

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.751 of 2014

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1. Baban Singh, son of late Mahadeo Singh

2. Ram Awadhesh Singh, son of Sri Ramjit Singh

3. Moti Lal Singh, son of Late Ram Ekbal Singh

All resident of village- Jarlahi, Mathiya, P.S.- Bikramganj, District-
Rohtas at Sasaram.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Chandra Singh, Adv.

Mr. Jitendra Kr. Singh, Adv.

For the Opposite Party : Mr. Sheojee Mishra, Adv.

For the State : Mr. Narendra Kr. Singh, APP

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

ORAL JUDGMENT & ORDER

Date: 19-01-2017

The present criminal revision application, under
Section 397 read with Section 401 of the Code of Criminal
Procedure, 1973 (*hereinafter referred to as the "Cr.P.C."*), has
been filed by the petitioners being aggrieved by judgment and
order, dated 01.07.2014, passed by the learned Ad hoc
Additional Sessions Judge-III, Rohtas at Sasaram, in Cr. Appeal
No. 18 of 2012, arising out of Complaint Case No. 172(C) of



1997, giving rise to Trial No. 118 of 2012.

2. By the judgment and order of conviction and sentence, dated 04.02.2012, learned Sub-Divisional Judicial Magistrate, Bikramganj, passed in Complaint Case No. 172 of 1997, while holding the petitioners' guilty of offence punishable under Section 420 of the Indian Penal Code (*hereinafter referred to as the "IPC"*), has sentenced them to undergo imprisonment for a term of 2 years and a fine of Rs. 5,000/- each. On appeal, learned Sessions Judge, Rohtas at Sasaram, confirmed the judgment of conviction and order of sentence, dated 04.02.2012, by the impugned judgment and order dated 01.07.2014.

3. I have heard learned counsel appearing on behalf of the petitioners and learned counsel representing the complainant as well as learned Additional Public Prosecutor representing the State.

4. In order to appreciate the grounds taken in the present revision application, it would be apt to take note of the case of the prosecution in brief. The complainant, namely, Lalan Singh, is the husband of one Lakhrajo Devi. The said Lakhrajo Devi is admittedly daughter of late Raj Dayal Singh. It is alleged that said late Raj Dayal Singh and his brother, namely, Ramanand Singh, had executed gift-deeds, dated 12.01.1983, in favour of the daughter of said late Raj Dayal Singh (wife of the



complainant) in respect of the land described hereinbelow:-

<u>Khata No.</u>	<u>Plot No.</u>	<u>Acres-----Decimals</u>
376	1734	00 34
436	129	00 08
436	162	00 13
437	1579	00 03

5. The said late Raj Dayal Singh had filed a Title Suit No. 38 of 1985 before the Court of learned Munsif, Bikramganj against the said registered deed, dated 12.01.1983, which was dismissed and accordingly title of said Lakhrajo Devi and possession of the complainant and his wife over the said land continued. Subsequently, the wife of late Raj Dayal Singh, namely, Budhiya Devi (accused No. 1) had executed a sale-deed in favour of Baban Singh (petitioner No. 1) with respect to the same land. It is the case of the complainant that though Budhiya Devi did not have any right, title or possession over the land in question, she executed a sale-deed, dated 16.05.1997.

6. With these allegations complaint petition was filed by the husband of Lakhrajo Devi against Budhiya Devi, Baban Singh (petitioner No. 1), Ram Awadhesh Singh (petitioner No. 2) and Moti Lal Singh (petitioner No. 3), on 26.06.1997, asserting that their conduct constituted offence under Sections 420, 419, 467, 468 and 471 of the IPC. Thereafter, cognizance was taken and the petitioners were put on trial on the charge of commission of offence under Section 420 read with Section 34 of



the IPC, which finally concluded into their conviction under Section 420 of the IPC, as has been noted above. One of the co-accused, namely, Mudrika Singh, was acquitted of the charge. The appeal preferred against the said judgment and order also came to be dismissed, as has been noticed above.

7. Learned counsel appearing on behalf of the petitioners has submitted that even if the allegations, made in the complaint petition, and the evidence, adduced at the trial by the prosecution, are taken to be true, no offence under Section 420 of the IPC is made out since essential ingredients of Section 420 of the IPC are completely missing.

8. Learned counsel appearing on behalf of the complainant, on the other hand, with all vehemence, has submitted that the act of execution of sale-deed by Budhiya Devi in favour of Baban Singh (petitioner No. 1) was a fraudulent act. According to him, the said Budhiya Devi did so on being induced by petitioner No. 1, Baban Singh. The other petitioners actively participated in hatching up a conspiracy to get the sale-deed executed fraudulently in favour of Baban Singh (petitioner No. 1) and, therefore, there is no illegality in holding the petitioners guilty of the offence punishable under Section 420 of the IPC. He has gone to the extent of making submission that, as a matter of fact, accused, Budhiya Devi, was herself deceived by petitioner No. 1, Baban Singh, and she was induced by Baban



Singh (petitioner No. 1) to execute the sale-deed, knowing well that the land in question did not belong to her. He has lastly submitted that there being concurrent finding of facts by the learned court below, recording conviction of the petitioners, this Court, exercising revisional jurisdiction, may not interfere with the impugned judgments and orders.

9. In order to appreciate rival submissions made on behalf of the parties, let us have a look at relevant provisions of the IPC. Section 415 of the IPC defines cheating in following words:-

"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

10. Section 420 of the IPC prescribes for punishment for commission of offence of cheating and dishonestly inducing delivery of property, which reads as such:-

"420. Cheating and



dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven year, and shall also be liable to fine.”

11. A conjoint reading of Sections 415 and 420 of the IPC, it can be easily said that following are the essential ingredients of an offence of cheating:-

(i) There should be fraudulent or dishonest inducement of a person by deceiving him,

(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) In cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm



to the person induced in body, mind, reputation or property.
[See, **S. W. Palanitkar and Others v. State of Bihar and Another (AIR 2001 SC 2960)**].

12. The first question which would arise for consideration in order to deal with the submission advanced on behalf of the parties is as to whether the complainant or his wife can be said to have been deceived in any manner by the accused persons/petitioners to deliver any property in his/their favour.

13. There is absolutely nothing to show that either the complainant or his wife was ever asked or induced to do something by these petitioners or omit to do anything which they would not have omitted, if they were not so deceived and any act or such omission caused any damage or harm to the property over which they had title and possession, according to the case of the prosecution. It is the case of the prosecution, on the other hand, that said Budhiya Devi had executed sale-deed in favour of petitioner No. 1, Baban Singh. Execution of the sale-deed by said Budhiya Devi, in favour of Baban Singh (petitioner No. 1), cannot be said to be constituting cheating, within the meaning of Section 415 of the IPC. It cannot be the case of the prosecution that said Budhiya Devi herself was deceived. There had never been the case of the prosecution that said Budhiya Devi was deceived by the petitioners. The allegation that the land, with respect to which the sale-deed was



executed by Budhiya Devi, did not belong to said Budhiya Devi rather it belonged to Lakhrajo Devi, cannot be said to be forming basis to constitute offence of cheating within the meaning of Section 415 of the IPC.

14. Learned counsel appearing on behalf of the petitioner has not been able to point out as to what damage or harm was caused either to the complainant or said Lakhrajo Devi, in terms of the property, because of execution of a deed by said Budhiya Devi in favour of Baban Singh (petitioner No. 1), if it is the case of the prosecution that the land in question, belonged to Lakhrajo Devi, by virtue of a gift deed, executed by the husband of said Budhiya Devi, namely, Late Raj Dayal Singh.

15. Since the ingredients of cheating are completely missing in the complaint petition as well as the evidence, adduced at the trial, I do not find conviction of the petitioners, under Section 420 of the IPC, to be justifiable.

16. Considering the clear language of Section 415 read with Section 420 of the IPC, I am of the considered view that conviction of the petitioners on the charge of offence, punishable under Section 420 of the IPC, cannot be sustained. The judgments and orders, dated 04.02.2012 and 01.07.2014, are set-aside.

17. This revision application is, accordingly, allowed.

18. The petitioners, above named, stands acquitted



of the charge. They are discharged from the liabilities of their respective bail bonds.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.02.2017
Transmission Date	01.02.2017

