

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.334 of 2018

Arising Out of PS. Case No.-61 Year-2009 Thana- GOPALPUR District- West Champaran
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Md. Isteyak son of Sk. Bolar Resident of Village - Kadamwa, Police Station - Gopalpur, District - West Champaran, Bihar, represented through his mother and natural guardian namely Kalamun Nesha.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s
=====

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar No.-7, Advocate

For the State : Mr. Bhanu Pratap Singh, APP
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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 08-11-2019

Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner has moved the Court against the order dated 11.02.2016 passed by the Sessions Judge, West Champaran, Bettiah in Criminal Appeal No. 76 of 2015 by which he has modified the order dated 15.09.2015 passed by the Juvenile Justice Board, Bettiah, West Champaran in JJB Case No. 53 of 2015 to the extent that the petitioner has been convicted under Sections 147 and 307/149 of the Indian Penal Code.

3. The petitioner along with 10 others named and 7-8 unknown persons was accused of forming an unlawful assembly and for cutting and destroying the informant's courtyard on 26.06.2009 at 6:30 PM, for which Gopalpur PS Case No. 61 of Patna High Court CR. REV. No.334 of 2018 dt.08-11-2019

2/5

2009 was instituted under Sections 147/148/149/341/323/324/307 of the Indian Penal Code and 27 of the Arms Act.

4. Cognizance was taken under Sections 147/148/149/341/323/427/504/324/307 of the Indian Penal Code and 27 of the Arms Act. However, the petitioner, being a juvenile, which is an admitted position, aged about 15 years on the date of occurrence, his case was considered by the Juvenile Justice Board, West Champaran, Bettiah and upon completion of the enquiry, he was ordered to go home, after advice and admonition in care of his

father. The petitioner being aggrieved by the direction to go with the father, as he was pursuing his training of electrician at Chennai, moved before the Sessions Judge, West Champaran, Bettiah in Criminal Appeal No. 76 of 2015 and the same has been dismissed by holding the petitioner guilty of offences under Sections 147 and 307/149 of the Indian Penal Code.

5. Learned counsel for the petitioner submitted that the petitioner being 15 years of age on the date of occurrence, which is an admitted position, the Juvenile Justice Board itself was required to conclude the enquiry without holding anything adverse against him. It was submitted that the Juvenile Justice Board has admitted that he was only a member of an unlawful assembly and had not done any overact during the course of occurrence. It was submitted

Patna High Court CR. REV. No.334 of 2018 dt.08-11-2019

3/5

that the Juvenile Justice Board has further taken note of the fact that he was juvenile and that there was no delinquency record known against him on earlier occasion and the neighbours and covillagers have also not complained regarding his behavior and disposition, had still proceeded to order for advice and admonition and handing him over in the care of his father. It was submitted that in the background of the admitted position, as accepted by the Juvenile Justice Board itself, the petitioner was required to be released. It was submitted that the Appellate Court has also not appreciated such circumstances and in fact gone beyond jurisdiction to give a finding of guilt for offences under Sections 147 and 307/149 of Indian Penal Code against the petitioner which was totally uncalled for as no appeal was filed by either the State or the informant and, thus, there was no occasion to record such finding of guilt against the petitioner by the Sessions Judge in the appeal filed by the petitioner against the order of advice and admonition and his release in the care of his father, who was also directed to give an undertaking that he would take care of his son and not allow him to go in association of antisocial elements.

6. Learned APP could not controvert the fact that on merits even the Juvenile Justice Board has held in favour of the petitioner and that the order of advise and admonition in care of

Patna High Court CR. REV. No.334 of 2018 dt.08-11-2019

4/5

his father was sufficient without there being any recording of any guilt against him. Further, he fairly submitted that the order passed

by the Sessions Judge, West Champaran, Bettiah in Cr. Appeal No. 76 of 2015 recording guilt under Sections 147 and 307/149 of the Indian Penal Code is unsustainable, as no appeal had been filed by the prosecution, i.e., the State or even the informant.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the order impugned dated 11.02.2016 passed in Criminal Appeal No. 76 of 2015 is unsustainable. As has rightly been submitted by learned counsel for the petitioner and not controverted by learned APP, the Juvenile Justice Board itself has held in favour of the petitioner and considering his juvenility had only directed for advise and admonition and release in the custody of his father without recording any order of conviction and the petitioner filing the appeal against the same, the Sessions Judge, West Champaran, Bettiah seems to have misdirected himself as it was not an appeal by the State or the informant. Further, recording of guilt against the petitioner is also found to be bad upon appraisal of evidence adduced during the enquiry, and even otherwise, Section 24 of the Juvenile Justice (Care and Protection of Children) Act, 2015 stipulates that even if a child who has

Patna High Court CR. REV. No.334 of 2018 dt.08-11-2019

5/5

committed an offence and has been dealt with under the provisions of the Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law.

8. In the aforesaid background, the application is allowed. The conviction recorded by the Sessions Judge, West Champaran, Bettiah in order dated 11.02.2016 passed in Criminal Appeal No. 76 of 2015, by which the petitioner has been held guilty for offences under Sections 147 and 307/149 of the Indian Penal Code, stands set aside.

Anjani/-

(Ahsanuddin Amanullah, J)

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