

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.37 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

Shivji Prasad Singh son of Late Sitaram Singh, Resident of Village + P.O.- Malwar,
P.S.- Shivsagar, District- Rohtas (Sasaram).

.... Appellant/s

Versus

1. The State of Bihar.
2. Ashok Singh Chandravanshi
3. Shiv Prasad Singh Chandravanshi
4. Anup Singh Chandravanshi
5. Bahadur Singh Chandravanshi
6. Vijay Singh Chandravanshi
7. Anuj Singh Chandravanshi
All sons of Late Sita Ram
8. Manwati Kunwar wife of Late Sita Ram
9. Manju Devi wife of Ashok Singh Chandravanshi
All resident of village- Sukhwana, P.S. -Garhwa, District- Garhwa.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Digvijay Kumar Ojha, Advocate
For the Respondent nos.2 to 9 : Mr. Ashok Kumar Mishra, Advocate
For the state : Ms. Abha Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-02-2015

The present application under section 378(4) of the Code of Criminal Procedure seeking leave to appeal has been filed against the judgment dated 1.11.2014 passed in Complaint Case No.367(C) of 2000 by the learned Judicial Magistrate, 1st Class, Sasaram whereby he has acquitted respondent nos. 2 to 9 from the charges under sections 406 and 420 of the Indian Penal Code.

According to the appellant (complainant) the allegation in sum and substance is that the appellant had fixed marriage of his daughter with respondent no.3 Shiv Prasad Singh Chandravanshi

which was scheduled to be held on 23.4.2000. Though the engagement and *Tilak* ceremonies were held earlier and all preparation for reception of *Barat* was made but on the scheduled date the *Barat* did not come as demand of colour T.V., freeze and golden chain made by respondent nos. 2 to 9 could not be fulfilled. When *Barat* did not come, the complainant approached the respondents-accused persons and they agreed to return a sum of Rs.75,000/- to the appellant but they failed to fulfill their promise.

Apart from the complainant, two other witnesses were examined in support of the prosecution case whereas four witnesses were examined in defence. The witnesses examined on behalf the prosecution are not consistent on the point of demand of dowry. The two independent witnesses examined on behalf of the prosecution have clearly stated that they were not witness to the agreement for marriage. After hearing the parties and on appreciation of evidence, the court below has acquitted the accused persons.

I have heard Mr. Digvijay Kumar Ojha, learned counsel for the appellant and Mr. Ashok Kumar Mishra, learned counsel appearing on behalf of respondent nos. 2 to 9.

I find no illegality in the judgment passed by the court below. The findings recorded by the learned Magistrate cannot be held to be erroneous or perverse.

Section 406 of the Indian Penal Code (hereinafter referred to

as “the Code”) prescribes punishment for the offences defined in section 405 of the Code which deals with criminal breach of trust. The gist of the offence under section 405 of the Code is entrustment of property and dishonest misappropriation thereof. A mere exchange of certain gifts for the purpose of marriage cannot amount to entrustment. Similarly, section 420 of the Code deals with cheating and dishonestly inducing delivery of property. It would appear from the record that there is no allegation of inducement on the part of the accused persons pursuant to which the appellant delivered any property. Moreover, there can be no legal contract or entrustment expressed or implied for payment of dowry in consideration of marriage. The same has been prohibited in law and made punishable. Further, an oral promise made for return of some money and not honouring the same would not attract ingredients of the offence of cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction.

Having regard to the facts and circumstances of the case, I find no merit in the present application. Accordingly, leave to appeal is refused. The application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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