



2025 INSC 287

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 1398 OF 2015

SANJAY KUMAR . . . . . APPELLANT(S)  
VERSUS  
STATE OF BIHAR & ORS. . . . . RESPONDENT(S)

O R D E R

We have heard the learned counsel appearing for the appellant, Sanjay Kumar, at some length, who has drawn our attention to the depositions of the eye-witnesses, namely, Sanjay Kumar (the appellant and informant/complainant), who had deposed as PW-8 and Kalam, who had deposed as PW-7, and the other witnesses, namely, Dinesh Prasad (PW-6) and Krishna Chandra Dubey (PW-10), the investigating officer.

As per the case of the prosecution, respondent no. 5, Megnath Koiri, was detained at the spot itself after three intruders had entered into the shop and one of them fired at the father of the informant/complainant, that is, the deceased, Ishwar/Ishwer Chander. Respondent No. 5, Megnath Koiri, had in the said occurrence, suffered injuries and was arrested after the police reached the spot.

It is pointed out to us that the impugned judgment dismissed the appeal preferred by the appellant/informant/complainant, Sanjay Kumar, on the very first day, without even calling for the trial

Court records.

The impugned judgment refers to the statement under Section 164 of the Code of Criminal Procedure, 1973<sup>1</sup>, made by respondent No. 5, Megnath Koiri, which was not produced in the Court. It also records that the version given by Sanjay Kumar (PW-8) is not corroborated by other staff members, without noticing the deposition of Dinesh Prasad (PW-6) in his cross-examination by the prosecutor, after he was declared hostile.

Learned counsel for the appellant submits that even Ashok Kumar Bhattacharya (PW-3) did accept that he had seen the deceased tumbling down on the chair outside and that one person was apprehended. It is highlighted that there was a long delay in the trial and as a result, they could not identify respondent No. 5, Megnath Koiri, who was apprehended at the spot. However, the fact that respondent No. 5, Megnath Koiri, was apprehended at the spot, as per the learned counsel, cannot be debated or doubted in view of the depositions of the appellant, Sanjay Kumar (PW-8) and the investigating officer, Krishna Chandra Dubey (PW-10).

Another reason noted by the High Court, to dismiss the appeal in limine, was that respondent No. 5, Megnath Koiri, was acquitted in the trial relating to the offence under the Arms Act, 1959<sup>2</sup>. It is also stated that the ballistic report of the pistol allegedly recovered from respondent No. 5, Megnath Koiri, was not produced in the Court.

In our opinion, the present case had to be decided on the

<sup>1</sup>For short, "CrPC."

<sup>2</sup>For short, "1959 Act."

basis of the evidence adduced before the trial Court in the chargesheet(s) in question. The judgment of acquittal for the offence under the 1959 Act would be based upon the evidence led in the said case. Reference, in this regard, as to the relevancy of judgments, can be made to Sections 40 to 44 of the Indian Evidence Act, 1872<sup>3</sup>. This aspect has not been considered by the High Court. The failure of the investigation or prosecution is an aspect which the Court has to consider after weighing the depositions of the eye-witnesses.

The learned counsel for the appellant, Sanjay Kumar, referred to Section 391 of the Cr.P.C. as well as Section 165 of the 1872 Act.

As we are inclined to pass an order of remand in the present case, we are not inclined to delve deeper into the matter. We, accordingly, set aside and quash the impugned order dated 03.07.2013 passed by the High Court, dismissing the appeal preferred by the appellant/informant/complainant, Sanjay Kumar, in limine. Criminal Appeal (DB) No. 573/2013 shall, accordingly, stand revived on the file of the High Court to its original number. The High Court will issue notice in the appeal and decide the same on merits and in accordance with law.

We clarify that the observations made in this order are for the disposal of the present appeal. The High Court shall independently examine the material and the evidence on record and form its own opinion, while deciding the appeal.

To cut short the delay, parties are directed to appear before

<sup>3</sup>For short, "1872 Act."

the High Court in the aforesaid appeal on 24.03.2025. As it is an old matter, the appeal may be heard and decided by the High Court as expeditiously as possible.

The present appeal is disposed of.

The original records of the Trial Court/High Court shall be sent back immediately.

Pending application(s), if any, shall stand disposed of.

.....CJI.  
(SANJIV KHANNA)

.....J.  
(SANJAY KUMAR)

NEW DELHI;  
FEBRUARY 27, 2025.