

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.793 of 2017

Arising Out of Case No. -1489C Year- 2010 Thana –Complaint District- SAHARSA

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Mohammad Mansoor Alam, Son of Late Maqbul Ansari @ Mahbul Ansari, R/o Village- Mir Tola, Bangaon Road North, Ward No.7, Saharsa, P.S. & District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Devendra Prasad Poddar, Son of Late Mauzi Poddar, R/o Village- Sor, Tola, Ghomkatta, P.S.- Gogri, District- Khagaria, at present Batraha, Ward no.22, Saharsa, P.S. & District- Saharsa.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Advocate.
Mr. Nafisuzzoha, Advocate.

For the Respondent/s : Mr. Ajay Kumar No. 1, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 23-08-2017

Heard learned counsel for the petitioner as well as
learned counsel for the State.

2. This revision application is preferred by the petitioner against the concurrent finding of the trial court as well as appellate court, relating to his conviction under Section 465/34 of the Indian Penal Code. The trial court, by order dated 27.06.2016 passed in Complaint Case No. 1489 of 2010, awarded punishment of both the convicts, namely, Mohammad Fakruddin Ansari and Mohammad Mansoor Alam (petitioner) to undergo rigorous imprisonment for two years and also fine of Rs. 1000/- each for committing offence under



Section 465/34 of the Indian Penal Code, in case of default in payment of fine, to further undergo simple imprisonment for one month. However, the appellate court modified the judgment of the court below and reduced the sentence of the petitioner to undergo rigorous imprisonment for six months, whereas the appellate court has released convict Mohammad Fakruddin Ansari on probation of good conduct after due admonition under the Probation of Offenders Act.

3. Learned counsel appearing on behalf of the petitioner submits that alleged forged document i.e. agreement for sale, an unregistered document was not produced by the prosecution side so, burden of proof lies on the prosecution side but in the present case, onus of burden of proof has not been discharged by the prosecution, even if the prosecution is not in possession of the said document, the convict cannot be compelled to produce the document and cannot be forced to bring incriminating material against him rather the same would have been called by the court as the document, under scrutiny, is on the record of a pending title suit in the court.

4. Learned counsel for the State submits that there are concurrent findings of the two courts and there is no illegality in judgments.

5. The complaint's case, in brief, is that accused persons have brought into existence a forged deed of agreement of sale stated



to be executed by his wife on 31.05.1984 with respect to her land in favour of Mohammad Fakruddin Ansari and another accused is witness on that document. The complainant's assertion is that there is no question of execution of such deed by his wife as she had already died on 29.12.1983.

6. Having considered rival submissions of both sides and on perusal of the record, this Court finds that the accused persons have not challenged, even not suggested during trial in cross-examination that the complainant's wife had not died on 29.12.1983. Her death certificate, issued on 29.12.1983, was also not disputed. Both the courts below on the basis of the evidence of death certificate of complainant's wife as well as taking into account presumption under Section 114 (g) of the Indian Evidence Act, convicted the accused persons. I find that during examination of the accused persons including the petitioner, under Section 313 of the Cr.P.C., they positively affirm about the execution of agreement for sale deed (*Jarbyananama*). Admittedly this document was in possession of the complainant rather it was in possession of the accused persons, so in case of non-production of that document natural corollary is the presumption against them under Section 114(g) of the Evidence Act. Hence, there is no illegality or any perversity in the concurrent findings of both the courts.



7. Learned counsel for the petitioner submits that Mohammad Fakruddin Ansari, the real beneficiary was given benefit of Probation of Offenders Act and released him on admonition whereas this petitioner, only an attesting witness of the said document, has been awarded substantive punishment, he has clean antecedent and there is no evidence on record that he was earlier convicted in any other case.

8. The court finds no illegality in the judgment and order of conviction passed against accused persons including the petitioner, however, the petitioner is also given the benefit of Section 4 of the Probation of Offenders Act. Hence, he is directed to execute a bond with two sureties to the satisfaction of the trial court in accordance with Section 4 of the Probation of Offenders Act. With the aforesaid modification in sentence, this revision application stands dismissed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.08.2017
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