
(2013) 10 PAT CK 0016

In the Patna High Court

Case No : Criminal Revision No. 88 of 2003

Anwarul Haque @ Bahrul

APPELLANT

Vs

State of Bihar and S.K. Khairuddin

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 244
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2013) 10 PAT CK 0016

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Md. Helal Ahmad, for the Appellant; Madan Kumar, APP, for the Respondent

Judgement

Aditya Kumar Trivedi, J.—Petitioner has assailed judgment dated 16.02.1994 passed by Sri. Suresh Chandra Srivastava, Judicial Magistrate-1st Class, Katihar in Complaint Case No. 890/1990 (S.K. Khairuddin v. Anwarul Haque) convicting the petitioner for an offence punishable under Sections 420 IPC and sentenced him to undergo RI for two years as well as judgment dated 19.09.2001 passed by Additional Sessions Judge, IInd Katihar in Cr. Appeal No. 22 of 1994 dismissing the same. After going through lower court record, it is evident that there is gross error persisting. After having evidence recorded u/s 244 of the Cr. P.C., petitioner was charged for an offence punishable under Sections 406, 420 of the IPC. From perusal of the trial court judgment, it is evident that the learned lower court had dealt with evidence and concluded by holding the petitioner guilty for an offence punishable u/s 420 of the IPC but nothing has been recorded with regard to Section 406 of the IPC. That means to say, the judgment did not speak as to whether an offence u/s 406 is made out or not. The judgment of learned trial court is totally absent with regard to application of Section 406 of the IPC and having conclusion thereupon whether prosecution has been able to substantiate the same or not or the petitioner has been acquitted therefor or not. That means to say appreciation of Section 406 IPC has been kept in abeyance.

2. The appellate court under para-4 of the judgment had taken note of it but it also kept mum due to reason best known to it which the learned appellate court should have and ought to have given his finding.

3. From the judgment of the appellate court, it is apparent that the petitioner, who was appellant before the learned appellate court was not represented nor the court took assistance in terms of amicus curiae and the judgment of the appellate court, on that very score is found deficient one because of the fact that save and except PW-5, the complainant, evidence of none other witness has been taken into consideration.

4. The Hon''ble Apex Court in the case of K.S. Panduranga Vs. State of Karnataka, has held that it is not obligatory on the part of the court to wait for appearance of learned counsel for the appellant for infinite period because of the fact that so many events would have affecting smooth function of the court and summarized the same under paragraphs-36 and 37 thereof which are follows:-

36. In view of the aforesaid annunciation of law, it can safely be concluded that the dictum in Mohd. Sukur Ali (supra) to the effect that the court cannot decide a criminal appeal in the absence of counsel for the accused and that too if the counsel does not appear deliberately or shows negligence in appearing, being contrary to the ratio laid down by the larger Bench in Bani Singh (supra), is per incuriam. We may hasten to clarify that barring the said aspect, we do not intend to say anything on the said judgment as far as engagement of amicus curiae or the decision rendered regard being had to the obtaining factual matrix therein or the role of the Bar Association or the lawyers. Thus, the contention of the learned counsel for the appellant that the High Court should not have decided the appeal on its merits without the presence of the counsel does not deserve acceptance. That apart, it is noticeable that after the judgment was dictated in open court, the counsel appeared and he was allowed to put forth his submissions and the same have been dealt with.

37. At this juncture, we are obligated to state that in certain cases this Court had remitted the matters to the High Court for fresh hearing and in certain cases the burden has been taken by this Court. If we allow ourselves to say so, it depends upon the facts of the each case. In the present case, as we perceive, the High Court has dealt with all the contentions raised in the memorandum of appeal and heard the learned counsel at a later stage and, hence, we think it apposite to advert to the contentions raised by the learned counsel for the appellant as regards the merits of the case.

5. When both the judgments have been taken together for proper scrutiny, it is apparent that at one occasion the learned trial court had committed illegality, at the other occasion the learned appellate court too committed the same mistake. The aforesaid mistake, as is evident, has been on account of non sensitization of the appellate court because of the fact that in that circumstance, when there is absence of learned counsel for the appellant, the appellate court is required to

see the relevant grounds so taken in memorandum of appeal inconsonance with the evidence available on the record to come to the just conclusion. Non appreciation of evidence of other witnesses by the appellate court while adjudicating upon the matter did not justify its continuance and in likewise manner on account of failure on the part of trial court to deal with evidence regarding 406 of the IPC happens to be.

6. Consequent thereupon, both the judgments are set aside. The petition is allowed.

7. The matter is remitted back to the learned trial court to proceed afresh from the stage of hearing of argument and will pass judgment in accordance with law without being prejudiced by the instant judgment.

8. Petitioner is on bail. His bail bond is cancelled and is directed to surrender before learned lower court. In case, there is delay on the part of the petitioner, then in that event, learned trial court will proceed in accordance with law for procurement of appearance of petitioner. Office is directed to return back the record along with judgment to the trial court at an earliest.