

IN THE HIGH COURT OF JUDICATURE AT PATNA
SLA No.15 of 2015

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1. Md. Shahid Ahmad @ Shahid Ahmad, S/o Abdul Wahid. R/o village -
Jogindar, P.S.- Mahalgaun (Jogihat), District – Araria Appellant
Versus

1. The State of Bihar.
2. Abdul Karim, S/o Late Abdurrahman, R/o village - Jogindar, P.S. -
Mahalgaun (Jogihat), District – Araria Respondents

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Appearance :

For the Appellant : Mr. Mukesh Kumar Rana, Adv.
For the Respondents : Mr. Sujeet Kumar Singh(App)

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

2 05-05-2015

Heard the learned counsel for the parties.

This is a petition for Special Leave to Appeal, which has been sought by filing appeal against the order of the acquittal passed by the Session's Judge, Araria, in Criminal Appeal No. 85 of 2013 in which the order of conviction and sentence has been challenged in Complaint Case No. 273 C of 2006 by which the conviction recorded under Section 420 of the Penal Code with a fine of Rs.500/-.

The prosecution case is that the appellant gave a contract for sale to purchase the land of khata no. 350, khesra no. 1408, area 49 decimals for a consideration amount of Rs.20,000/- and it is alleged that Rs.15,000/- was paid by the complainant/appellant and it was agreed that after payment of Rs.5,000/- the land will be registered. The, further, case of the appellant is that he is in possession of the land and his grievance is that the owner of the land is neither taking Rs.5,000/- nor

registering the land in favour of the complainant/appellant.

However, the trial Court convicted under Section 420 of the Penal Code, but, acquitted under Section 504 of the Penal Code.

The learned Session's Judge, Araria, while hearing the appeal, take into consideration the fact that there is no documentary proof that the complainant had given money to the appellant and the evidence of the complainant that he had given the money to the appellant before Naiyer, Sohail, Afzal, Khalid and Mojahid, but, the evidence of none of them had been brought on record in trial to corroborate the evidence of the complainant and, further, the case of the complainant that the land owner has given the possession of the land, hence, held that the offence under Section 420 of the Penal Code does not make out.

However, the learned counsel for the appellant submits that he is still in possession of the land in question and has agreed to purchase the land for a consideration amount of Rs.20,000/- out of which he paid Rs.15,000/- and rest amount of Rs.5,000/- is not being accepted to register the piece of land. Even from the allegation, itself, the offence under Section 420 of the Penal Code does not make out because the appellant is the gainer and the allegation, itself, appear that the accused

persons has not gained by contracting the sale when it is alleged that the possession of the land had already been given to the appellant.

Hence, I do not find any merit to interfere with the order of conviction and leave to appeal is hereby rejected.

(Gopal Prasad, J)

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