

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.855 of 2022

Arising Out of PS. Case No.-148 Year-2017 Thana- NAWADA District- Nawada

Syed Shah Saulat Fahmi Bari @ Fahmi Bari S/O Late Syed Shah Abdul Bari
R/O- Maroofganj, Nala Road, P.S.- Kotwali, District- Gaya

... .. Appellant

Versus

1. The State of Bihar
2. The State Of Bihar Through Vigilance Department , Bihar, Patna
3. Soni Devi Wife Of Pappu Yadav Resident Of Paura, Ps- Nagar (Kadirganj), Distt- Nawada
4. Pappu Yadav Son Of Chando Yadav @ Chandeshwar Yadav Resident Of Paura, Ps- Nagar (Kadirganj), Distt- Nawada

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ansul, Adv.
	:	Mr.Md. Fazle Karim, Adv.
For the Vigilance	:	Mr.Arvind Kumar, Adv.
For the Resp. No. 2 & 3	:	Mr. Deepak Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 05-03-2024

Heard Mr. Ansul, learned Advocate assisted by Md.

Fazle Karim, learned Advocate for the appellant and Mr. Deepak Kumar, learned Advocate who has entered appearance on behalf of respondent nos. 3 and 4. The State is represented through Mr. Arvind Kumar, learned Advocate for the Vigilance.

2. This appeal has been preferred for setting aside the judgment dated 03.08.2022 passed by learned Special Judge, Vigilance, Patna in Special Case No. 12 of 2017 which arose out of Nawada Town (Kadirganj) P.S. Case No. 148 of 2017 dated



10.03.2017 registered for the offences under Sections 420, 409, 467, 468, 471 and 120B of the Indian Penal Code (in short 'IPC') read with Section 7/13(a) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act') and Section 4 of the Prevention of Money Laundering Act, 2002. By the judgment under appeal (hereinafter referred to as the 'impugned judgment'), the learned Special Judge, Vigilance, Patna has acquitted the accused-respondent nos. 3 and 4.

3. It is the grievance of the appellant that the learned Special Judge, Vigilance Court, Patna has acquitted the respondent nos. 3 and 4 on erroneous grounds without proper appreciation of the evidences available on record.

4. A perusal of the records would show that the Nawada (Town) P.S. Case No. 148 of 2017 was instituted on the basis of an inquiry conducted by the Criminal Investigation Department (CID), Bihar, Patna as per direction/order dated 14.12.2016 passed by this Court in C.W.J.C. No. 7769 of 2014 (Fahim Bari Vs. The State of Bihar).

5. The Additional Director General of Police, Patna conducted the inquiry on the direction of this Court and on the basis of the said inquiry report, this Court issued further direction to conduct proper investigation in the matter.



6. The allegations which surfaced during the inquiry have been summarized in the impugned judgment and the same are being taken note of as under:-

“a) There have been irregularities, misappropriation and fraud committed in demarcation of land.

b) There have been irregularities and misappropriation committed in various schemes during the tenure of accused Soni Devi, w/o Pappu Yadav, Mukhiya, Pawara Gram Panchayat, P.O. Qadirganj, P.S. and District Nawada in execution of various schemes including that under the MANREGA and Indira Awas Yojna. It also alleged that job card holder also informed that they were not paid through bank or Post Office rather they were paid by Pappu Kumar.

c) The report further shows that assets acquired by accused Soni Devi and her husband Pappu Yadav who are husband and wife, are not readily explainable with regard to the income disclosed by them. The accused persons amassed huge assets during their tenure. They have also invested the ill gotten money. It is also alleged that during the period from 2006 to 2016 they have declared their assets to the tune of Rs. 50,00,000/-, but they have shown their income only as Rs. 60,000/-.

d) It is also alleged that during the period 2010 to 2013 there were numerous communal incidents and during the same period there has been numerous acquisition of land by accused Soni Devi and among them quite a few relates to those from minority community. Thus, it shows that there appears to be some nexus between the communal disturbances and the land dealings.

e) It is also alleged that the accused persons and their family members have numerous criminal antecedent.”

7. On the basis of the said inquiry report, after institution of the case, the same was investigated and upon completion of



investigation, the I.O. submitted the charge-sheet no. 760 of 2018 under various sections of the IPC and Section 7/13(a) of the PC Act as also under Section 4 of the Prevention of Money Laundering Act against two accused persons (respondent Nos. 3 and 4). After supply of police papers, the charges were framed against respondent nos. 3 and 4, they were explained the charges and on their denial to the same, respondent nos. 3 and 4 were tried.

8. On behalf of the prosecution, altogether 12 witnesses were examined and various documents were marked exhibits which may be found mentioned in paragraphs '7', '8' and '9' of the impugned judgment.

9. After the prosecution evidence is closed, the statement of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied the alleged occurrence and claimed that they have been falsely implicated in this case.

10. The learned trial court having discussed the prosecution evidences and all other materials which were on the record concluded that all the alleged offences are based on the documentary evidences as per the allegation, but the prosecution had miserably failed to produce all such forged and fabricated documents. It has been further held that there is no oral evidence of any beneficiary of MANREGA or Indira Awas Scheme saying that he had/has been cheated at the hands of both the accused persons or



has/had committed breach of trust in respect of their wages or funds allotted towards Indira Awas Scheme.

11. The learned trial court found that the documents produced by the prosecution are the xerox copy which were not duly proved as secondary evidence in accordance with Section 65 of the Indian Evidence Act.

12. In ultimate analysis, the learned trial court held that the prosecution had not been able to prove the charges against the accused persons beyond all reasonable doubts. Hence, both the accused persons (respondent nos. 3 and 4) were acquitted from the charges. While parting with the judgment under appeal, the learned trial court has pointed out as to how the three investigating officers of the case who had been entrusted with the work of the investigation had failed to record the statement of the inquiry witnesses and they had not recorded the statement of any witnesses.

13. The learned trial court has, therefore, marked a copy of the judgment to the Director General of Police, Bihar, Patna and Additional Chief Secretary, Vigilance for information and needful.

14. Mr. Ansul, learned counsel for the appellant submits that the learned trial court could not appreciate that all the prosecution witnesses have supported the case of the prosecution and the learned trial court ought to have considered the statement of PW 7 who has stated about the irregularities in the Indira Awas Scheme



and regarding source of income of respondent nos. 3 and 4. Learned counsel submits that the learned trial judge ought to have considered the statement of PW 9 who has stated that he found irregularities in MANREGA, pond and plantation. It is submitted that PW 11 had himself appeared and stated that he had constituted the team and conducted investigation into the matter and requested the officials at District offices to provide requisite documents.

15. On the other hand, Mr. Deepak Kumar, learned counsel for respondent nos. 3 and 4 submits at the outset that this appeal cannot be maintained by and at the instance of the present appellant. It is submitted that the present appeal has been preferred under Section 378 of the Cr.P.C. Learned counsel submits that according to Section 378, “save as otherwise provided in Sub-Section (2) and subject to the provisions of sub-Sections (3) and (5), the District Magistrate may, in any case, direct the public prosecutor to present an appeal to the court of session from an order of acquittal passed by a magistrate...” and further the State Government may in any case direct the public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court. Learned counsel submits that by virtue of proviso to Section 372 Cr.P.C. under Chapter XXIX of the Code of Criminal Procedure a victim shall have right to prefer an appeal against any order passed by the court acquitting the accused



or convicting for a lesser offence or imposing inadequate compensation and such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.

16. It is pointed out that so far as the present appellant is concerned, he had no doubt filed the writ application being C.W.J.C. No. 7769 of 2014 and in the said writ application, this Court had passed the order directing the CID to inquire into the matter and then further directions were issued to conduct proper investigation but that was the end of the matter. This appellant is neither the informant of the case nor was he part of the investigation as a witness in this case and had not been examined in course of trial. Learned counsel submits that the very *locus standi* of the appellant in this appeal would be at the stake. If the appellant does not confirm to the provision of proviso to Section 372 of the Code of Criminal Procedure, this Court being a court of appeal is governed by the provisions of Cr.P.C. so the present appeal cannot be maintained at the instance of the appellant.

17. Mr. Ansul, learned counsel for the appellant does not dispute that in this case the appellant has not claimed that he is the victim of the alleged offence. It is not disputed that this appellant had never been part of the investigation and had not deposed in course of trial.



18. In view of the admitted position that this appellant is neither victim nor been a witness in this case at any stage, this Court is of the considered opinion that the present appeal cannot be maintained at his instance.

19. This appeal is dismissed but with a cost of Rs. 10,000/- (rupees ten thousand only) which will be deposited by the appellant with the Patna High Court, Legal Services Committee.

20. This Court has not made any observation on the merit of the impugned judgment leaving it open for the State to take a view.

(Rajeev Ranjan Prasad, J)

(G. Anupama Chakravarthy, J)

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CAV DATE	
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