

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.1 of 2016

Arising Out of Complaint Case No. -786 Year- 2008 Thana -null District- SAMASTIPUR

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1. Neeraj Kumar Khemka Son of Pradip Kumar Khemka Resident of Village Marwari Bazar, Basant Market, Samastipur, P.S and District Samastipur.

.... Appellant/s

Versus

1. The State of Bihar.

2. Kailash Kumar Jhunjhunwala Son of late Parmeshwar lal Jhunjhunwala Resident of Ganesh Pharma, Marwari Bazar, Samastipur, P.S and District Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Narain Sinha, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-09-2016

By way of the present application preferred under sub-section (4) of Section 378 of the Code of Criminal Procedure (for short 'CrPC'), the petitioner seeks leave to appeal against the judgment dated 30th September, 2015 passed by the learned Judicial Magistrate 1st Class, Samastipur in TR No. 164 of 2015 arising out of Complaint Case CR No. 786 of 2008, whereby and whereunder the opposite party no. 2 Kailash Kumar Jhunjhunwala has been acquitted of the charges under Sections 323 and 504 of the Indian Penal Code (for short 'IPC').

2. The petitioner-complainant filed a complaint petition on 13th June, 2008 in the court of Chief Judicial Magistrate, Samastipur alleging, inter alia, that the opposite party no.2 Kailash Kumar Jhunjhunwala is his tenant and he is running an ayurvedic medicine



shop in the name of 'Ganesh Pharma'. The petitioner has filed an eviction suit against him which is pending for appearance of the accused. On 12th June, 2008 at about 3.00 p.m., the complainant came to know that the accused had damaged a part of the house and had started some construction without his consent. The complainant went to the said premises and instructed the accused to stop construction work upon which the accused used abusive words and pushed him down, as a result of which the complainant fell on the ground and got injured. It is stated that the complainant informed the police but the police advised him to file case in the court due to tenancy dispute.

3. The learned Chief Judicial Magistrate, Samastipur in exercise of power conferred under Section 192 of the CrPC, transferred the case to the court of Judicial Magistrate, Samastipur for inquiry and disposal.

4. In course of inquiry, the complainant was examined on solemn affirmation. Finding prima facie case to be made out against the accused under Sections 323 and 504 of the IPC, the learned Magistrate issued summons for his appearance.

5. After appearance, charges under Sections 323 and 504 of the IPC were explained to the sole accused to which he died and claimed to be tried. The statement of the accused was also recorded under Section 313 of the CrPC in which he pleaded his innocence.

6. During trial, two witnesses were examined on behalf of the complainant. They are P.W.1 Niraj Kumar Khemka, the complainant and P.W.2 Kedar Sah. Certified copy of the judgment and decree passed in Eviction Suit No.3 of 2007 was also identified by the complainant and marked as Ext.-1. The defence has neither produced oral nor documentary evidence.

7. P.W.1 the complainant himself supported the prosecution case in his examination-in-chief. In his cross-examination, he has stated that he had filed eviction suit against the accused in which he has got the decree. He has also stated that the accused is his lessee for the last 40 years on the basis of *ekrarnama* executed by his grandmother. He has stated that on being informed by a private guard, he had gone to the place of occurrence alone and he had informed his advocate and family members about the occurrence. He has further stated that he fell down upon a thrust given by the accused between the shop and the road and he was injured but there was no bleeding nor any cut and fracture. He got himself treated by Dr. R.R. Jha, X-ray was also done but he did not submit the prescription. He has accepted in his cross-examination that he had not gone to the Police Station.

8. P.W.2 Kedar Sah has stated that he is the tenant of the father of the complainant. He has stated that the occurrence took place

in the main market place of Samastipur. At the time of occurrence there was crowd. In his cross-examination, he has stated that does not know that there was any dispute between the complainant and the accused since 1991. He has further stated that he does not know whether the complainant was treated anywhere after the occurrence.

9. After hearing the parties and taking into consideration the evidence of the prosecution witnesses, the learned Magistrate summed up his findings in paragraph 13 of the impugned judgment, which runs as under :

“13. On scrutiny and perusal of the whole evidence and case record it transpires that statement of PW1 and PW2 is contradictory as PW1 in para 17 of cross examination stated that he got up and went away, he did not go to thana but PW2 stated in his examination in chief that after scuffle between Neeraj Jee and shopkeeper, Neeraj Jee fell down. People pulled up Neeraj jee and taken him away. On the other hand out of two witnesses PW1 is complainant himself and PW2 is his father's tenant so it is clear that no independent witness was produced for examination and cross examination. PW2 in para 6, stated that the place of occurrence is the main market place of Samastipur. At the time of occurrence there was crowd time and people was moving there. It appears to be quite unnatural that in day time at busiest market place occurrence took place, no one except PW1 and PW2 saw the occurrence and no one from near vicinity came to support the complainant's case. Complainant on the other hand produced documentary evidence marked as Ext 1, certified copy of judgment dated 26/09/12 and decree in eviction suit 03/07 in his favour. This shows that complainant of this case is landlord and accused

of this case is his tenant.”

10. On the strength of the above discussions, the learned Magistrate came to the conclusion that the prosecution version is false, concocted and untrustworthy and thus acquitted the accused-opposite party no.2 of the charges leveled against him.

11. Heard learned counsel for the petitioner and perused the materials available on record.

12. Having regard to the evidence adduced before the court of Magistrate, this Court is of the opinion that the learned Magistrate has rightly held that the prosecution has failed to prove the charges leveled against the accused beyond shadow of reasonable doubt. The reasonings assigned by the trial Magistrate, as recorded hereinabove, are cogent and convincing.

13. In that view of the matter, I do not find any merit in this application. Accordingly, the application preferred under Section 378(4) of the Code of Criminal Procedure seeking leave to appeal against the impugned judgment of acquittal is rejected.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	----
Uploading Date	29-09-2016
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