

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.692 of 2023

Arising Out of PS. Case No.-6 Year-2004 Thana- KATIHAR (R.T) District- Katihar

SHIV BALAK RAI @ SHIV BALAK RAY S/O LATE NAGO RAI
VILLAGE- GANGA PRASAD, PS. TEGHRA, DIST. BEGUSARAI

... .. Petitioner/s

Versus

1. The State of Bihar
2. MD. JAMIL AKHTAR SON OF LATE SK SAZID RESIDENT OF
VILLAGE - DASPATTAR, P.S. - SADAR, DISTRICT - PURNEA

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Bimal Kumar, Adv.

For the Respondent/s : Mr.Rajendra Prasad Nat, APP

CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL ORDER

7 08-08-2024 With consent of both the parties, heard finally.

2. This revision petition has been preferred by the petitioner being aggrieved with the judgment dated 24.06.2019 passed by learned District and Sessions Judge, District- Katihar in Cr. Appeal No. 07/2018 whereby the learned Sessions Judge affirmed the judgment of conviction and sentence dated 10.12.2007 passed by the learned Railway Judicial Magistrate, Katihar in connection with G.R. Case No. 08/2004 whereby the learned Railway Judicial Magistrate, Katihar convicted the applicant for the offence punishable under Sections 384 and 426 I.P.C.

3. According to case of prosecution, on 19.01.2004,



the informant/ complainant Md. Jamil Akhtar had come from his village and was intending to go to Allahabad by Mahananda Express. He purchased the ticket and came on platform no. 8. Allegedly, the applicant/ accused who was the coolie demanded Rs. 20,000/- from the informant and there was a scuffle between informant and the applicant and allegedly during the said scuffle, the belt of wrist watch of the petitioner was broken and Rs. 20/- has been also obtained by the applicant as extortion from the informant. The matter was reported by the complainant and on basis of that, FIR was registered. After completion of investigation, chargesheet was submitted before the learned Judicial Magistrate.

4. The Learned Judicial Magistrate framed charges under Sections 384, 426 of I.P.C. To establish its case, the prosecution examined as many as five witnesses before the learned Judicial Magistrate. After conclusion of trial, the learned Judicial Magistrate convicted the applicant for the offences punishable under Sections 384, 426 of I.P.C. and sentenced him to undergo rigorous imprisonment of three years and one month respectively for both the offences.

5. Being aggrieved with the said judgment of conviction a Cr. Appeal being Cr. Appeal No. 07/2008 has been



preferred by the applicant which has also been dismissed by the learned Appellate Court vide order dated 24.09.2019. The learned Appellate Court also affirmed the said conviction and order of sentence imposed by the learned Judicial Magistrate. Hence, this revision petition has been filed.

6. Learned counsel for the petitioner would submit that he does not want to argue the matter on merits and confined his argument only on the sentence part of the applicant. He further submits that the applicant is aged more than 60 years and he is also suffering from various diseases including heart disease. Learned counsel further submits that during the trial the applicant had remained in jail for 1½ month and during the pendency of this revision petition, he has surrendered on 19.09.2023 and provisional bail has been granted to him on 25.01.2024 by a Co-ordinate Bench of this Court. Thus, he had remained in jail for 4 months, 15 days in jail, thereby he has already undergone 6 months in jail in this case. Learned counsel further submits that he does not have any criminal antecedent. Therefore, learned counsel prays that the applicant may be sentenced already undergone by him in this case.

7. Learned counsel for the State opposes the prayer of learned counsel for the petitioner and submits that considering



the gravity of offence, the learned Trial Court as well as learned Appellate Court rightly imposed the sentence to undergo rigorous imprisonment of three years and one month respectively for both the offences as mentioned hereinabove.

8. Heard both the parties.

9. Considering the submission made by both the parties and further considering the fact that the petitioner is an aged person and suffering from various diseases and has also retired from service and further considering the fact that he is facing this *lis* from last 18 years and that he has no criminal antecedent and has already undergone about 6 months in jail in this case. Hence, it would be inappropriate to sentence him the imprisonment already undergone by him in this case. It is ordered accordingly.

10. Accordingly, this revision petition is disposed of.

11. Let a copy of this order be sent to the concerned court below to do the needful.

(Arvind Singh Chandel, J)

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