

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1353 of 2019

Arising Out of PS. Case No.-21 Year-1994 Thana- BENIPATTI District- Madhubani

HARISHCHANDRA MAHTO Son of Late Pitamber Mahto Resident of
Village-Sibesidhpur, P.S.-Lakhnaur, District-Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar, Adv
For the Respondent/s : Mr.Md. Matloob Rab, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 07-10-2020

The matter has been taken up through video conferencing.

2. Heard the parties.

3. The petitioner faced trial in G.O. Case No.1010 of 1994 corresponding to Trial No.03 of 2017. The learned Trial Judge at Benipatti, Madhubani recorded conviction under Sections 409 and 420 I.P.C. and sentence of 3 years of simple imprisonment has been awarded for both the offences aforesaid separately besides fine of Rs.3,000/- and 2,000/- respectively under the aforesaid Head. The petitioner challenged the aforesaid conviction in Cr.Appeal No.08 of 2017 which was dismissed on 10.07.2019 by learned Additional Sessions Judge- IV, Madhubani. Both orders of learned courts below are under challenge in this application



under Sections 397 read with 401 of the Code of Criminal Procedure.

4. The trial court judgment reveals that charge against the petitioner was that he joined on a public post by producing a forged joining letter.

5. Learned counsel for the petitioner submits that this petition may be disposed off after hearing on the sentence only without going into the merit of the case. His contention is that the learned court below did not consider the mandate of law in the matter of grant of benefit of the provisions of Probation of Offenders Act which was applicable in the present facts and circumstances of this case, as the petitioner was having no previous conviction in any other matter. According to learned counsel for the petitioner under Section 361 of the Code of Criminal Procedure as well as under the Probation of Offenders Act, the learned Trial Court is required to assign special reason for not giving benefit of Section 360 Cr. P.C. In the present case, the learned court below has recorded that the petitioner is responsible for embezzlement of public money. In fact there was no evidence that the appointment letter was forged by the petitioner nor the prosecution had brought any evidence to substantiate that the petitioner had knowledge that the appointment letter was a forged



one. Salary to the petitioner was paid for the work done which cannot be said to be a case of entrustment of property to attract conviction under Section 409 I.P.C. Moreover, the petitioner is in custody since last more than one year.

6. Considering substance in the submission aforesaid, the sentence passed against the petitioner is modified to the extent of period already undergone. Petitioner is exonerated from depositing the fine.

7. With the aforesaid modification, this application stands disposed off.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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