

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.857 of 2017

Arising Out of PS.Case No. -247 Year- 1999 Thana -Raniganj District- ARRARIA

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Md. Nasim Son of Late Ghulla @ Manzoor Alam, R/o Village- Karankiya, P.S.-
Bousi, District- Araria.

.... Petitioner/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kundan Kumar Singh, Adv.

For the Respondent/s : Mr. Ajay Kumar – 1, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 17-11-2017

Heard learned counsel for the petitioner and learned A.P.P.
for the State.

2. The petitioner has preferred this revision application against judgment dated 16.09.1998 passed in Cr. Appeal No. 71/2008 by learned Additional District & Sessions Judge Ist, Araria whereby he upheld the conviction under Section 414 of the Indian Penal Code passed by Sub-Divisional Judicial Magistrate, Araria in Trial No. 472/2002 arising out of Raniganj P.S. Case No. 247/1999 and also upheld the sentence of rigorous imprisonment for two years.

3. The case of the prosecution, in brief, is that while Mahindra Ram (P.W. 5) the then Officer Incharge of Bausi Police Station in the District of Banka along with police personnel was going for investigation in Bausi P.S. Case No. 242/99 on way, he got secret information that Md. Nasim (petitioner) had secretly kept two stolen



oxen in his house. He went over there along with police personnel and searched his house and in the cow-shed found two oxen kept in suspicious condition. Subsequently, he seized those oxen and prepared seizure list. He entrusted the investigation to a police officer of his police station and submitted charge-sheet in the matter on completion of the investigation.

4. Learned counsel appearing on behalf of the petitioner submits that there is no evidence on record to prove the charge against the accused despite that he has been convicted under Section 414 of the Indian Penal Code. There is complete lack of evidence showing two oxen recovered from the house of the accused, were stolen. All P.W. 1 to P.W. 5 have turned hostile to the prosecution case. Rest others only proved the recovery of two oxen, but none has proved that the oxen were stolen one whereas; case of the petitioner right from the investigation is that he had purchased two oxen from a cattle-fair. This court has gone through the entire record including evidence; but there is lack of evidence and material on record showing two oxen recovered from the house of the accused were stolen property. There is no positive case of the prosecution that those oxen were stolen from whose possession. The trial court as well as appellate court has appreciated the evidence on wrong premises holding that it was the onus of the defense to prove as to wherefrom he had purchased those two oxen. Though, the burden of proof of proving the charge under



Section 414 of the Indian Penal Code in this case squarely lies on the prosecution, in view of Section 101 of the Evidence Act. The prosecution has not been able to prove the charge under Section 414 of the Indian Penal Code against the petitioner, for the reason of absence of such evidence. It is mandatory for the prosecution to prove that the seized property from the possession of the accused, is the stolen property unless that is proved the charge fails, so the petitioner's conviction under Section 414 of the Indian Penal Code as well as sentence of two years rigorous imprisonment awarded by the trial court as well as appellate court in Trial No. 472/2002, arising out of Raniganj P.S. Case No. 247/1999 is set aside. Since the petitioner is in custody, so he is directed to be released forthwith, if not wanted in any other case.

5. The application stands allowed.

(Arun Kumar, J)

Vinita/-

AF.R/NAFR	NAFR
CAV DATE	NA
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