

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1094 of 2014

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1. Upendra Narayan Jha, S/o Late Gulli Ram Jha, Resident of
Village Dakhram, Police Station Bahera, District Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Choudhary Mani Kant Rai.
3. Choudhary Phoolkant Rai.
4. Choudhary Bipin Rai.

All S/o Late Ram Prakash Rai, Resident of Village Pousi, P.S.
Bahera, District Darbhanga.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Baidya Nath Thakur, Adv.
Mr. Shankar Kumar Thakur, Adv.
For the State : Mr. Md. Ansarul Haque, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 09-11-2016

This application has been preferred, under
Section 397 read with Section 401 of the Code of Criminal
Procedure, against the judgment and order, dated 22.03.2014,
passed by learned *Adhoc* Additional Sessions Judge-IV,
Darbhanga, in Cr. Appeal No. 24 of 2010, whereby, he has set
aside the order of conviction and sentence, dated 20.09.2010,



passed by learned Sub-Divisional Judicial Magistrate, Benipur, Darbhanga, in Trial No. 191 of 2010 (Complaint Case No. 261 of 2005), whereby, after holding the opposite party Nos. 2 to 4 guilty of the offences, punishable under Sections 147 and 379 of the Indian Penal Code, the trial Court had sentenced them to undergo simple imprisonment for a period of six months each for the offence punishable under Section 147 of the Indian Penal Code and for six months each for the offence punishable under Section 379 of the Indian Penal Code.

2. Learned appellate Court while setting aside the judgment of learned trial Court, on the basis of analysis of evidence available on the record, had come to the conclusion that the prosecution failed to prove the charge so framed against opposite party Nos. 2 to 4. The case of the prosecution is based on a complaint petition filed by the petitioner according to which, the accused persons were cutting the paddy from the field owned by the complainant. Despite objection having been raised, the accused persons continued cutting the paddy crop and, thus, they allegedly looted the paddy crop worth Rs. 1,000/-. It was specific case of the complainant that the land in question was his *Khatiyani* land over which he was coming in peaceful possession from the very beginning.

3. Learned counsel, appearing on behalf of the



petitioners has submitted that the appellate Court has set aside the judgment and order of sentence and conviction, passed by the learned trial Court, on the ground, inter alia, that the witnesses, mentioned in the complaint petition, were not examined at the trial. According to him, in such circumstance the appellate Court ought to have remanded the matter back to the learned trial Court, in terms of Section 386 (b-i) of the Code Criminal Procedure. He has further submitted, referring to the judgment and order passed by learned trial Court, that the prosecution was able to prove the charge of the offences, punishable under Sections 379 and 147 of the Indian Penal Code, beyond all reasonable doubt. Accordingly, the learned appellate Court ought not to have interfered with the findings recorded by the learned trial Court.

4. I have perused both the judgments and orders passed by the learned trial Court, i.e., learned Sub-Divisional Judicial Magistrate, Benipur, Darbhanga, and the appellate Court, i.e., learned Adhoc Additional Sessions Judge-IV, Darbhanga. Upon perusal of both the judgments and orders, as aforesaid, and the materials available on the record coupled with the submission advanced on behalf of the petitioner, I am not left with any doubt that there is serious dispute between the petitioner and opposite party Nos. 2 to 4 in respect of title over the land in question. On the one hand,

the complainant/petitioner claims that the disputed land, is his *Khatiyani* land, it is the claim of opposite party Nos. 2 to 4 that they obtained the said land on participation in the family. On the basis of evidence, adduced at the trial, as have been referred to in the judgment and order of learned trial Court, it could not be concluded that the petitioner was in peaceful possession over the land in question or he held title over the said land. Unless this aspect was proved beyond all reasonable doubt at the stage of trial, conviction of opposite party Nos. 2 to 4 could not be the recorded.

5. In that background, in my view, learned appellate Court has committed no illegality in up-setting the judgment and order passed by the learned trial Court. The impugned judgment and order, passed by the learned trial Court and learned appellate Court, require no interference.

6. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-c

AFR/NAFR	NAFR
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