

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.6 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- MUZAFFARPUR

Jot Narayan Singh @ Jyot Narayan Singh son of Late Bishun Singh, resident of village - Telia Chchapra, P.S. - Sahebganj, District - Muzaffarpur.

.... Appellant

Versus

1. The State of Bihar.

2. Ganesh Mahto son of Late Sahindar Mahto, resident of village - Gilabpatti, P.S.- Sahebganj, District - Muzaffarpur.

3. Rameshwar Mahto son of Khalawan Bhagatm resident of village - Dilwarpur, Tola Alkh Dabari, P.O. - Dilwarpur, P.S. - Kesharia, District - Muzaffarpur.

.... Respondents

Appearance :

For the Appellant/s : Mr. Sanjay Kumar @ S.K., Advocate

For the Respondent/s : Mr. Binod Bihari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-02-2015

This application under section 378(4) of the Code of Criminal Procedure has been filed by the complainant of Complaint Case No.1798 of 2007 seeking leave to appeal against the judgment dated 11.11.2014 passed by the learned Sub Divisional Judicial Magistrate, (West) Muzaffarpur whereby he has acquitted the accused persons (respondent nos. 2 and 3) of the charge under section 420 of the Indian Penal Code.

2. The prosecution case in brief is that the complainant (appellant) purchased a piece of land of R.S.Khata No.144 for joint family and later on he divided the said land in equal share amongst his three sons. His elder son, namely, Binod Kumar Singh executed a sale



deed on 5.4.2005 for his 1/3rd share in favour of one Umesh Prasad Mahto. Similarly, his second son, namely, Pramod Kumar Singh also executed a sale deed for his 1/3rd share in favour of wife of Baijnath Mahto. The respondent no.2, namely, Ganesh Mahto agreed to purchase 1/3rd share of his third son Amod Kumar Singh. The complainant was given an impression that the sale deed is being executed for 10.45 decimals of land but by committing fraud he got executed 21.5 decimals of land. When the complainant brought it to the notice of respondent no.2 Ganesh Mahto, he got infuriated and threatened him to assault.

3. The learned Magistrate took cognizance of the offence and framed charge under section 420 of the Indian Penal Code against Ganesh Mahto and scribe of the deed, namely, Rameshwar Bhagat.

4. In course of trial, five witnesses including the complainant were examined. On conclusion of trial, the learned Magistrate acquitted the accused persons by the impugned order.

5. Learned counsel for the appellant has submitted that though there is sufficient evidence on record but the court below has come to an erroneous finding. It has not appreciated the evidence in correct perspective and, thus, the impugned judgment is perverse.

6. I have heard Mr. Sanjay Kumar, learned counsel appearing on behalf of the appellant (complainant) and with his

assistance gone through the of the case.

7. P.W.5 Ramnek Singh is a formal witness, who has proved the complaint in question which has been marked as Ext.1. P.W.2 Laxman Mahto and P.W.3 Rawan Mahto have clearly admitted in their deposition that they have never ever seen the sale deed in question. The complainant has been examined as P.W.4. He has stated in his deposition that out of his three sons, two had sold nine decimals of land each whereas in the complaint he has stated that each of his first two sons had sold eleven decimals of land. He has further deposed that respondent no.2 Ganesh Mahto is in possession of the land in question since last 7-8 years. He has stated that the accused Ganesh Mahto had purchased 10.45 decimals of land for a consideration of Rs.75,000/-. However, he has not produced the sale deed in question in court. The sale deed has been brought on record on behalf of the defence which would show that the land in question was sold to the accused Ganesh Mahto for a consideration of Rs.60,000/-. There is nothing on the record on the basis of which it can be presumed that any fraud was played at the time of execution of sale deed.

8. Considering all these discrepancies in evidence, the learned Sub Divisional Judicial Magistrate, Muzaffarpur came to the conclusion that the complainant has miserably failed to bring home

the charge against the accused persons. The court below has given cogent reasons for acquitting the accused persons of complaint case no.1798 of 2007.

9. Having regard to the facts and circumstances of the case, I find no merit in this application. Accordingly, leave to appeal is refused. As a consequence thereof, the special leave application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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