

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.26 of 2015

Arising Out of Complaint.Case No. –C-1157of 1998 District- EASTCHAMPARAN(MOTIHARI)

1. Kanhaiya Prasad Son of late Jai Narayan Prasad@Jai Narayan Mahto Resident of Village- Noneya mahto tola, Police Station -Paharpur, District East Champaran.

.... .. petitioner

Versus

1. The State of Bihar
2. Sanjeev Kumar Son of Dhruv Prasad Singh
3. Din Bandhu Prasad Son of Surya Kant Prasad null
4. Rahul Kumar Sono f Dhruv Prasad Singh
5. Jai Bandhu Prasad son of Surya Kant Prasad
6. Ashok Prasad Son of Kailash Prasad
7. Dhruv Prasad Singh Son of Late Bindhyachal prasad
8. Surya Kant prasad Son of Jokhu Prasad
9. Satyadeo Prasad son of Harihar Prasad
10. Hridyanand Prasad son of Nayak Prasad All (2 to 10) are resident of Noneya Mahto tola ,Police Station Paharpur ,District East Champaran.
11. Gobardhan Das son of Raghuvir Das Resident of Panditpur,Police Station Paharpur ,district East Champaran.

.... .. opposite parties

Appearance :

For the Appellant/s : Mr. Anil Kumar

For the Respondent/s : Mr. Binod Bihari Singh

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-08-2015

Heard learned counsel for the petitioner.

2. The present application under sub-section (4) of Section 378 of the Code of Criminal Procedure (for short the ‘Code’) has been filed seeking leave to appeal against the judgment dated 14.05.2015, passed in Trial No. 4074 of 2015 arising out of Complaint Case No. C-1157 of 1998 by the learned Sub-Divisional Judicial Magistrate, Motihari, East Champaran, whereby and whereunder the accused have

been acquitted from all the charges.

3. The trial court has recorded the case of the complainant in Para-2 of its Judgment, which is as under :-

“The prosecution story, based on the complaint of Gogali Devi in brief is that the complainant Gogali Devi was a widow, destitute and ordinary woman. One of her son Gaya Prasad was married with accused no. 1 Rukhiya Devi but since Gaya Prasad was a foolish man, Rukhiya Devi deserted him and in the lifetime of Gaya Prasad performed 2nd marriage with Ram Sarup Mahto. After her 2nd marriage, Rukhiya Devi had remained in no relation with any of the family member of complainant and their properties. It is further stated that the 2nd son of complainant Kanahiya Prasad is also foolish man and complainant has no any other male member in his family. Taking advantage of the situation all the accused persons with common intention after conspiracy have prepared a forged sale deed in the name of accused 2, 3, 4 and 5. The accused no. 7 and 8 managed to get the above sale deed prepared and accused number 9 and 10 are identifier on this forged document and accused number 11 is the deed writer. The case of complainant is that Rukhiya Devi had no right and title to execute any document for the land of Khata, Khesra and area mentioned in the complaint because she performed 2nd marriage in the lifetime of first husband after deserting him and she had no child from her first husband and also because thereafter, she was not in touch with the family of complainant either during lifetime or after death of her first husband.”

4. After enquiry on the above complaint, the learned Magistrate took cognizance of the offences under Sections 420 and 465 of the Indian Penal Code and summoned the opposite party nos. 2 to 11 and Rukhiya Devi to face trial. Subsequently charges were framed under Section 420 and 465 of the Indian Penal Code to which the



accused persons pleaded not guilty and claimed to be tried. During course of trial, accused Rukhiya Devi died. Hence, her name was expunged from the list of accused. The complainant produced three witnesses during trial. They are PW 1 Sheonath Prasad, PW 2 Saudagar Prasad and PW 3 Chanchal Mahto. The certified copy of judgment passed in Title Suit No. 140 of 1998 by learned Sub-Judge-VI was also proved and marked as Exhibit- 1 and voter lists were marked as Exhibits- 2 and 3.

5. The defence has also examined four witnesses in order to prove innocence of the accused, they are DW 1 Ram Chandra Prasad, DW 2 Ramanand Prasad, DW 3 Rameshwar Prasad Gupta and DW 4 Bhupendra Paswan. The certified copy of plaint of Title Suit No. 140 of 1998 was proved and marked as Exhibit-‘A’.

6. After discussing about the evidences adduced during trial, the learned Magistrate has recorded his findings in paragraph nos. 19 and 20 of the impugned judgment which reads as under :

“19. In the light of above legal position, considering the fact and circumstances of the case, the averments made in the complaint, even if assumed to be true i.e. Rukhiya Devi had sold the land of complainant to the accused persons without having any right and title over the same, do not make out any offence punishable under Section 465 and 420 of the IPC and therefore, the present complaint case is fit for acquittal of accused persons from the charges levelled against them.

20. Thus pursuant to the fact and circumstances



of the case and the discussion made above, this court finds that prosecution has failed in proving the charges under Section 465 and 420 of the IPC levelled against accused persons. As a result all the accused persons namely 1- Sanjeev Kumar, 2- Din Banchu Prasad, 3- Rahul Kumar, 4- Jai Bandhu Prasad, 5- Ashok Prasad, 6- Dhruv Prasad Singh, 7- Surya Kant Prasad, 8- Satydeo Prasad, 9- Hridyanand Prasad, 10- Gobardhan Das are acquitted from all the charges. They are also discharged from the liabilities of bail bond.”

7. Learned counsel for the petitioner has submitted that the trial court has not appreciated the evidence on record in correct perspective. The land in question, belonged to the complainant and deceased-accused Rukhiya Devi had illegally executed the sale deed in favour of accused persons namely 1. Sanjeev Kumar, Din Babdhu Prasad, Rahul Kumar and Jai Bandhu Prasad.

8. According to him accused Dhruv Prasad Singh and Surya Kant Prasad managed to get above sale deed prepared and accused Satydeo Prasad and Hridyanand Prasad identified the forged sale deed, executed by deceased accused Rukhiya Devi, who had no right and title to execute any document for the land of Khata, Khesra and area mentioned in the complaint because she has performed second marriage during the lifetime of her first husband and after deserting him, she had no child from her first husband and also because she was not in touch with the family of the complainant either during lifetime or after death of her first husband.

9. I have heard the learned counsel for the appellant and perused the evidence on record.

10. In my view, the trial court has rightly acquitted the accused persons from the charges under Sections 420 and 465 of the Indian Penal Code. I am also of the view that criminal proceedings initiated by the complainant against the opposite parties nos. 2 to 11 was wholly unwarranted. The complaint was an abuse of the process of Court. The averments made in the complaint if assumed to be correct do not make out any offence under Sections 420 and 465 of the Indian Penal Code. The complainant does not make any averment so as to infer any fraudulent, dishonest, inducement having been made by the deceased Rukhiya Devi pursuant to which the complainant parted with any money. It is not the case of the complainant that the deceased Rukhiya Devi was not competent to enter into agreement to sale. The complainant has not been cheated in any manner.

11. The learned Magistrate has rightly observed in the impugned Judgment that it is not a case of impersonation of complainant by the accused Rukhiya Devi but both the parties are claiming their title over the sold land.

12. In order to record the Judgment of acquittal, the trial court has placed reliance on the decision of the Supreme Court in the case of Md. Ibrahim & Ors. Vs. State of Bihar & Anr. [(2009) 8 SCC



751]. In *Md. Ibrahim (supra)* Accused 1 had executed a sale deed in favour of Accused 2, claiming that the property being sold belonged to Accused 1. The second respondent (complainant) filed a criminal complaint that the title to the property sold, belonged to the second respondent and therefore, Accused 1 had committed offences under Sections 420, 467 and 471 IPC. The plea of Accused 1 was that the property was mutated in his name and he was having its possession and was also paying land revenue for it. The issue before the Supreme Court was even if the facts alleged by the 2nd respondent were accepted as true, whether or not Accused 1 had committed an act of forgery. The trial court and the High Court had dismissed the plea of Accused 1 for quashing of criminal complaint, but on appeal being filed by Accused 1, reversing the decision of the High Court, the Supreme Court held in Paragraphs 16, 17, 20 and 21 as under:-

“16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorized or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of “false documents” it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the

intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.”

13. The facts of the present case are exactly identical to the

facts of the case of Md. Ibrahim (Supra). In that view of the matter, the instant case would be squarely covered by the law laid down by the Supreme Court in the case of Md. Ibrahim (Supra).

14. Moreover, this application on behalf of the petitioner Kanhaiya Prasad is not maintainable in law in view of the fact that it has not been filed by or on behalf of the complainant. Section 378(4) gives right to the complainant alone to seek leave to appeal before the High Court in case of acquittal in a case arising out of a complaint by a court subordinate to the High Court. Admittedly, in the present case the complainant is one Gogli Devi and not the petitioner, who has no locus in the matter.

15. Accordingly, the application, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J)

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