

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.827 of 2014

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Jainath Prasad, Son of late Ram Briksh Prasad, Resident of Village-
Baishakhwa P. S. Keshwaria, District East Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Brahma Prasad, Son of late Mukhlal Prasad, Resident of Village-
Baishkhwa, P. S. Kesharia, District-East Champaran, Motihari

.... Opposite parties

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar

For the Respondent/s : Mr. Ramesh Chandra (APP)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL ORDER

10 02-03-2017

Heard learned counsel for the parties.

2. The Opposite party No.2 was convicted of the offence punishable under Section 417 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months by the judgment and order of sentence, dated 19.06.1998, passed by learned Judicial Magistrate, Ist Class, Motihari, in T. R. No. 57 of 1998 arising out of Kesharia P. S. Case No. 93 of 1990 (G.R. Case No. 1748 of 1990). On an appeal preferred by him against the order of conviction and sentence, learned Additional Sessions Judge-cum-F.T.C.-IV, East Champaran, Motihari, *vide* his order dated 05.04.2011 passed in Criminal Appeal No. 89 of 1998 has set aside the judgment of conviction and sentence and has recorded acquittal of the Opposite party No.2.

3. The petitioner is informant of said Kesharia P. S.



Case No. 93 of 1990 and is aggrieved by the judgment and order, dated 05.04.2011 passed by learned Additional Sessions Judge-cum-F.T. C. IV, East Champaran, Motihari in Criminal Appeal No. 89 of 1998.

4. I have perused the order, which is impugned in the present application as also the materials available on record. The Opposite party No.2 was charged of the offence punishable under Sections 406, 420, 467, 468 of the Indian Penal Code. The trial Court acquitted the Opposite party No.2 of the offence punishable under Sections 406, 420, 467, 468 and 471 read with Section 34 of the Indian Penal Code and convicted him of the offence punishable under Section 417 of the Indian Penal Code.

5. On perusal of the impugned appellate order, I find that the appellate Court has held that if charge under Section 420 of the Indian Penal Code could not be proved, the Opposite party No.2 held guilty of the offence punishable under Section 417 of the Indian Penal Code. The appellant Court has further recorded that identity of the lands covered by the sale deeds of both the parties, which was the foundation for registration of the criminal case could not be established at the trial.

6. Though the observation of the appellate Court below that if a person is not found guilty of the offence



punishable under Section 420 of the Indian Penal Code, he cannot be found guilty of offence punishable under Section 417 of the Indian Penal Code is concerned, in my view, is not correct position of law. Section 417 of the Indian Penal Code deals with punishment for cheating simpliciter whereas Section 420 of the Indian Penal Code deals with cheating and dishonestly inducing delivery of property. The ingredients of Section 420 of the Indian Penal Code are not only that the accused has cheated some one but also that by doing so, he has dishonestly induced the person so cheated to deliver property.

7. However, upon consideration of materials on record I notice that dispute was purely of civil in nature and, therefore, in the facts and circumstances of the present case, I do not intend to interfere with the finding of acquittal recorded by the learned appellate Court below in his impugned judgment and order dated 05.04.2011, in criminal revision jurisdiction.

8. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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