

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1304 of 2018

Arising Out of PS. Case No.-81 Year-2013 Thana- POTHIA District- Kishanganj

MD. AGNU @ MD. AGHNU, Son of Md. Abdul, Resident of Village -
Suhagi, P.S. Pothia, Distt. - Kishanganj

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sri Nageshwar Prasad Mandal, Block Supply Officer, Pothia, Block, Distt. -
Kishanganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ravindra Kr Sinha No.2, Advocate Ms. Lalita Kumari-II, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Pandey, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 29-11-2019

Heard the parties.

2. The petitioner, in this application, under Section 397 read with Section 401 of the Code of Criminal Procedure, has challenged the order dated 30.08.2018 passed in Criminal Appeal No. 13 of 2017 whereby the learned lower appellate Court has dismissed the appeal and confirmed the judgment of conviction and order of sentence dated 17.07.2017 passed by Mr. Abhishek Kumar Mishra, learned S.D.J.M., Kishanganj, in CIS No. 4827 of 2014, arising out of G.R. No. 480 of 2013, corresponding to Pothia (Patharkata) P.S. Case No. 81 of 2013, registered under Section 414 of the Indian Penal Code and Section 7 of the Essential Commodities Act.



3. The prosecution case as disclosed in the First Information Report is that the petitioner was found carrying 90 litres of kerosene oil on a bicycle. On being asked by the informant-the Block Supply Officer, the petitioner reported that he had no valid paper for carrying the said kerosene oil. After investigation of the case, the police submitted charge-sheet for offence under Section 7 of the Essential Commodities Act only.

4. Learned counsel for the petitioner submits that the learned trial court failed to consider the requirement of law and by a composite order dated 17.07.2017 started a de nove trial which was not needed in the case and mentioned in the order that accused has pleaded guilt, whereas the accused petitioner had not pleaded guilt at the time when accusation was explained for the first time, on 15.07.2014. In fact, the accused had not pleaded the guilt nor the guilt has been recorded in the words of the accused as required by law. The learned lower appellate court failed to appreciate that the appeal was maintainable, at least, to the extent of legality of the sentence and the sentence awarded against the petitioner was wholly illegal, inasmuch as, in a summary trial, no sentence beyond a period of three months could have been passed whereas the learned trial court had passed sentence of one year.



5. On the other hand, learned counsel for the respondents submits that this Court should not interfere with the concurrent finding of the two courts below especially when the judgment of conviction is based on plea of guilt.

6. The lower Court record reveals that on 15.07.2014 accusation was explained to the petitioner and petitioner denied the charges. Apparently, the Court below was following a procedure of trial of “summons cases”. Order dated 15.07.2014 is being reproduced below:-

“अभियुक्त की हाजरी दी गई।

वाद के पुकार पर अभियुक्त अपने वि० अधिवक्ता के साथ न्यायालय में उपस्थित हुए। अभियुक्त को आवश्यक वस्तु अधिनियम की धारा 7 के अन्तर्गत आरोप का सारांश हिन्दी में सुनाया गया। अभियुक्त सुन व समझ कर दोष से इनकार किये तथा वाद विचारण की मांग किये । O/C साक्षी पर सम्मन निर्गत करें।

दिनांक 26.8.14 वास्ते साक्ष्य।

लेखापित
ह० अस्पष्ट
अनु० न्या० द०”

7. Thereafter, the case was running for evidence and on 12.01.2016, two prosecution witnesses were examined by the same Presiding Officer, who passed the impugned judgment. They are P.W. 1 Zakir Hussain, who stated that he does not know anything about the occurrence and P.W.2 Saiful Rahman. P.W.2 stated that his signature was obtained at the police station on blank paper.



8. Thereafter the case was running for further prosecution evidence. On 17.07.2017, the case was fixed for prosecution evidence. However, the learned trial Judge abruptly recorded an order dated 17.07.2017 stating therein that since cognizance has been taken under Section 7 of the Essential Commodities Act which relates to summary trial, it requires de novo trial. Again accusation was explained to the accused for offence under Section 7 of the Essential Commodities Act and it is mentioned in the order-sheet that the accused pleaded guilt. Thereafter, statement of the accused, under Section 313 Cr.P.C., was recorded wherein the petitioner admitted that he was carrying 90 litres of kerosene oil from the neighborhood for his agricultural purpose and on that very basis a judgment of conviction was recorded on the same day whereby the petitioner was sentenced to undergo imprisonment for one year for offence under Section 7 of the Essential Commodities Act.

9. The learned lower appellate Court dismissed the appeal simply on the ground that no appeal shall lie, if the accused has pleaded guilt in view of the bar under Section 375 Cr.P.C. However, the learned lower appellate Court failed to appreciate that even in a case of admission of guilt by the convict, the appeal is maintainable to the extent or legality of the sentence. Learned



lower appellate Court further failed to appreciate the infirmities in the trial Court judgment otherwise also, vitiating the whole judgment of conviction. Sub-section (2) of Section 262 Cr.P.C. which is in the Chapter of summary trials provides that **no sentence of imprisonment for a term exceeding three months** shall be passed in the case of any conviction under this Chapter. Hence, the sentence of one year was apparently against the law.

10. Section 262 Cr.P.C. provides that the procedures of trial of “summons cases” shall be followed unless specifically provided in the Chapter of summary trial. The procedure of trial of summons case provides (Section 251 Cr.P.C.) that the court shall state the particulars of the offence of which the accused is charged and shall ask the accused whether he pleads guilty or he has any defence to make. If the accused pleads guilty, **the Magistrate shall record the plea as nearly as possible in the words used by the accused and may in his discretion convict thereon.** Evidently, there is non-compliance of Section 252 Cr.P.C. for the reason that if the trial Court says that the accused had pleaded guilt, it must have recorded the plea of accused in the words of the accused whereas in the present case no such recording is there. The record reveals that statement of the two witnesses were recorded by the same Presiding Officer on 12.01.2016 who has



passed the judgment of conviction. The order dated 15.07.2014 reveals that on explanation of accusation, the petitioner had denied the charges, therefore, there was completely absence of any material to substantiate that this was a case of plea of guilt by the petitioner or a Court of de novo trial concluded by the same judgment/order.

11. Evidently, for the aforesaid reason, in my view, the learned trial Judge as well as the learned lower appellate court misdirected themselves in following the prescribed law and procedure. Hence, judgment passed by both the Courts below suffers from illegality, impropriety and error of record.

12. Accordingly, both the impugned judgments are hereby set aside and this application is allowed.

13. Registrar General shall bring this order to the notice of the Presiding Officers concern.

(Birendra Kumar, J)

Kundan/T.Kr.

AFR/NAFR	NA.
CAV DATE	NA
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