

(2004) 06 PAT CK 0028
In the Patna High Court
Case No : Criminal Appeal No. 97 of 2004

Mahendra Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-06-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2), 376
Penal Code, 1860 (IPC) — Section 307, 323
Probation of Offenders Act, 1958 — Section 11(2), 3, 4, 4(1)

Citation : (2004) 3 PLJR 256

Hon'ble Judges : S.N. Hussain, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Poonam Kumari, for the Appellant; Assistant Public Prosecutor for State, for the Respondent

Judgement

1. The Appellants, four in number, were out on trial before the Additional Sessions judge Fast Track Court No. II, Gopalganj or the offences punishable under sections-(sic) and 323 of the Indian Penal Code. The (sic) court by order dated 20th December, 2003 found that the charge u/s 307 I.P.C. framed against one of the Appellants, namely, Lal Bahadur Prasad, was not proved but charge u/s 323 I.P.C. was proved against all the four Appellants. He did not pass any substantive sentence against the Appellants. He passed order under the provisions of Section 4(1) of the Probation of Offenders Act and released them on entering into a bond of Rs. 5,000/- with two sureties of the like amount to maintain peace and good behaviour for a period of two years and to receive sentence during that period if called upon by the court.

2. The Appellant preferred appeal before this Court u/s 374(2) of the Code of Criminal Procedure and the matter was placed before the learned single Judge and his Lordship referred the matter to the Division Bench to decide the question as to whether appeal is maintainable in the present case in view of the bar created u/s 376 of the Code of Criminal Procedure providing that no appeal shall lie where a court of Session passes only a sentence of imprisonment for a term

not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine.

3. Thus, the only question for consideration is as to whether appeal is maintainable u/s 374(2) of the Code of Criminal Procedure in the present case where no imprisonment or fine has been imposed and the Appellants have been released on probation u/s 4(1) of the Probation of Offenders Act on executing bond as stated above.

4. Section 374(2) of the Code of Criminal Procedure provides, inter alia, that any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial; may appeal to the High Court.

5. Section 376 of the Code of Criminal Procedure contains the provision regarding petty cases where appeal to the appellate court is prohibited. According to Section 376(b), where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine, no appeal shall lie by a convicted person in spite of provisions contained u/s 374(2) of the Code. Proviso to Section 376 provides that the bar created in the main section i.e. Section 376, will not apply and the appeal may be brought against any such sentence if any other punishment is combined with it.

6. In the present case proviso to Section 376 of the Code is not attracted. No appeal lies u/s 376(b) of the Code in a case where the court of Sessions awards sentence of imprisonment upto three months or fine upto Rs. 200/- or both. In the present case, neither any imprisonment nor fine has been awarded against the Appellants. Only an order has been passed u/s 4 of the Probation of Offenders Act. In our considered view, appeal u/s 374(2) will not be maintainable in view of the provisions of Section 374(2) read with Section 376 of the Code of Criminal Procedure. However, appeal is provided u/s 11(2) of the Probation of Offenders Act, 1958 which provides as follows:

(2) Notwithstanding anything contained in the Code, where an order u/s 3 or Section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court.

7. Thus, in view of the aforesaid provisions, appeal is maintainable u/s 11(2) of the Probation of offenders Act and as the appeal against the sentence passed by the Additional District & Sessions Judge lies to the High Court, the present appeal is maintainable though u/s 11(2) of the Probation of Offenders Act and not u/s 374(2) of the Code of Criminal Procedure.

8. In the result, it is held that the appeal is maintainable as stated above. Let this appeal be placed before an appropriate Bench for disposal.