

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.895 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District-

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1. Md. Alquaman, son of Abdul Hamid
 2. M. Qaiyum, Son of Abdul Hamid
 3. Zarina Khatoon @ Karo, wife of Md. Ayub. All residents of village- Bhoj Pandaul Tole Hasanpur, P.S.- Bisfi, District- Madhubani.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Maitun Nishan, D/o Md. Mofiz. Resident of Village- Khairi Banka Tole Hasanpur, P.S.- Bisfi, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Md. Shahnawaz Ali, Advocate

For the Respondent/s : Mr.Shyam Kumar Singh, APP-138

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

6 29-04-2019 Opposite Party No.2, *Maitun Nishan*, who is wife of the petitioner is already dead, as per supplementary affidavit filed by the petitioner. In the circumstances, no notice be sent to opposite party No.2.

Heard learned counsel for the petitioners and learned counsel for the State.

This criminal revision has been preferred, under Sections 397 and 401 of the Code of Criminal Procedure, against the order dated 16.05.2017, passed by the learned Additional Sessions Judge-6th, Madhubani in Criminal Appeal No.47 of 1998.



The petitioners faced trial for the offences under Sections 498(A), 323 and 379 of the Indian Penal Code and were convicted by the learned trial judge and sentence of imprisonment was passed by judgment and order dated 18.04.1998, passed in C.R. No.724 of 1992, corresponding to Trial No.723 of 1998.

The conviction was challenged in Criminal Appeal No.47 of 1998, which was taken up by learned Additional Sessions Judge- 6th, Madhubani and by order dated 16.05.2017, the appeal was dismissed summarily, as the appellants were not appearing for hearing of the appeal.

Learned counsel for the petitioners submits that the learned lower appellate court has committed error of law in dismissing the appeal on merit without hearing learned counsel for the petitioners. Reliance has been placed on the judgment of the Hon'ble Supreme Court in ***Ram Naresh Yadav and Others Vs. State of Bihar***, reported in ***A.I.R. 1987 S.C., Page-1500***, wherein the Hon'ble Supreme Court held that :

“Dismissal of appeal for non-prosecution is permissible but appeal cannot be disposed of on merit unless accused or his counsel are heard”.

I find force in the submission of the learned counsel for the petitioners after going through the impugned order,



which does not even discuss the merit of the case, nor nature of allegation, nor nature of evidence available on the record and has dismissed the appeal in summary manner. Hence, the impugned order passed by the learned court below is hereby *set aside* and the matter is remitted back to pass necessary order, after hearing the parties.

Petitioners are in custody. Hence, let them be released at once on execution of bail bond of Rs.5000/- (Rupees Five Thousand) with two sureties of the like amount each.

Accordingly, this criminal revision stands *allowed*.

Let it be communicated to the court concern at once.

(Birendra Kumar, J)

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