

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.9 of 2015

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

Praveen Chandra Prasad son of Late Ishwar Chandra Prasad, resident of Mohalla-Khushkibagh, P.S.-Sadar, District- Purnea

.... Petitioner/s

Versus

1. State of Bihar
2. Satish Chandra Gupta (Proprietor, M/s S. Chandra Enterprises), son of Late Baldeo Prasad Gupta, resident of Mohalla-Sipahi Tola, Chunapur Road, P.S.-K. Hat, District- Purnea

.... opposite party/s

Appearance :

For the Appellant/s : Mr. Rajendra Lal Das, Advocate

For the Respondent/s : Mr. S.N.Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-03-2015

This special leave application arises out of a judgment dated 26.6.2014 passed by learned Judicial Magistrate, 1st Class, Purnea in Complaint Case No.451 of 2008/CIS No.4528 of 2013 whereby the learned Magistrate has acquitted opposite party no.2 (accused) of the charges framed against him under sections 417 and 504 of the Indian Penal Code.

2. The complaint case in brief is that the opposite party no.2 was a property dealer. The petitioner (complainant) and opposite party no.2 had taken Khatiyan land bearing Khata No.489, Khesra No.1641, 1644 and 1645 of Deo Sharan Yadav through joint agreement and the petitioner paid Rs.1,10,000/- for the said purchase as his share. The first payment of Rs.50,000/- through Cheque No.0293892 was made



to the opposite party no.2 in the name of M/s S. Chandra Enterprises on 17.5.2000 and the aforesaid cheque was withdrawn by the opposite party no.2 on the same day from the Central Bank, Khuskibagh. The petitioner issued another cheque bearing no.0293898 dated 26.9.2000 amounting to Rs.60,000/- in the name of Chandan and the said Chandan after encashment of the aforesaid amount gave it to the opposite party no.2. The opposite party no.2 sold part of the land in auction to different persons and earned several lakhs. He neither returned the principal amount to the complainant nor paid any amount of profit earned by him through sale of the land in question. On 12.2.2008 when the petitioner along with Chandra Kishore Bhagat and Arbind Kumar went to the house of the opposite party no.2 and demanded money then he refused to return the aforesaid money. It has been alleged that the accused has cheated the complainant.

3. After examining the petitioner on oath under section 200 of the Code of Criminal Procedure (hereinafter referred to as “the Code) and certain other witnesses in course of enquiry under section 202 of the Code, the opposite party no.2 was summoned to face trial for the offences under sections 417 and 504 of the Indian Penal Code. The substance of accusation was explained to him to which he pleaded not guilty and claimed to be tried. Accordingly, the trial proceeded. In course of trial the petitioner produced and examined

five witnesses in all. They are C.W.1 Praveen Chandra Prasad (complainant), C.W.2 Chandan, C.W.3 Prabhash Kumar Jha, C.W.4 Arbind Kumar and C.W.5 Ranjeet Singh

4. The petitioner has alleged in his complaint petition as well as in his deposition that he as well as the accused Satish Chandra Gupta entered into an agreement with one Deo Sharan Gupta for selling the land of Khesra No.1641, 1644 and 1645 for consideration amount of Rs.1,10,000/-. The petitioner has not disclosed the area of the land either in the complaint petition or in his evidence. He has stated that as per the agreement he had given one cheque amounting to Rs.50,000/- on 17.5.2000 in the name of S.Chandra Enterprises as the opposite party no.2 is owner of the said firm and the second cheque was given to C.W.2 Chandan amounting to Rs.60,000/- on 26.9.2000 as per instruction of the opposite party no.2 and both the cheques were encashed from the bank but the petitioner failed to examine the actual owner of the land Deo Sharan Yadav to support the version of the complainant. The petitioner has also failed to produce any deed of agreement in order to substantiate his claim that there was an agreement between the petitioner and the opposite party no.2 for sale of the land.

5. Similarly, C.W.2 Chandan has though deposed that on 26.9.2000 he withdrew Rs.60,000/- from the bank and gave it to the

accused Satish Chandra Gupta but he admitted that he had no knowledge that for what purpose the said amount had been given by the petitioner to the accused. He has also admitted that the opposite party no.2 had not given any authority to him to receive cheque on his behalf.

6. Similarly, C.W.3 has admitted in his cross-examination that no agreement was ever prepared in his presence. I further find that C.W.4 Arbind Kumar has categorically admitted in cross-examination that he has no personal knowledge about the transaction held between the petitioner and the opposite party no.2. He is alleged to be an eye witness of the alleged occurrence but he has completely denied the fact that he accompanied the petitioner on 12.2 2008 for demanding due amount from the opposite party no.2. Thus, he has given a complete go-bye to the story propounded by the petitioner in the complaint petition as well as in his deposition in course of trial. C.W.5 Ranjeet Singh is a formal witness.

7. On appreciation of the evidence recorded in course of trial, the learned Magistrate has come to a conclusion that the petitioner has failed to prove his case during the trial and acquitted the opposite party no.2.

8. I have heard Mr. Rajendra Lal Das, learned counsel for the petitioner. He has submitted that the court below has not

appreciated the evidence led before it in correct perspective. As a matter of fact, the petitioner has fully corroborated his case while being examined in court. There may be minor discrepancies in the evidence but the witnesses consistently stated that the opposite party no.2 had taken Rs.1,10,000/- from the complainant and he failed to return the same.

9. I have perused the judgment passed by the court below. The judgment passed by the court below is reasoned one. It can neither be called erroneous nor perverse. The learned Magistrate has given sufficient and sound reasons for arriving at a conclusion that the petitioner has failed to prove his case beyond all reasonable doubts. I find no error in the judgment passed by the learned Magistrate. In that view of the matter, leave to appeal sought for by the petitioner is refused. The application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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