

IN THE HIGH COURT OF JUDICATURE AT PATNA
SLA No.4 of 2017

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Kaushal Kishor Choudhay, Son of Late Siya Saran Choudhary, Residing at
Qtr No. B 706, Rail Vihar, Gurgaon P. S. Gurgaon District Gurgaon-
122001, Haryana

.... Appellant/s

Versus

1. The State of Bihar
 2. Praveen Kumar Choudhary, Son of Siya Saran Choudhary, Resident of
Bharti Nagar, P. S. Chitragupta Nagar, District-Khagaria
 3. Shiromani Devi, Wife of Shailendra Choudhary, Resident of Village
Rahimpur, Nayatola at present residing at Jai Prakash Nagar, P. S.
Mufassil, Distt. Khagaria. Respondent/s
- =====

Appearance :

For the Appellant/s : Mr. Bharat Bhushan

For the Respondent/s : Mr. Sri Bipin Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 20-02-2017 Heard learned counsel for the parties.

2. The present application under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the **Code**) has been filed seeking leave to prefer an appeal against the judgment and order, dated 04.11.2016 passed by learned Judicial Magistrate First Class, Khagaria in C.I.S. No. 2037 of 2013 arising out of Complaint Case No. 317C/2011, whereby he has recorded acquittal of Opposite parties No. 2 and 3 of the offence punishable under Section 423 of the Indian Penal Code.

3. The petitioner filed the said complaint case making an allegation that Opposite party No.2 executed a sale deed in favour of Opposite party No.3 on 29.12.2005 in relation to a land,



which existed in the name of the appellant. He alleged that in the said registered sale deed the Opposite party No.2 described the land to be of his share whereas there had been no partition in the parental land.

4. The trial Court taking into account the evidence adduced at the trial including the fact that the petitioner could not establish his ownership over the land in question and that complaint petition was filed six years after the cause of action arose, has recorded acquittal of the Opposite parties.

5. Learned counsel appearing on behalf of the petitioner has vehemently submitted that it was within the knowledge of Opposite party No.2 that the land was owned and possessed by the petitioner and despite that it described the land as his own land in the sale deed and, therefore, offence under Section 423 of the Indian Penal Code is made out.

6. A person can be convicted of a criminal offence only if the offence is proved against him beyond all reasonable doubts. Unless there could be a finding that the petitioner was holding the title and possession over the land, the Opposite party No.2 or for that matter the Opposite party No.3 could not be convicted of the offence under Section 423 of the Indian Penal Code. There is apparent family dispute between the parties purely



of civil nature.

7. I do not think that the petitioner has been able to make out a case for grant of leave for preferring appeal against the impugned order, which does not suffer from any apparent illegality or infirmity.

8. This application is, accordingly, dismissed.

9. It is, however, made clear that the findings recorded by the Court below shall be treated to be confined to accusation against the Opposite parties No. 2 and 3 and the findings shall not prejudice the case of the petitioner in any civil dispute.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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