

Sk. Mainu @ Mainuddin Vs. the State of Bihar

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Court : Patna

Decided On : Dec-14-2009

Judge : Mandhata Singh, J.

Appellant : Sk. Mainu @ Mainuddin

Respondent : The State of Bihar

Disposition : Petition allowed

Judgement :

Mandhata Singh, J.

1. Three persons including this petitioner were seen with two 'paries'. The petitioner was apprehended while two of them fled away from there. The matter was investigated. After some time charge sheet was submitted. The petitioner faced trial for the offence under Section 414 of I.P.C. and he was convicted by the trial court which has been affirmed by the appellate court also.

2. The grievance of the learned Counsel for the petitioner is that the appellate court did not consider the infirmities and points raised. Judgment of the appellate court mentions the brief of fact, witnesses examined in the case, the defence, statement recorded under Section 313 of Cr.P.C.

3. After perusal of the record I find substance in the submission of the petitioner advanced by the learned Counsel for the petitioner. In concluding portion of paragraph 8 the learned Additional Sessions Judge 1st, Araria for reaching the conclusion has observed as follows:

After that he has not done any pairvy it means appellant has got no intrest in this case and he has nothing to say against the order and Judgment of conviction passed by the lower court.

4. Section 374 of Cr.P.C. mentions about appeal against conviction which shall be presented in a form of petition in writing. That can be summarily dismissed under Section 384 of Cr.P.C. In case that is not dismissed summarily then the procedure for hearing under Section 385 of Cr.P.C. and on ward applies.

5. Section 386 of Cr.P.C. casts duty upon the appellate court that after perusing the record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, the appellate court may dismiss or deviate from the decision/finding by interfering with the same. That means to say that appeal should be decided on its merit.

6. This point was brought before the Hon'ble Supreme Court by filing Cr. Appeal No. 82 of 1985 and decided on 9.7.1986 reported in A.I.R. 1996 SC 2439 laying down the same principle in conformity with what is observed above. Para 14 of the above decision runs as follows:

14. We have carefully considered the view expressed in the said two decisions of this Court and, we may state that the view taken in Shyam Deo's case AIR 1971 SC 1606 appears to be sound except for a minor clarification which we consider necessary to mention. The plain language of Section 385 makes it clear that if the appellate Court does not consider the appeal fit for summary dismissal, it 'must' call for the record and Section 386 mandates that after the record is received, the appellate Court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record.

The law clearly expects the Appellate court to dispose of the on merits, not merely by perusing the reasoning of the trial Court in the Judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial Court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav's case AIR 1987 SC 1500 that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution.

7. After the above discussions this revision petition is allowed. Judgment and order passed by the appellate court affirming the conclusion of the trial court is set aside and the case is sent back to decide the same afresh on merit. The first date which shall be fixed by the appellate court is 15th of March, 2010 on which date the petitioner as well as the Public Prosecutor will remain present for hearing there after to another date as may be decided by the appellate court.

8. In the meantime, let the above named petitioner be enlarged on bail on furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the 1st. Additional Sessions Judge, Araria in Cr.A. 130 of 1996/Tr. No. 2/1997.

9. Let this order be faxed at the cost of the petitioner.

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