2002 is not ultra vires the Act of 1989 or the Rules made thereunder. It is further declared that the impugned Notification dated 3rd June 2002 has become effective from the date of its publication in the Official Gazette of the State of Bihar i.e. on and from 9th August 2008. Investigation and consequent prosecution lodged by a police officer empowered under the impugned Notification, though lower in the rank than a Deputy Superintendent of Police, on or after 9th August 2008 will be valid although the offence in question may have been committed prior to 9th August 2008. It is further declared that the investigation made by a police officer below the rank of a Deputy Superintendent of Police after the date of the Rules, i.e. 31st March 1995 and prior to 9th August 2008 and consequent prosecution will not stand validated by the impugned Notification dated 3rd June 2002 published on 9th August 2008.”



8. Further more, the said view has been affirmed by the Apex Court in State of Bihar & Ors. Vrs. Anil Kumar & Ors. reported in 2018(1) P.L.J.R., 149(SC) which the learned lower Court should have also taken note of.

9. I do not want to cast any kind of aspersion against the learned Presiding Officer concerned, but, it is advisable that before referring the relevant judgment, at least the judgment should be read out properly in order to ward off any kind of confusion otherwise such mistake is bound to occur which will also adversely affect upon the relevance of the judgment.

10. Learned counsel for the respondents no. 2 to 5 has submitted that on the facts also prosecution has no case. Be that as it may, because of the fact that relevant law has been wrongly perceived and that has also to be one of the grounds for acquitting the respondents no. 2 to 5 that being so, let a fresh exercise be at the end of the learned lower Court and for that purpose, after setting aside the judgment, impugned, the matter is being remitted back to the learned lower Court to hear both the parties and will pass judgment afresh in accordance with law. In like wise manner, respondents no. 2 to 5 are directed to be physically present before the learned lower Court with a prayer of bail within fortnight which the lower Court will



consider in accordance with law, failing which the learned lower Court will be at liberty to proceed against the absentee accused in accordance with law.

11. The appeal is **allowed** in terms as indicated here-in-above.

(Aditya Kumar Trivedi, J)

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