

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.119 of 2019**

Arising Out of PS. Case No.-4 Year-2011 Thana- MOTIHARI MUFASIL District- East
Champaran

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Dasrath Prasad Late Basudev Prasad Vill-Dhekaha Phakira Tola, P.S-Muffasil,
P.O-Dhekaha Bazar, Distt.-East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sukhdeo Prasad Late Ramdeo Prasad Vill-Fakira Tola, P.S-Muffasil, Distt.-
East Champaran
3. Kanhaiya Prasad Late Ramdeo Prasad Vill-Fakira Tola, P.S-Muffasil, Distt.-
East Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms. Vagisha Pragya Vacaknavi, Advocate
For the Respondent/s : Mr. Navin Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 13-12-2023 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The defect of complainant of East Champaran
Muffasil P.S. Case No. 04 of 2011, corresponding to Sessions
Trial No.829 of 2013, is the petitioner before this Court.

3. The trial of the said case was ended with conviction
under Sections 307, 341, 323, 324, 504, 506/34 of the I.P.C. by
the learned 1st Assistant Session Judge, Motihari. The accused
persons preferred an appeal before the learned Sessions Judge,
Motihari. The trial of the case was finally taken up by the
learned Additional Sessions Judge-9th at Motihari. By a



judgment dated 28.09.2018 the petitioner/accused persons/ opposite parties were acquitted of charge under Section 307 of the I.P.C. The appellate court though found the petitioner guilty for committing offence under Section 323, 324, 341 of the I.P.C., they were granted benefit of Probation of Offenders Act, 1958. The defect of complainant being aggrieved has challenged the legality, validity and propriety of the order by filing the instant revision.

4. This Court is of the view that an order of acquittal under Section 307 of the I.P.C. is appealable. An order of conviction under Section 323/324/341 of the I.P.C. and prayer for enhancement of sentence can also be made by filing an appeal.

5. Therefore, the remedy of the petitioner lies in the Court of appeal.

6. Under such circumstances, the petitioner/defect complainant is at liberty to withdraw the instant revision and file appropriate appeal before the competent court of appeal.

7. Since the defect of complainant was proceeding diligently in a wrong forum, the period of limitation in filing the appeal may be considered by the appellate court sympathetically. The learned advocate for the petitioner is also



permitted to take back the certified copies of the judgments from the record of the instant revision replacing the same with the photostat copies of the judgment.

Accordingly, the present criminal revision stands disposed of.

(Bibek Chaudhuri, J)

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