

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1023 of 2017

Arising Out of PS. Case No.-943 Year-1996 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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Ashutosh Kumar Das Son of Late Ramni Mohan Das, R/o Mohalla- Dalhatta,
P.S.- Kotwali, District- Munger.

... .. Petitioner/s

Versus

1. State of Bihar
2. Leena Das, wife of Ashutosh Kumar Das, resident of village- Mohaddinagar,
Mirzanhat, P.S. Mojahidpur, Distt- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Pandey, Adv.
For the Respondent/s	:	Mr. Narsingh Tanti, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 08-05-2023

Learned counsel for the petitioner and learned
A.P.P. for the State present.

Counsel for the petitioner submits that the present
criminal revision application has been filed against the judgment
and order of conviction dated 17.08.2016 passed by the learned
4th Additional Sessions Judge, Bhagalpur in Cr. Appeal No. 25
of 2006 arising out of judgment and order dated 07.03.2006
passed by the learned J.M. 1st Class, Bhagalpur in Complaint
Case No. 943 of 1996 by which the petitioner has been
convicted under Section 323 of the I.P.C. for six months and
under Section 498A of the I.P.C., simple imprisonment for two
years. It was also directed that sentence shall run concurrently

and the period of custody may be set off.

Counsel for the petitioner submits that the order impugned is basically an illegal order and passed in gross violation of Section 385 and 386 of the Cr.P.C. contending that the appellant was not appearing since last many days but all of a sudden on 17.08.2016, Court without hearing the arguments of the counsel for the appellant has passed order on merit. Therefore, according to him, the said impugned order should be set aside and matter be remitted back before the Appellate Court to pass order after complying the provisions laid down under Sections 385 and 386 of the Cr.P.C.

Counsel for the State submits that from the record, particularly, from Annexure-3 *i.e.* order dated 17.08.2016 and from the order of different dates prior to the said date of judgment in Cr. Appeal No. 25 of 2006, which is part and parcel of the original records that appellant was not appearing since last many days and the order impugned has been passed without hearing the parties.

It transpires from the record that notices were issued upon O.P. No. 2 in this case on 13.02.2018.

Counsel for the O.P. No. 2 has appeared through *Vakalatnama* but today, at the time of hearing, he is not present

before the Court to defend his stand.

After going through the provisions of Sections 85 and 86 of the Cr.P.C. which narrates as follows:

“85. Release, sale and restoration of attached property.- (1) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(2) If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under Section 84 has been disposed under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

(3) If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, under sub-section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

86. Appeal from order rejecting application for restoration of attached property.- Any

person referred to in sub-section (3) of Section 85, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of the first-mentioned Court.”

Upon going through the records that the present petitioner who is appellant there, was not appearing consistently since last many days. Even then the Court has passed final order in which a single word has not mentioned that whether appellant has argued or not argued the case.

In this view of the matter, the judgment and order of conviction dated 17.08.2016 passed by the learned 4th Additional Sessions Judge, Bhagalpur in Cr. Appeal No. 25 of 2006 arising out of judgment and order dated 07.03.2006 passed by the learned J.M. 1st Class, Bhagalpur in Complaint Case No. 943 of 1996 is hereby set aside and the Appellate Court is directed to hear the appellant, State and informant fixing a date within three months from today and pass order on merit.

It is made clear that appellant and informant both shall appear before the Trial Court on the date fixed. If the appellant shall start evading his appearance, then the Sessions

Court is directed to appoint advocate through Legal Services Authority and upon hearing him, pass the final order/ judgment without fail within three months from today.

With this observation, the present criminal revision application stands allowed.

(Dr. Anshuman, J.)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	