

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.15 of 2016

Arising Out of Complaint Case No. -1100 Year- 2005 Thana -null District- GAYA

1. Nawal Kishore Singh Son of Late Harihar Singh Resident of Village - Law, P.S. Tekari, District - Gaya.

.... Petitioner

Versus

1. The State of Bihar.
2. Kamta Prasad Singh Son of Late Ganga Bishun Singh
3. Satendra Singh Son of Late Ganga Bishun Singh
4. Janardan Singh Son of Late Sitaram Singh
5. Mundrika Prasad Yadav Son of Late Kali Yadav
6. Rajesh Singh Son of Late Sitaram Singh All Sl. No. 1 to 6 are residents of Village - Law, P.S. - Tekari, District - Gaya.
7. Syeed Mohd. Allauddin Son of Mohd, Riyaz Resident of Village - Devdharpur, P.S. Tekari, District - Gaya.

.... Opposite Parties

Appearance :

For the Appellant/s : Mr. Anil Kumar Saxena, Adv.

For the Respondent/s : Mr. Sujeet Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-10-2016

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 12th January, 2016 passed by the learned Judicial Magistrate-XVI, Gaya in Complaint Case No. 1100 of 2005/ Trial No. 199 of 2016, whereby the opposite parties no.2 to 7 have been acquitted of the charges under Sections 417 and 465 of the Indian Penal Code.



2. The complainant-petitioner filed a written complaint in the court of Chief Judicial Magistrate, Gaya on 9th August, 2005 vide Complaint Case No. 1100 of 2005 alleging, inter alia, that accused Kamta Singh and Satendra Singh, who are brothers, have sold the land of the complainant Nawal Kishore Singh to the accused Janardan Singh and Tulsi Yadav. The accused Mundrika Prasad Nayak was introducer of the accused nos. 1 and 2 in the alleged sale deed. The accused Rajesh Singh is the witness to the alleged transaction of the sale of land and the accused Syed Mohd. Allauddin is the deed writer of the alleged sale deed. According to the complainant, his wife Savitri Devi is the only daughter of Keshwar Mahto and she received the lands of Khata no. 78 New, Plot No. 244 and 2105 having area of 25½ decimals and 33½ decimals under Mauza Law, P.S. Tekari in the district of Gaya in inheritance from her father. It is alleged that the accused persons in conspiracy with each other executed the sale deed in favour of accused nos. 3 and 7. It is alleged that the accused nos. 1 and 2 have no concern with the aforesaid land and they have no right, title and possession over the same. It is alleged that after getting certified copy of the sale deed filed the present complaint case in the court as the police evaded to register the FIR.

3. The learned Chief Judicial Magistrate, Gaya in exercise of power conferred under Section 192 of the Cr.P.C. made over the



complaint to the court of Judicial Magistrate 1st Class, Gaya for inquiry and disposal. After inquiry and examination of the complainant on solemn affirmation, the learned Judicial Magistrate 1st Class, finding prima facie case to be made out against the accused persons under Sections 417 and 465 of the Indian Penal Code, took cognizance of the offence and summoned them to face trial.

4. After appearance of the accused persons, charges were framed against them under Sections 417 and 465 of the Indian Penal Code, to which they pleaded not guilty and claimed to be tried. The case was again made over to the court of Judicial Magistrate- XVI, Gaya.

5. During trial, the complainant produced altogether six witnesses. They are P.W.1 Bindeshwar Yadav, P.W.2 Naresh Prajapati, P.W.3 Krishna Nandan Singh, P.W.4 Amarendra Kumar, P.W.5 Nawal Kishore Singh, the complainant and P.W.6 Virendra Singh. The complainant also produced a large number of documentary evidences and marked exhibits. The defence has not produced any oral evidence. However, some documentary evidences were produced on their behalf.

6. Having considered the evidence and arguments on behalf of both the parties, the trial Magistrate made detailed discussions in his judgment and came to the conclusion that the complainant has

failed to prove the charges under Sections 417 and 465 of the Indian Penal Code. It is relevant to reproduce paragraph 13 to 16 of the judgment of the trial Magistrate, which read as under :

“13. 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 or 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. 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 the retention thereof by any person or to intentionally induce him to do or 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 complainant while executing the sale deeds. Therefore, it cannot be said that the accused no.1 and 2 by the act of executing sale deeds in favour of the accused no.3 & 4 or the accused no.3 & 4 by reason of being the purchaser, or the 5th, 6th and 7th accused, by reason of being the introducer, witness and scribe in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found. It cannot be said that there was an offence punishable under sections 417 IPC is attracted.

14. In the present case the complainant is not the purchaser of the alleged land but party to the alleged registered sale deed based on which he had filed this case. It is also pertinent to discuss that the only document based on which this case is instituted is the alleged registered sale deed i.e. Ext.-2 and 2/A, in which the presumption is in favour of the accused persons i.e. against the complainant and this

court cannot give any remedy if the alleged registered sale deed is challenged,. Since the presumption is in favour of the accused persons and ingredients of sec. 417 & 465 IPC are not proved, her allegation u/s 417 & 465 IPC is not attracted.

15. In Mohd. Ibrahim Vs. State of Bihar, (2009) 8 SCC 751 Hon'ble Supreme Court of India has held that,

“When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint...”

16. Finally considering the above discussion and case law the court finds that complainant has miserably failed to prove the guilt of accused persons in this case and no offence has been committed u/s 417 and 465 IPC, hence all the accused persons in this case are acquitted from the accusation u/s 417 & 465 IPC.”

7. I have heard learned counsel for the petitioner and perused the impugned judgment dated 12th January, 2016 passed by the learned Judicial Magistrate-XVI, Gaya.

8. I find that the trial Magistrate has given clear, cogent and convincing reasons for recording the judgment of acquittal. The reasonings assigned by the trial Magistrate are neither ill-founded nor

perverse. In that view of the matter, I see no merit in this application.
Accordingly, leave to appeal is rejected.

9. The application stands dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	-----
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