

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.787 of 2019

Arising Out of PS. Case No.-2294 Year-2009 Thana- PATNA COMPLAINT CASE District-
Patna

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Rajendra Prasad Gupta @ Rajendra Prasad Son of Late Gauri Prasad Gupta
@ Late Ganauri Prasad Gupta Resident of Mohalla-Prabha Batika, South
Chandmari Road, Dr. Ram Govind Path, Near Govind Enclave, P.O-Lohia
Nagar, P.S-Kankarbagh, District-Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. Krishna Kumar @ Krishn Kumar Son of Rajendra Prasad Gupta Resident of
Village-Paharpur Bazar, P.S-Simri Bakhtiarpur, P.O-Pajharpur Bazar,
District-Saharsa. At Present-Prabha Batika, South Chandmari Road, Dr. Ram
Govind Path, Near Govind Enclave, P.O-Lohia Nagar, P.S-Kankarbagh,
Patna.
3. Sarita Gupta @ Sarita Devi Wife of Krishna Kumar Resident of Village-
Paharpur Bazar, P.S-Simri Bakhtiarpur, P.O-Pajharpur Bazar, District-
Saharsa. At Present-Prabha Batika, South Chandmari Road, Dr. Ram Govind
Path, Near Govind Enclave, P.O-Lohia Nagar, P.S-Kankarbagh, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Anil Kumar Mukund, Advocate
For the Respondent/s : Mr.Nand Kishore Prasad

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 20-02-2020 Heard Mr. Anil Kumar Mukund, learned counsel for
the petitioner and learned counsel for the State.

This revision application has been preferred for
setting aside the judgment of the Appellate Court dated
08.05.2019 passed in Cr. Appeal No. 192 of 2017 by which the
learned Additional Sessions Judge-VII, Patna has set aside the
sentence awarded to the Opposite Parties for rigorous
imprisonment of one month and fine of Rs.500/- into one of



their release after due admonition. The judgment under revision shows that there were allegations that 5 accused persons including both the Opposite Party Nos. 2 and 3 herein caused hurt to the complainant in the night of 19.07.2009 and 21.07.2009. The complainant is none else but the father of the Opposite Party No. 2.

The allegation was that the Opposite Party No. 2 was demanding a sum of Rs.5 lakhs from the complainant for purpose of his business and when the complainant denied to give the demanded alleged amount then both the Opposite Party Nos. 2 and 3 caused hurt to the complainant by kicks, *gussa* and *danda*. Cognizance of the offences under Sections 323 and 506 I.P.C. were taken and then after framing of charges under those provisions the trial proceeded.

In course of trial, 8 prosecution witnesses were examined and the learned Trial Court held that the charges were proved against these Opposite Parties and accordingly they were convicted and sentenced to undergo imprisonment for one month under Section 323 I.P.C. with a fine of Rs.500/- each.

The learned Appellate Court considered the materials on the record and upon finding that the complainant, his wife and sons and some independent witnesses were also examined



and they have corroborated the case concluded that the act of the appellants were sufficient to constitute the offence punishable under Section 323 I.P.C.

On the question of sentence, however, the learned Appellate Court considered the social circumstances wherein it was found that the appellant no. 1 and the complainant are son and father and appellant no. 2 is the daughter-in-law and the offences for which they have been found guilty are of petty nature, the appellants belong to the same family and, therefore, a lenient view may be taken on the point of sentence and benefit of the provisions of Section 3 of the Probation of Offenders Act may be given to the appellants. The Appellate Court further observed that the case record also reveals that father, son and the daughter-in-law were all residing in the same house and there was no evidence on the record in respect of any previous conviction of the appellants. The case was lodged in the year 2009, the appellants were found guilty in the year 2017 and, therefore, the Appellate Court was of the view that the appellants-O.P. Nos. 2 and 3 had already suffered for a long period for petty offence therefore there is a need to modify the order of sentence.

Mr. Anil Kumar Mukund, learned counsel has



submitted before this Court that once the two appellants who are Opposite Party No. 2 and 3 herein have been found guilty of committing the offence under Section 323 I.P.C., the learned Appellate Court could not have taken a lenient view of the matter and the appellants were required to undergo imprisonment of one month as well as to pay the fine. It is also his submission that the appellant no. 1-O.P. No. 2 had been earlier convicted in a case.

Learned counsel for the State has, however, supported the appellate order and submits that the learned Additional Sessions Judge-VII, Patna has categorically stated while taking a view on the sentence that there is no evidence on case record in respect of previous conviction of the appellants.

This Court has perused the pleadings and the grounds mentioned in the present revision application it has neither been stated nor any ground has been taken in the revision application stating that the appellant no. 1 was previously convicted. The oral submission of learned counsel for the petitioner that the learned Appellate Court has shown a leniency despite that the appellant no. 1 had been previously convicted, therefore, has no basis to stand and is liable to be rejected. It is worth mentioning that the Appellate Court had categorically recorded that there



was no evidence on case record in respect of previous conviction of the accused and if that judgment was being assailed in this revision application without raising any ground to the contrary, this Court finds no reason to accept the mere bald submission at this stage.

In its revisional jurisdiction this Court is not supposed to impose its own opinion on the opinion of the learned Appellate Court. The social circumstances and conditions which have been taken into consideration and the fact that both the parties are son and father and daughter-in-law and they reside in the same family, if the appellate Court has while upholding the conviction taken a view that the appellants be given benefit of the provisions of Probation of Offenders Act, this Court finds no reason to interfere with the same at this stage.

Learned counsel for the petitioner at this stage submits that this Court should give some protection to the complainant.

Again in the present proceeding this Court finds no reason to go into such submission of the learned counsel for the petitioner as it is always open for the petitioner to seek his remedy as may be advised to him in the circumstances which may require an action at his end.



So far as this revision application is concerned, it is
dismissed.

(Rajeev Ranjan Prasad, J)

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