

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.463 of 2016

Arising Out of PS. Case No.-1199 Year-1997 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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Lalita Kuar wife of Late Umesh Prasad, resident of village- Madhubani,
Police Station- Sangrampur, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gokhula Singh son of Bachchan Singh, resident of village- Madhubani,
Police Station- Sangrampur, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Verma

For the Respondent/s : Mr. INDRA KUMAR SINGH(APP)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 30-03-2018 The opposite party no. 2 was convicted by the learned Judicial Magistrate, 1st Class, Motihari in connection with Complaint Case No. 1199C of 1997 (T.R. No. 96 of 2011) under Sections 420 and 467 of the Indian Penal Code and was sentenced to undergo R.I. for three years, to pay a fine of Rs. 10,000/- under both the counts and in the event of non-payment of fine, he was directed to suffer R.I. for one year for each of the offences.

In appeal vide Cr. APP. No. 10 of 2011, the judgment and order of conviction referred to above was upturned by the learned 12th Additional Sessions Judge, East Champaran at Motihari vide judgment



dated 17.02.2016.

The wife of the complainant/petitioner has sought to have the aforesaid appellate order revised.

The case of the prosecution is that a land measuring 1 kattha and 13 Dhurs in Khata No. 767, Plot No. 4067 was purchased by the father and uncle of the complainant through a registered sale deed dated 02.07.1956 (Ext. 1/2). The aforesaid property was vended by one Kishun Ojha. Out of the aforesaid purchased land, the opposite party no. 2 is said to have purchased about 18 Dhurs from the aunt of the complainant through a forged and fabricated sale deed. This was challenged in the local Panchayat and the opposite party no. 2, finding the view of the villagers against him, returned the so-called purchased land to the mother of the complainant through a registered sale deed (Ext. 1/3).

However, later, an attempt was made to have another sale deed executed with the aid of one of the accused persons viz. Ram Naresh Singh, whereby the said land was said to have been sold in favour of Ram Naresh Singh, who later, by way of *Bakshishnama* which was again a forged document, executed it in favour of the daughter-in-law of



opposite party no. 2. On the basis of the aforesaid *Bakhshishnama*, the opposite party no. 2 has staked his claim over the said property.

Hence the complaint.

During trial, five of the witnesses who supported the case of the complainant only spoke about the sale and purchase of the land in question. None of those witnesses have stated about the manner in which the sale deed or the *Bakhshishnama* was prepared. The appellate court, taking into consideration that the "*Khesta*" documents, in which the opposite party no. 2 was not a beneficiary, did not agree with the findings of the trial court holding the opposite party no. 2 to be guilty of the offence.

The other ground which has weighed to the appellate court is that a Title Suit with respect the dispute between the parties, is pending for consideration before the competent court. It was further held by the appellate court that in view of the judgment of the Supreme Court, reported in 2009 (3) BCCR 118 (*Md. Ibrahim vs. State of Bihar*), it has been held that unless the offence of forgery and cheating are made out in terms of Section 415 and 465 of the Indian Penal Code respectively, the



accused persons cannot be prosecuted and convicted under Sections 420 and 467 of the Indian Penal Code.

The records reveal that there is no evidence whatsoever with respect to any document having been forged. The allegations mere remained empty assertion of the husband of the petitioner. The opposite party no. 2 could not ultimately stake his claim over the land in question.

For the aforesaid reason, this Court is of the view that the appellate court judgment, which has been impugned in the present petition, is absolutely justified and does not call for any interference.

The petition is dismissed.

(Ashutosh Kumar, J)

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