

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.34 of 2015

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

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1. Dharmasheela Devi @ Ramshila Devi W/o Narendra singh, resident of village- Kurkuri, P.S.- Fulwarisharif, District- Patna

.... Appellant/s

Versus

1. Deepnarayan Singh son of Late Daroga Rai, resident of village- Jamshout, P.S.- Sahpur, District- Patna. At present address- Alamganj Kachchi Dargah, Anita Marka Brick Company, P.S.- Didarganj Bankaghat, District- Patna

2. Sunita Devi, w/o Jagarnath Munda, resident of village- Chutiya, P.S.- Same, District- Ranchi (Jharkhand)

3. Anita Devi W/o Vishram Singh, resident of village- Alampur, P.S.- Dilarganj, District- Ranchi

4. Rajdev Rai S/o Ramlal Rai, resident of village- Brahmapur, P.S.- Phulwari, District- Patna. At present address- Alamganj Kachchi Dargah, Anita Marka Brick Company, P.S.- Didarganj Bankaghat, District- Patna

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-09-2016

The present application under sub-section (4) of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed seeking leave to appeal against the judgment and order dated 7th February, 2015 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 498(C) of 2004/ Trial No. 645 of 2015, whereby and whereunder the opposite parties no.1 to 4 have been acquitted of the charges under Sections 379, 406 and 420/34 of the Indian Penal Code (for short 'IPC').

2. The petitioner-complainant filed a complaint petition before the court of Chief Judicial Magistrate on 25th February, 2004 bearing Complaint Case No. 498(C) of 2004 alleging, inter alia, that her father Late Vishram Singh had a brick-kiln at Alamganj (Sabalpur), P.S.- Didarganj, District- Patna. After death of her father, the complainant became the owner of the brick-kiln. The opposite party no.1 is the manager of the brick-kiln and he used to see accounts work as well. The opposite parties no. 2 and 3 are labourers and opposite party no.4 is the driver of the tractor bearing Registration No. BPA 684. It is further stated that her father had one scooter bearing Registration No. BHI 6841. Apart from these, kiln materials including chimney worth Rs. 7 lakhs and bricks worth Rs. 20 lakhs were there. It is stated that on 4th August, 2002, father of the complainant died all of a sudden at the kiln. After her father's death, all the accused persons used to visit her house and assure her that the kiln is running smoothly and they will hand over the details of accounts to her. However, when the accused persons did not furnish the details of accounts, the complainant went to the kiln on 22nd March, 2003 and demanded cash and stock register from the opposite party no.1 but he refused to hand over the same on the pretext that the keys are not available with him. On inspection, it transpired to her that her father's death was not natural rather he was victim of



conspiracy by the accused persons in order to grab the entire property. The complainant again visited the kiln on 2nd October, 2003 and 15th February, 2004 but the opposite parties did not produce the accounts. It has been alleged in the complaint petition that all the accused persons have embezzled the amount and property pertaining to kiln materials worth Rs. 7 lakhs, bricks worth Rs. 20 lakhs, tractor worth Rs. 1.5 lakhs, scooter worth Rs.10,000/- and cash of Rs. 25,000/- which the complainant had given to her father in the morning of 4th August, 2002. It is further alleged that the accused persons have threatened and attacked her and her family and their life is under threat. On the basis of the aforesaid allegations, the complainant has filed the aforesaid complaint petition in the court of Chief Judicial Magistrate, Patna.

3. After filing of the complaint case, the complainant was examined on solemn affirmation and the statements of two witnesses on her behalf, namely, Narendra Singh and Gautam Kumar were also recorded in course of inquiry conducted under Section 202 of the CrPC. Thereafter, finding a prima facie case to be made out for the offences under Sections 406, 420 and 379/34 of the IPC, the learned Judicial Magistrate 1st Class, Patna issued summons to the accused persons to face trial.

4. In compliance with the summoning order passed by the

learned Magistrate, the accused persons appeared before the court and charges were framed against them under Sections 379, 406 and 420 read with 34 of the IPC to which they pleaded not guilty and claimed to be tried. Accordingly, the trial commenced.

5. In course of trial, altogether three witnesses were examined on behalf of the complainant. They are P.W.1 Narendra Singh, P.W.2 Dharmasheela Devi and P.W.3 Ganesh Kumar.

6. P.W.1 Narendra Singh is the husband of the complainant. During cross-examination, he has firstly denied that the deceased Vishram Singh had died in the hospital but later on he accepted that he had died in the hospital on 4th August, 2002. He has further stated that the accused Anita had no relation with the deceased. He has also stated that the accused Anita had no relation with the deceased and that she was not married to the deceased in a temple.

7. P.W.3 Ganesh Kumar is the brother of Narendra Singh (P.W.1). he has supported the version of P.W.1.

8. P.W.2 is the complainant herself. During cross-examination, she had admitted that there were ongoing litigations between the parties and one title suit was pending. She has stated that she last visited the kiln in 2002 and she could not tell the location of articles claimed by her. She also could not give the details of her

father's property.

9. 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 court has recorded its findings in paragraph 9 of the impugned judgment, which reads as under :-

“9. Rest of deposition of these witnesses is not worth detailed discussion and analysis. Keeping apart for a while, the merits/demerits of the prosecution case, the defence during cross has sufficiently extracted that property dispute existed between the parties, and the complainant being one of the claimants of deceased's property, has prosecuted the accused. It has also extracted that deceased's and accused Anita's relation inter-se, has remained one aspect. Apart from these three PWs, remaining named witness, has not been examined. Associates of complainant's deceased father are not examined. Nevertheless, no documentary evidence has been produced and proved by the prosecution. Even the complaint petition has not been proved. The complainant herself and her witnesses have deposed in casual and superficial manner and there are many loose ends. For instance, there is nothing on record, which could indicate, suggest or establish convincingly, that at the relevant time, who possessed the properties allegedly subjected to theft, with whom the same were entrusted and what was the manner of entrustment, who was induced by whom and what was the manner of inducement, and what was the conspiracy, if at all. Last but not the least, P.W.1 Narendra Singh has stated that his father-in-law was murdered and in 2003, written report was also lodged with Didarganj PS, regarding alleged embezzlement. It is noticeable that why the allegations of



conspiracy and murder were not made. From available prosecution evidence, the acts/omissions on part of the accused, and consequently their liability in the alleged offences, could not be ascertained. Whatsoever may be the magnitude/seriousness of allegations, the ingredients so as to constitute the offences punishable u/ss 379, 406 and 420 of the IPC are not at all satisfied. The prosecution case is poorly fought, there is insufficiency of evidence, and it cannot stand on its own. As such, defence version of the case including its evidence, is not worth discussion and analysis.”

10. Having recorded its observation in paragraph 9 of the impugned judgment, the trial Magistrate has acquitted all the four accused persons of the charges under Sections 379, 406 and 420 read with 34 of the IPC.

11. Heard learned counsel for the petitioner and perused the record.

12. Having noticed the facts of the case, the evidence led before the court of Magistrate and the reasonings given for acquittal of the accused, I see no error in the impugned judgment of the learned Magistrate. The jurisdictional Magistrate has given clear, cogent and convincing reasons for arriving at a conclusion of innocence of the accused persons. The reasonings assigned in paragraph 9 of the impugned judgment, as noticed hereinabove, are sound on facts and on law.

13. In that view of the matter, I see no merit in this application. Accordingly, the application preferred under Section 378(4) of the Cr.P.C. seeking leave to file appeal against the impugned judgment is rejected.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	