

CASE NO.:
Appeal (crl.) 1248 of 1999

PETITIONER:
VIJAYENDRA KUMAR

RESPONDENT:
STATE OF BIHAR & ANR.

DATE OF JUDGMENT: 24/11/2004

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

B.P.Singh, J.

We have heard counsel for the parties.

In this appeal by special leave, the appellant has challenged the judgment and order of the High Court of Judicature at Patna dated 21 May, 1999 in Criminal Appeal No.68 of 1989. The learned judge of the High Court affirmed the judgment and order of the Special Judge, C.B.I. Dated 4th February, 1989 in Special Case No.11/1982 whereby the appellant was found guilty of the offence under Section 409 IPC and sentenced to one year rigorous imprisonment and a fine of Rs.10,000/-, in default to undergo six months rigorous imprisonment and to one year rigorous imprisonment under Section 477A IPC. Though it affirmed the conviction for the offences under Sections 5(1)(c) and 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1957, no separate sentence was passed.

We have gone through the judgment of the High Court as also the judgment of the trial court. We find that in the judgment of the High Court, there is hardly any discussion of the evidence on record. This Court has consistently observed that an appeal against an order of conviction preferred by an accused, must be considered by the appellate court, both on questions of law and questions of fact. While the High Court has the power to dismiss a criminal appeal summarily, that power must be exercised only in a case where there is no arguable question of fact or law.

Having gone through the judgments of the High Court and the trial court, we find that the matter requires deeper consideration. This is not one of those cases where the High Court could have simply affirmed the findings of the trial court without recording reasons.

The High Court has observed that the trial court had gone into all details of oral and documentary evidence adduced in the case and it found that the conclusions drawn on the basis thereof were absolutely correct and, therefore, the High Court did not feel the need to discuss oral and documentary evidence on record, which may only result in repetition. In our view this approach is perverse.

In fact, counsel for the appellant has drawn our attention to paragraphs 23 and 24 of the judgment of the trial court and argued that the findings recorded by the trial court cannot be sustained. We do not wish to consider this submission urged before us, in view of the order, that we propose to pass, lest it may prejudice the case of the parties.

We are firmly of the view that this is an appeal which requires to be considered by the High Court in detail and the points involved require a close scrutiny of the oral and documentary evidence on record.

In this view of the matter, we set aside the impugned judgment and order of the High Court and remit the matter to the High Court for fresh hearing by a judge other than the judge, who decided this appeal.

This Court granted bail to the appellant. He shall continue on bail till the disposal of the appeal by the High Court.

Since the matter is an old one, we request the High Court to dispose it of as early as possible.

The appeal is disposed of in the above terms.

JUDIS