

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.23 of 2017

In

Criminal Revision No.305 of 2017

Arising Out of PS. Case No.-2474 Year-2006 Thana- Patna Complaint Case District- Patna

Abhay Kumar, son of Sri Tara Chandra Prasad, resident of 203, Lata Kunj, Boring Road, Police Station Sri Krishna Puri, District Patna and Vice Chairman cum Secretary of the Trust named and stayled as Dr. L. Prasad Foundation, having Office at 203, Lata Kunj, Boring Road, Police Station Sri Krishna Puri, District Patna

... .. Appellant

Versus

1. The State Of Bihar

2. Satyabhama Devi, wife of Sri Nawal Kishore Sharma, resident of "Mangalam", Mohalla Saketpuri, Near Ambedkar Chowk, East of Hanuman Nagar Water Tank, P.S. Patrakar Nagar, District Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Binay Kant Mani Tripathi

For the Respondent/s : Mr. SATYENDRA NARAYAN SINGH

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 08-08-2017

Heard learned Counsel for the petitioner and learned Additional Public Prosecutor, representing the State of Bihar.

2. By the judgment and order, dated 02.08.2016, passed by learned Additional Sessions Judge X, Patna, in Criminal Appeal No. 102 of 2011, a judgment and order, dated 25.03.2011, passed by learned Judicial Magistrate, 1st Class, Patna, in complaint Case No. 2474 (C) of 2006/Trial No. 771 of 2011, convicting the Opposite Party No. 2, of the offences punishable under Section 420 of the Indian Penal Code and sentencing to undergo rigorous



imprisonment for one year and pay fine of a sum of Rs. 10,000/- has been reversed.

3. The case of the prosecution, as unfolded in the complaint petition, which is the basis for conviction recorded by the learned Trial Court is that the complainant had taken the premises of the Opposite Party No. 2 for running a school through a lease deed, dated 11.12.2002. As per the lease agreement, effective from 01.04.2003, the petitioner had paid refundable security deposit of Rs. 48,000/- to the accused through account payee cheque, which was to be returned at the time of vacating the premises. The petitioner/complainant is said to have paid rent for the months of February and March, 2003 also, before beginning of the actual lease period from 01.04.2003.

4. It is the case of the petitioner that the condition of the leased premises was so bad that it could not be used for the purpose it was taken by the petitioner and despite several requests and reminders, the Opposite Party No. 2 refused to correct the deficiencies. The complainant/petition had to leave the premises thereafter. It is his case that the security money of Rs. 48,000/- was not returned by the Opposite Party No. 2, which was refundable.



5. With these allegations, the petitioner filed the complaint case and asserted that the conduct of the Opposite Party No. 2 constituted offences under Sections 420 and 406 of the Indian Penal Code.

6. Considering the depositions adduced by the witnesses at the trial, learned Trial Court recorded conviction of Opposite Party No. 2 of the charge under Section 420 of the Indian Penal code. The Appellate Court has reversed the finding by the impugned judgment and order.

7. Learned Counsel appearing on behalf of the petitioner has submitted that the intention of cheating the petitioner was there from the very beginning inasmuch as the Opposite Party No. 2 knew the condition of the premises and induced the petitioner to pay said amount of Rs. 48,000/- as security money. It is his contention that these facts stood proved at the trial and, therefore, the Opposite Party No. 2 was rightly convicted by the learned Trial Court. According to him, the Appellate Court had wrongly acquitted the Opposite Party No. 2 of the charge under Section 420 of the Indian Penal Code.

8. I have perused the complaint petition, the impugned judgments and orders of the Courts below, other materials on record and I have given my anxious consideration to the



submissions advanced on behalf of the petitioner. Upon examining the allegations made in the complaint petition, in my view, no case, under Section 420 of the Indian Penal Code, is made out. There is nothing to show that the Opposite Party No. 2 could not have entered into the lease agreement with the petitioner. The amount of Rs. 48,000/-, if at all paid to the Opposite Party No. 2, by the petitioner, was, according to the petitioner's case itself, security money.

9. Learned Counsel for the petitioner has submitted that the petitioner has not taken any step for recovery of the said amount of Rs. 48,000/- through any other valid legal means.

10. In such circumstance, acquittal recorded by the learned Appellate Court does not require interference since in my view the lodging of the complaint petition itself was an abuse of the process of the Court.

11. This application has no merit and is accordingly dismissed.

Prabhakar Anand/-

(Chakradhari Sharan Singh, J.)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10-08-2017
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