

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.10 of 2016

Arising Out of Complaint Case No. -2313 Year- 2008 Thana -null District- VAISHALI(HAJIPUR)

1. Indramani Devi, W/o Sri Nand Kishore Prasad Gupta of Village- Anwarpur, P.O Pouda, P.S. Sarai, District Vaishali.

.... Petitioner

Versus

1. The State of Bihar
2. Mahavir Sah, S/o Late Banshi Sah
3. Amod Sah, S/o Mahavir Sah Both of Village- Anwarpur, P.O Pouda P.S. Sarai, District- Vaishali.

.... Opposite Parties

Appearance :

For the Appellant/s : Mr. Pratik Kumar Sinha, Adv.

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

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-10-2016

The present application under clause (4) of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner seeking leave to appeal against the judgment and order dated 11th December, 2015 passed by the learned Judicial Magistrate 1st Class, Hajipur in T.R. No. 987 of 2015 arising out of C.R. No. 2313 of 2008, whereby the learned Magistrate has acquitted the accused opposite parties no.2 and 3 of the charges under Sections 406, 420 and 120-B of the Indian Penal Code.

2. The complainant-petitioner filed a written complaint on 5th August, 2008 in the court of Chief Judicial Magistrate, Vaishali, Hajipur Vide Complaint Case No. 2313 of 2008 alleging, inter alia, that accused Mahavir Sah had decided to sell a piece of land of khata



no. 53 khesra nos. 899 and 900 having an area of 6 decimals for a consideration of Rs.60,000/- in favour of the complainant. It was agreed that the consideration amount would be paid to the accused at the time of execution of the sale deed. The complainant purchased non-judicial stamp of Rs.3,100/- and went to the Registry Office, Lalganj with the accused persons, witnesses and identifier. On the instruction of the accused Mahavir Sah, sale deed was prepared by the scribe. It is further alleged in the complaint that accused Amod Sah, who is son of accused Mahavir Sah, demanded consideration amount and the petitioner paid Rs.60,000/- but Mahavir Sah demanded an extra amount of Rs.15,000/- from the complainant as the cost of the land. The complainant refused to pay the said extra amount. The accused persons left the Registry Office without executing the sale deed. Since the sale deed was not executed, the complainant asked the accused persons to return her total money amounting to Rs.63,100/- but the accused persons refused to return the same. A panchayati was also held on 4th August, 2018 for the said purpose but the accused persons refused either to execute the sale deed in favour of the complainant or to return the money to her.

3. The learned Chief Judicial Magistrate, Hajipur, in exercise of power conferred under Section 192 of the Cr.P.C., made over the complaint case to the court of Judicial Magistrate 1st Class,

Hajipur for inquiry and disposal.

4. In course of inquiry, the complainant was examined on solemn affirmation. Three other witnesses were also examined on behalf of the complainant. They are C.W.1 Bipin Kumar, C.W.2 Ramchandra Singh and C.W.3 Parmanand Sah. The trial Magistrate finding prima facie case to be made out against the accused persons, framed charges under Sections 406, 420 and 120-B read with 34 of the Indian Penal Code and summoned them to face trial.

5. After appearance, charges were read over to the accused persons to which they pleaded not guilty and claimed to be tried. The statements of both the accused persons were recorded under Section 313 of the Cr.P.C. on 27th November, 2014.

6. During trial, the complainant examined only three witnesses including herself. They are C.W.1 Bipin Kumar, C.W.3 Parmanand Sah and C.W.4 Indramani Devi. However, no documentary evidence was produced on behalf of the complainant. The defence neither produced any oral evidence nor any documentary evidence.

7. Having considered the evidence on record and the submissions advanced on behalf of both the parties, the trial Magistrate found that there was no documentary evidence regarding payment of Rs.60,000/- to the accused persons by the complainant.



The trial Magistrate also found that the scribe was not produced as a witness though it was claimed that the amount was paid to the accused persons in his presence. It was also found that C.W.3 Parmanand Sah has stated in his examination-in-chief that Rs.60,000/- was paid to the accused persons which was Rs.10,000/- less than what was agreed and the complainant had assured to pay the balance amount in a short while. The trial Magistrate also found that there was no corroboration of fact of payment from any independent witness. The trial Magistrate has summed up his findings in paragraphs 13 and 14 of the impugned judgment, which read as under:

“13. Thus, the Court finds that while the evidence of the three witnesses does tend to show a dispute between the two sides at the time of execution of the sale-deed, the evidence of C.W.3 is at variance with that of the other two witnesses with respect to the precise cause of dispute, since it relates to a different amount (Rs.10,000/-) and suggests that the amount demanded (balance) fell within the agreed consideration and not over and above it. Moreover, given that C.W.3 is closely related to C.W.4 and that C.W.1 being the son of C.W.4, conducted the affairs on behalf of C.W.4, the Court is of the view that there is no corroboration of the fact of payment from an independent witness. As such, the factum of delivery of the consideration amount is not proved beyond reasonable doubts. It follows that there is neither ‘entrustment’ of the consideration amount to the accused persons nor ‘delivery’ of the same whether or not under dishonest inducement, to constitute either the offence of criminal breach of trust as described under section 406 or cheating as described under section 420 of the Indian Penal

Code respectively.

14. Further, the evidence on record hardly attribute any specific role to accused no.2 in the whole sequence of alleged event to prove any agreement and concerted action by the two accused persons for an illegal purpose. As such the offence under section 120B of the Indian Penal Code is also not proved beyond reasonable doubts.”

8. On the strength of the aforesaid findings, the trial Magistrate acquitted both the accused persons of the charges leveled against them.

9. Having heard learned counsel for the petitioner and perused the materials available on record, this Court is of the view that the trial Magistrate has committed no error in recording the judgment of acquittal. The learned Magistrate has given clear, cogent and convincing reasons in acquitting the accused- opposite party nos.2 and 3.

10. In that view of the matter, I do not find any merit in this application. Accordingly, leave to appeal is refused.

11. The application stands dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	-----
Uploading Date	21.10.2016
Transmission Date	21.10.2016