

(2013) 07 PAT CK 0083
In the Patna High Court
Case No : Criminal Appeal No. 7 of 2005

Arun Kumar Jaiswal

APPELLANT

Vs

Kailash Chandra Agrawal and The State of Bihar

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 409, 420

Citation : (2013) 07 PAT CK 0083

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Advocate : Sujit Kumar Singh, Assistant Public Prosecutor for the State and Mr. R.S. Pradhan and Mr. Jainandra Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Akhilesh Chandra, J.—On repeated calls, none turned up on behalf of the appellant. Similar is the position continuing since 17.06.2013. Heard learned counsel for the respondent no. 2 and learned Additional Public Prosecutor for the State.

2. Under the circumstances, this court left with no other option but either to appoint Amicus Curiae to represent the interest of the appellant, but there is general experience that such process takes much time and the court's burden are not reduced or to proceed without any such representation, taking into consideration the latest decision of the Hon''ble Apex Court in a case K.S. Panduranga Vs. State of Karnataka, . It is thought proper to hear learned Additional Public Prosecutor representing the State and to examine the record and Lower Court Records and decide the appeal on its own merit.

3. This is an appeal preferred against judgment and order of acquittal dated 20.01.2003 passed by learned Sub-Divisional Judicial Magistrate, Samatipur, in connection with Session trial No. 777 of 2003 arising out of Complaint Case No. 314 of 1988 for offences under sections 409, 420 and 120B of the Indian Penal

Code.

4. It is needless to go into the entire details since as it appears from the examination of record that Samastipur Town P.S. Case No. 144 of 1985 was instituted at the instance of the appellant against respondent no. 2 wherein police after investigation submitted final form. Protest Complaint was filed after inquiry, cognizance was taken on 2nd February 1993, on appearance matter proceeded for evidence before charge. Thereafter charge was framed on 28.08.1996. While matter was proceeding for cross examination after charge on behalf of the complainant. A petition was filed praying therein to re-examine all the witnesses so examined earlier due to some error occurred as mentioned in the order. Permission was granted. Thereafter only two witnesses on behalf of the prosecution were produced they are P.W.1 Nawal Kishore Prasad examined on 5th January 1997, but never turned up for cross examination after charge, and P.W. 2 Arun Kumar Jaiswal the complainant examined on 27th August 1998 and simply proved the complaint petition, his signature (Ext. 1) on the first complaint and subsequently Exhibit - 2 on protest complaint. No other document was produced on behalf of the complainant.

5. The Court below has examined critically all the materials available and in absence of any documentary evidence to support the allegation of appointment of respondent no. 2 as Transport Agent and alleged Sub-Agent or any material to establish entrustment of claims for transportation etc. acquitted the accused facing trial. There appears no reason to interfere in the order. Hence, this appeal is hereby dismissed since devoid of any merit.