

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.27 of 2015

Arising Out of Complaint Case No. -1030 Year- 2008 Thana -null District- JEHANABAD

1. Ram Shakal Mistry Son of Late Bhav Sagar Mistry R/o village - Rakasiya Dayal Chak, P.S. Shakurabad, District - Jehanabad

.... Petitioner

Versus

1. The State of Bihar
2. Badari Singh Son of Late Sarvi Singh R/o village - Rakasiya Dayal Chak, P.S. Shakurabad, District - Jehanabad
3. Dhanraj Devi W/o Subhash Mistry
4. Subhas Mistry Son of Late Both Resident of village - Karsa, P.S. Bikram, District - Patna
5. Mohan Singh Son of Late Jagdish Singh R/o village - Rakasiya Dayal Chak, P.S. Shakurabad, District - Jehanabad

.... Opposite Parties

Appearance :

For the Appellant/s : Mr. Umesh Kumar, Adv.

For the Respondent/s : Mr. Abha Singh, APP

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 19.06.2015, passed in Trial No. 350 of 2015 arising out of Complaint Case No. 1030 of 2008 by the learned Judicial Magistrate 1st Class, Jehanabad, whereby and whereunder Opposite Party Nos.2 to 5 were acquitted of the charges under Sections 420, 468 and 471 of the Indian Penal Code.



3. The petitioner herein was the complainant of the aforesaid complaint case. It is the case of the complainant that the accused persons (Opposite Party Nos.2 to 5) in connivance with each other had prepared a sale deed of the land of the complainant at Jehanabad Registration Office with an intention to cheat him. When the complainant came to know about the said forged sale deed, he obtained certified copy of the same and after perusal of the sale deed, he found that his land bearing Khata No.71, Plot No.1131 measuring 63 decimals has been sold in favour of Opposite Party No.2 Badari Singh by Opposite Party No.3 Dhanraj Devi, who is sister of the complainant. It has further been stated that the land in question was owned and possessed exclusively by the complainant and he was paying rent for the same. He has stated that when he made a complaint in this regard, the accused persons agreed to execute a deed of Bazidava. However, subsequently, they refused to execute the deed of Bazidava and hence, the complainant was left with no option but to institute a complaint.

4. After filing of the complaint case, the complainant was examined on solemn affirmation and on his behalf two witnesses, namely, Chinta Devi and Surajdeo Singh were examined in course of enquiry conducted under Section 202 of the Code. Thereafter, finding a prima facie case to be made out for the offences punishable under

Sections 420, 467 and 471 of the Indian Penal Code, the learned Magistrate issued summons against the accused persons vide order dated 19.02.2009.

5. In compliance with the summoning order passed by the learned Magistrate, the accused persons appeared before the court. Certain witnesses were examined on behalf of the complainant before framing of charge under Section 244 of the Code of Criminal Procedure and thereafter charges were framed under Sections 420, 467 and 471 of the Indian Penal Code to which the accused persons pleaded not guilty and claimed to be tried. Accordingly, the trial commenced.

6. In course of trial, altogether five witnesses were examined on behalf of the complainant. They are C.W.1 Ram Shakal Mistry (Complainant), C.W.2 Surajdeo Singh, C.W.3 Chinta Devi, C.W.4 Surendra Kumar and C.W.5 Chandeshwar Chaudhary, an Advocate Clerk, who has proved the sale deed dated 20.04.1968 executed by Harihari Singh in favour of Smt. Kalawati Devi, which has been marked as Ext.-2.

7. The complainant deposed that accused Badari Singh, Mohan Singh, Subhash Mistry and Ragho Singh got executed his land by Dhanraj Devi on 22.10.2008. When he came to know about execution of the sale deed, he asked the accused persons, who told



him to do as he likes. He obtained a copy of the sale deed and went to the Police, who told to lodge case in the Court. He got prepared the complaint petition by an advocate and put his signature over it, which has been marked as Ext.-1. He claimed to have identified the accused persons. During cross-examination, he has stated that he has not seen the khatiyani of the land. He has stated that his mother had gifted the land in favour of her daughter, who is an accused. He has admitted that his father had performed two marriages. He also admitted that Opposite Party no.3 Dhanraj Devi is the sole daughter of Kalawati Devi, who was the second wife of his father. He has also admitted that he has compromised the case with four accused persons except Badari Singh. It has also been admitted during cross-examination that the complainant is step brother of Opposite Party No.3 Dhanraj Devi.

8. C.W.2 Surajdeo Singh has stated in his deposition that on 22.10.2008 Dhanraj Devi executed the sale deed in favour of Badari Singh in which accused Mohan Singh was identifier whereas Ragho Singh and Subhash Mistry were attesting witnesses of the sale deed. He has stated that the land in question was in possession of the complainant Ram Shakal Mistry and rent receipt is being issued in his name. He has admitted in cross-examination that Bhawsagar Mistry had two wives. The mother of the accused Dhanraj Devi was Kalawati Devi and the land under the sale deed was in the name of

Kalawati Devi. He also admits that the complainant is the brother of Dhanraj Devi.

9. C.W.3 Chinta Devi is wife of the complainant. She has stated in her evidence that the accused persons executed the sale deed of the land of her husband by playing fraud upon him. She states that the land is still in possession of her husband and the rent receipt is being issued in his name. In cross-examination, she admits that the complainant Ram Shakal Mistry and the accused Dhanraj Devi are related as step brother and sister. She also admits that the mother of Dhanraj Devi had executed the gift deed in favour of Dhanraj Devi. She further admits that the complainant has compromised the case with other accused persons except Badari Singh.

10. C.W.4 Sumendra Kumar is an advocate clerk, who has proved the complaint petition which bears the signature of Sri Jai Kishore Singh and the complainant Ram Shakal Mistry, which has been marked as Ext.-2 on his identification.

11. C.W.5 Chandeshwar Chaudhary is an advocate clerk. He has proved the sale deed dated 20.04.1960 executed by Harihar Singh in favour of Kalawati Devi being mother of accused Dhanraj Devi, which has been marked as Ext-3. In cross-examination, he denied personal knowledge of the contents of the sale deed.

12. The defence has also adduced evidence in order to prove

the innocence of the accused persons.

13. D.W.1 Umanath Prasad, an advocate clerk, has proved the sale deed dated 14.10.2008 executed by Ram Shakal Mistry in favour of Badari Singh in respect of the land under Khata No.79, Plot No. 1722/1141 measuring 10 decimals, which has been marked as Ext.-A.

14. D.W.2 Chhotelal Yadav has proved the sale deed dated 22.10.2008 executed by Dhanraj Devi in favour of Badari Singh in respect of land under Khata No.71 measuring 63 decimals in which accused Mohan Singh is identifier whereas Subash Mistry and Ragho Singh are attesting witnesses, which has been marked as Ext.-A/a. He has also proved two rent receipts in respect of the land under Khata No.84/262, 71 and 79 measuring 87 decimals for the year 2012-13 standing in the name of Badari Prasad son of Sarbi Singh and another rent receipt in respect of the said land for the year 2013-14 standing in the name of Badari Prasad, which have been marked as Exts.-B and B/a.

15. After considering the evidence adduced on behalf of the parties, the trial court acquitted the accused persons of the offences under which they were charged. The trial has recorded its findings in paragraphs 12 and 13 of the impugned judgment, which read as under:-



“12. After hearing both sides perused the case record. On careful consideration of evidence, documents and material, I find that it is an admitted that the complainant Ra, Sakal Mistry and accused Dhanraj Devi are step brother and sister, and their father was Bhawsagar Mistry who had performed two marriages. Ram Sakal Mistry is the son of his first wife whereas Dhanraj Devi is sole daughter of Kalawati Devi being second wife of said Bhawsagar Mistry. Meaning thereby complainant and accused Dhanraj Devi are co-sharer in ancestral property. Exbt. A shows that complainant sold 10 decimals land in favour of Badari Singh on 14.10.2008 after partition by the court. C.W.1 complainant Ram Sakal Mistry admitted in his evidenced that the land was gifted in favour of Dhanraj Devi by her mother Kalawati Devi, which was in her possession and Dhanraj Devi sold her land of share in favour of Badari Singh which was allotted to her after legal partition. Further no any documentary evidence has been produced on behalf of the complainant showing his right, title and interest over the land under sale deed dated 22.10.2008 executed by Dhanraj Devi in favour of Badari Singh, vide Exbt. A/a. So, no any ingredient of offence of cheating and dishonestly inducing delivery of property, or forgery for purpose of cheating or using a genuine a forged document getting prepared by accused has been established.

13. Considering the facts, circumstances of the case, evidence, documents produced by the parties, Exbt. 1 to 4 as well as Exbt. A to C, I find that the complainant has been failed to prove the charge against the accused persons beyond shadow of all reasonable doubts. Hence accused persons are entitled to get benefit of doubts.”

16. In my view, the trial court has rightly acquitted the accused persons from the charges under Sections 420, 468 and 471 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 5 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, 467 and 471 of the Indian Penal Code. The complainant has not been cheated in any manner.

17. The learned Magistrate has rightly observed in the impugned Judgment that none of the ingredients of the offence of cheating and dishonestly inducing for delivery of property by forgery for the purpose of cheating or using as genuine a forged document are attracted in the present case.

18. In Md. Ibrahim & Ors. Vs. State of Bihar & Anr. [(2009) 8 SCC 751], Accused 1 had executed a sale deed in favour of Accused 2, claiming that the property being sold belonged to Accused I. 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.

18. xxxx xxxx xxxx
19. xxxx xxxx xxxx

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.”

19. 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).

20. In view of the law laid down by the Supreme Court in Md. Ibrahim(Supra), I find no reason to accede to the request made by the petitioner to file appeal against the impugned judgment. Even otherwise, the trial Magistrate has given clear, cogent and convincing reason for recording the judgment of acquittal.

21. In view of the discussions made hereinabove, leave to appeal is refused and the application is dismissed.

(Ashwani Kumar Singh, J)

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