

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.278 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

1. Saroj Kumar Gupta son of Satya Narayan Vedpuriya Resident of Village - Majhauriya, Police Station Majhauriya, District - West Champaran.

.... Petitioner

Versus

1. The State of Bihar.

2. Bhagwati Shankar Gupta Son of Late Rameshwar Dayal

3. Pawan Kumar Gupta son of Bhagwati Shankar Gupta Both are residents of Village Majhauriya, Police Station Majhauriya, District - West Champaran

.... Respondents

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar No. 7

For the Respondent/s : Mr. Anant Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 09-11-2016

The petitioner, in the present application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, is aggrieved by the judgment and order, passed by learned 2nd Additional Sessions Judge, West Champaran, at Bettiah, in Criminal Appeal No. 09 of 2013, whereby he has set aside the judgment of conviction and order of sentence, dated 08.01.2013, passed by the learned Judicial Magistrate, 1st Class, Bettiah, in Trial Court 522 of 2013, arising out of Majhauria Police Station Case No. 191 of 2001 (G. R. No. 2386 of 2001).



2. On the basis of written report of the informant, said Majhulia Police Station Case No. 191 of 2001 came to be registered for the offence punishable under Sections 447, 323, 379 read with Section 34 of the Indian Penal Code. It was alleged in the First Information Report that the informant had title and possession over a land, bearing Khata No. 21, Khesra No. 342, area 03 katthas and 4½ dhurs. On the day of occurrence, i.e., 12.10.2001, the informant is said to have seen the respondent nos. 2 and 3 along with few other persons, who were illegally harvesting the crop from the said field and carrying away the same. On protest having been made, the accused persons are said to have abused the informant and assaulted him. Allegedly, the informant suffered loss of Rs. 2,000/- out of the said occurrence.

3. The police, upon completion of investigation, submitted charge sheet for the offences punishable under Section 447 and 323 read with Section 34 of the Indian Penal Code. After framing of charge for the offence punishable under Sections 447 and 323 read with Section 34 of the Indian Penal Code, respondent nos. 2 and 3 were put on trial, since they denied the charges levelled against them.

4. The learned Trial Court, by judgment and order, dated 08.01.2013, acquitted the respondent nos. 2 and 3 of the charge under Section 447 read with Section 34 of the

Indian Penal Code. They, however, came to be convicted by the learned Trial Court for the charge under Section 323 read with Section 34 of the Indian Penal Code. Learned trial Court sentenced them to undergo rigorous imprisonment for a period of one year and to pay fine of Rs. 500/- each, and in default of payment of fine, they were directed to undergo imprisonment for a further period of one month.

5. On appeal, having been preferred by the respondent nos. 2 and 3, the Appellate Court, i.e., the Court of learned 2nd Additional Sessions Judge, West Champaran, at Bettiah, set aside the judgment of conviction and order of sentence passed by the learned Judicial Magistrate, 1st Class, Bettiah.

6. Heard Mr. Sanjay Kumar No. 7, learned Counsel appearing on behalf of the petitioner and Mr. Anant Kumar, learned Additional Public Prosecutor, representing the State.

7. It appears from the impugned judgment and order passed by the learned 2nd Additional Sessions Judge, West Champaran, at Bettiah, that taking into account acquittal of the respondent nos. 2 and 3 of the charge under Section 447 read with Section 34 of the Indian Penal Code by the learned Trial Court came to a conclusion that the place of occurrence itself became doubtful and, therefore, the respondent nos. 2 and 3 were entitled for being given benefit

of doubt.

8. Learned Counsel for the petitioner has submitted that merely on the basis of conjectures and surmises, learned Appellate Court allowed the appeal by setting aside the judgment of conviction, on an erroneous consideration that because the prosecution could not establish the charge under Section 447 read with Section 34 of the Indian Penal Code, the place of occurrence itself became doubtful and, therefore, respondent nos. 2 and 3 were entitled to be given benefit of doubt.

9. I do not find much substance in the submission made on behalf of the petitioner upon going through the impugned judgment and order as well as the judgment and order of the learned Trial Court.

10. This was the specific case of the informant, in his First Information Report, that the particular land, where the occurrence had taken place, belonged to him and respondent nos. 2 and 3, after having committed criminal trespass into the said land, were illegally harvesting the crop, which they had taken away and on protest, they had assaulted the informant.

11. I do not find any flaw in the reasoning recorded by the learned Appellate Court, in view of the case of the prosecution, as narrated in the First Information Report

that since the prosecution failed to prove the charge under Section 447 read with Section 34 of the Indian Penal Code, the place of occurrence itself became doubtful. The manner of occurrence and the place of occurrence having become doubtful, I do not find any illegality or other infirmity in the judgment and order passed by the learned Appellate Court in allowing the appeal and upsetting the judgment of conviction and order of sentence recorded by the learned Trial Court.

12. I do not find any merit in this application, which is accordingly dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-c

AFR/NAFR	NAFR
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