

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.434 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Ajay Kishore, S/o Late Sheo Shankar Prasad, Resident of Mohalla-Ashok Nagar,
Road No. 11A, Kankarbagh, P.S. Kankarbagh, Town & District-Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Saran Paswan, S/o Late Mukund Saran Paswan,
3. Santosh Kumar, son of Ram Saran Paswan,
4. Naulesh Paswan, son of Ram Saran Paswan,
5. Lal Muni devi, Wife of Ram Saran Paswan
2-5 are resident of Mohalla-Bari Pahari, P.S. Agamkuan, District-Patna.
6. Satrugan Paswan, son of Sri Chaturi Paswan, resident of village Sarvano, P.O.
Ushmanchak, Police Station Masaurhi, District Patna

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Amitabh Ranjan Mishra Mr. Jai Shankar Pathak
For the State	:	Ms. (Dr.) Indihar Kumari

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 23-06-2017

Heard learned Counsel for the petitioner and
learned Additional Public Prosecutor appearing on behalf of the
State of Bihar.

2. The present application has been filed under
Section 397 read with Section 401 of the Code of Criminal
Procedure, 1973, by the petitioner, being aggrieved by the
judgment and order, dated 25.02.2017, passed, in Criminal



Appeal No. 279 of 2009, by learned Additional Sessions Judge VIII, Patna, whereby he has set aside the judgment of conviction and order of sentence, dated 05.08.2009, passed by learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 1503(C) of 2007, and has acquitted the Opposite Party Nos. 2 to 5 of the offences punishable under Section 406 and 420 of the Indian Penal Code. The said Opposite Party Nos. 2 to 5 were convicted by the learned Trial Court of the said offence, under Sections 406 and 420 of the Indian Penal Code, and were sentenced to imprisonment for a term of two years and three years respectively.

3. Briefly narrated, the case of the prosecution, as unfurled in the complaint petition, is that the petitioner had given some money to Opposite Party No. 2 for the purpose of transfer of a piece of land in favour of the petitioner through registered sale deed on payment of consideration amount. It is the case of the petitioner that he had paid a sum of Rs. 1,15,000/- to Opposite Party No. 2 for the purpose of transfer of a piece of land to Opposite Party No. 2, who, in collusion with others, refused to either execute the sale deed or to return back the said amount. With these allegations, the petitioner filed the complaint petition in order to make out a case under Section 406 and 420 of the Indian Penal Code.



4. The learned Trial Court, as has been noted above, recorded conviction of the said Opposite Party Nos. 2 to 5, which, subsequently, came to be set aside by the learned Appellate Court, by the impugned judgment and order, dated 25.02.2017.

5. Learned Counsel appearing on behalf of the petitioner has vehemently argued that there was abundant evidence before the learned Trial Court as well as learned Appellate Court to establish that the Opposite Party No. 2 had taken money from the petitioner for the purpose of execution of sale deed in petitioner's favour with respect to a piece of land. On failure on the part of Opposite Party No. 2 to execute the sale deed, the petitioner had made an attempt for return of the said amount or to execute the sale deed, but the Opposite Party No. 2 refused to do so in order to misappropriate the amount so advanced by the petitioner.

6. In my view, on the basis of evidence to the effect, as noted above, no case under Section 406 or 420 of the Indian Penal Code is made out. What I find from the records is that there is no material to show or evidence to establish that Opposite Party No. 2 had, from the very beginning, an intention to dupe the petitioner. This is not even the case of the petitioner. It is the case of the petitioner that after having taken the said amount for the purpose of



execution of sale deed, the private opposite parties neither executed the sale deed nor did they return the amount given by the petitioner to Opposite Party No. 2.

7. In my view, these facts do not constitute offence under Section 406 or 420 of the Indian Penal Code. Further, learned Counsel for the petitioner has submitted that the petitioner, at no point of time, filed any suit for specific performance of contract.

8. In that background, findings recorded by the learned Appellate Court acquitting the private opposite parties of the offence punishable under Sections 406 and 420 of the Indian Penal Code cannot be said to be unjustified. The Appellate Court has taken into account all the materials on record. The petitioner has not been able to make out a case of perversity in the findings recorded by the learned Appellate Court.

9. I do not find any merit in this application. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.06.2017
Transmission Date	28.06.2017

