

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 453 of 2017

1. Nirmal Bhattacharya,

2. Chandra Bhushan Singh,

... Petitioners

-Versus-

1. The State of Jharkhand

2. Fredrick D'souza,

... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners: Mr. Nagmani Tiwari, Advocate

For O.P. No.2 : Mr. Harsh Chandra, AC to Mr. S.L. Agrawal, Advocate

For the State : Mrs. Priya Shrestha, Spl.P.P.

09/14.07.2022. Heard Mr. Nagmani Tiwari, learned counsel for the petitioners,

Mr. Harsh Chandra, learned counsel for opposite party no.2 and Mrs. Priya

Shrestha, learned counsel for the State.

2. This petition has been filed for quashing of the order dated 19.01.2017 passed in Criminal Appeal No.141/2012 by the learned Additional Sessions Judge-V, Jamshedpur whereby the petition filed by the petitioners under Section 391 Cr.P.C. for accepting additional evidence has been rejected.

3. Mr. Nagmani Tiwari, learned counsel for the petitioners submits that the petitioners are innocent. The petitioners have been convicted under Sections 452/457 of the Indian Penal Code. Against that order, an appeal has been filed by the petitioners before the learned appellate court. He further submits that a petition dated 17.02.2016 has been filed by the appellants in the said appeal for exhibiting two judgments before the appellate court. He also submits that the learned court has rejected the said

petition without appreciating the purpose of filing of that petition. He refers the statement of P.W.5, who happens to be the informant and submits that so far as the power of attorney is concerned, that has been admitted that the same has been issued in favour of petitioner no.2. He also submits that the appellate court is having power to accept additional evidence under Section 391 Cr.P.C.

4. Mr. Harsh Chandra, learned counsel for opposite party no.2 submits that there is no illegality in the impugned order and the learned court after relying on judgments, has come to that conclusion and due diligence has not been shown by the petitioners in the trial. On earlier occasions, the petitioners have not tried to bring the fact before the trial court and at the initial stage of appeal and, therefore, the learned court has rightly rejected the petition.

5. Mrs. Priya Shrestha, learned counsel for the State submits that there is no illegality in the impugned order. The learned court, after looking into entire materials, has rejected the petition.

6. The Court has perused the impugned order dated 19.01.2017 and finds that the learned court has taken care of the entire aspects of the matter. The learned court has relied on two judgments of the Hon'ble Supreme Court. It is settled proposition of law that for filling in lacuna, the petitions under Sections 311 and 391 Cr.P.C. and Section 165 of the Evidence Act are not being allowed. Only in the exceptional circumstance, at the appellate stage, the court can allow the additional evidence in terms of Section 391 Cr.P.C. In the case in hand, the petitioners have not show their due diligence to bring on record two documents before the trial court. Looking into the petition filed by the petitioners for exhibiting two

judgments, it appears that not even a single word has been whispered for accepting additional evidence, in the petition. The learned court has held that party of miscellaneous case and G.R. case are not the party in the appeal and the judgment of miscellaneous case and G.R. Case are no concerned with the appeal.

7. In view of the aforesaid facts, there is no illegality in the impugned order dated 19.01.2017. Accordingly, this petition stands dismissed.

8. It is open to the petitioners to demonstrate their case in the appeal by way of elaborating the argument.

9. Interim order dated 12.04.2017 stands vacated.

(Sanjay Kumar Dwivedi, J.)

Ajay/