IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.1102 of 2018

Arising Out of PS. Case No.-1477 Year-2013 Thana- EAST CHAMPARAN COMPLAINT District- East Champaran

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1. Uma Shankar Mishra, S/o Late Kamod Mishra,
2. Lalit Narayan Mishra S/o Uma Shankar Mishra, Both are R/o Vill.- Madhuban Chowk, Bajaj Patti, P.S.- Motihari Town, District- East Champaran.

... ... Petitioners

Versus

1. The State of Bihar.
2. Sujan Kumar Rai Verman S/o Late Dhrub Prasad Rai Varman, R/o 913 Hemdah Lane Verman , Kolkata.

... ... Respondents

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Appearance :

For the Petitioner/s	:	M/S Soni Srivastava, Ratanakar Jha, Advocates
For the Respondent/s	:	Mr. Sri Sunil Kumar Pandey, APP
For Respondent No.2	:	M/S D.K.Sinha, Sr.Advocate with Karandeep Kr.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV JUDGMENT
Date : 12 -12-2018

As both the parties have appeared and lower court records are available, as such vide order dated 27.11.2018 it has been taken up for final disposal at the time of admission stage itself and both the parties have been heard.

2. This revision application is directed against the judgment and order dated 20.8.2018 passed by Sri Sanjay Kumar Singh, Additional Sessions Judge-IX, East Champaran, Motihari in Cr.Appeal No. 28 of 2018, whereby and whereunder he has dismissed the appeal filed by the petitioners and affirmed the judgment and order dated 17.4.2018 passed by the Chief Judicial Magistrate, East Champaran, Motihari in connection with Complaint Case No. 1477 of 2013, corresponding to T.R.No. 986 of 2016, by which both the petitioners have been held guilty for the offences punishable under Sections 406/120B of the Indian Penal Code and awarded simple imprisonment for one year and further held guilty under Section 420 IPC and awarded simple imprisonment for three and a half years, including a fine of Rs.10,000/- each and also convicted both the petitioners under Sections 467, 471 and 120B IPC for five years simple imprisonment and a fine of Rs.10,000/- each and

under Sections 468, 471/120B IPC, S.I. for 3.5 years and fine of Rs.10,000/- each and all the sentences were directed to run concurrently and the period undergone during trial and investigation would be set off from the period of quantum of punishment under the proviso of Section 428 Cr.P.C.

3. Prosecution case, in brief, is that the complainant filed a complaint petition on the basis of registered power of attorney dated 24.5.2013 (Ext.3/B) executed by Sri Chitranjan Mukharjee and Swastika Banerjee in favour of the complainant and on that basis the present case is being filed by complainant. Further case is that both the Chitranjan Mukharjee and Swastika Banerjee along with Manjari Mukherjee (since died) were residents of Calcutta (West Bengal) and they had jointly executed power of attorney on 26.9.2011 (Ext.3) in favour of petitioner No.1 Uma Shankar Mishra to look after, to manage and to sell the properties of landlords, i.e., Chitranjan Mukherjee, Swastika Banerjee and Manjari Mukherjee. Further case is that one of the landlords Manjari Mukherjee has died on 6.12.2018 at Calcutta and therefore remaining landlords Chitranjan Mukherjee and Swastika Banerjee executed another registered power of attorney on 21.12.2012 (Ext. 3/A) by rectifying the previous power of attorney dated 29.6.2011 (Ext.3) in favour of petitioner No.1 Uma Shankar Mishra whereby the valuable land situated in the Madhubani Chhawan Chowk, Motihari was handed over to look after, to control and to right to sell to intending purchaser or purchasers and in paragraph-2 to power of attorney dated 29.6.2011 and 21.12.2012 it has been specifically described that to receive from the intending purchaser any earnest amount or only consideration money by cheque or Bank Draft in their names and deposit the same in their Bank Account and to give receipt for the same which will protect the purchaser or purchasers.

4. Further case of the complainant is that thereafter petitioner Uma Shankar Mishra dishonestly and fraudulently with a view to cheat landlords sold land of Khata No. 04, Khesra No. 2780, 2781, 2782, area 1 katha to his son Lalit Narayan Mishra, petitioner No.2 through registered sale deed No. 18513 dated 17.10.2012 and

petitioner Uma Shankar Mishra again sold land in Khata No.4, Plot No. 2784, area 2.90 decimal, including the house to his son Lalit Narayan Mishra by registered sale deed No. 22365 dated 28.12.2012 (Ext.5/C) in which Saroj Kumar and Ravi Shankar Raj were the witnesses and Ras Narayan Jha was the deed writer (since died). It is also alleged that all the accused persons conspired to each other and created forged and fabricated sale deed without paying consideration money to the landlord. It is also the case of the complainant that total consideration money dishonestly utilised by petitioner Uma Shankar Mishra. It is also the case of the complainant that total consideration money of the aforesaid two sale deeds Rs.30,55,000/- was grabbed by both the petitioners-appellants with the help of other accused persons and the market value of the aforesaid land was Rs.70,00,000/- at that time, when the sale deed was executed but in the sale deed only Rs.30,55,000/- was shown with a view to grab the stamp duty and court fee of Bihar Government. It is also the case of the complainant opposite party No.2 that as soon as the landlords came to know that they have been cheated, they sent the complainant to Motihari to enquire about the matter and when he arrived at Motihari registry office he learnt that petitioners, including three others have cheated the landlords worth Rs.70,00,000/-. It is also the case of the complainant that thereafter the landlords revoked power of attorney on 4.4.2013 (Ext.4). It is also the case that both the petitioners did not pay single farthing towards consideration money of the above two sale deeds and then the landlords executed a general power of attorney on 24.5.2013 (Ext.3/B) in favour of the complainant opposite party No.2 and thus opposite party No.2 has filed the complaint case.

5. On query summons were issued against the petitioners, charges were framed against five accused persons, including the petitioners under Sections 419, 420, 406, 467, 468, 471 and 120B/34 IPC.

6. During course of trial one accused Ras Narayan Jha died and proceeding against him was dropped.

7. During trial two witnesses have been examined on behalf of complainant opposite party No.2, they are CW 1 Kalyaneshwar Gautam and CW 2

Sujan Kumar Roy Burman, the complainant. The following documents were produced and marked Ext.1- certified copy of judgment dated 9.9.2016 passed by Sub-Judge-I, Motihari in T.S.No. 607 of 2013 (Chittranjan Mukherjee and others, plaintiff vs. Lalit Narayan Mishra and others, defendants), Ext.2- certified copy of decree passed by Sub-Judge-I, Motihari in T.S.No. 607 of 2013 whereby sale deeds dated 17.10.2012 and 28.12.2012 were declared null and void ab-initio, Ext.3- certified copy of registered power of attorney dated 26.9.2011 executed by land owner Chittranjan Mukherjee and his two sisters in favour of Uma Shankar Mishra, petitioner No.1, Ext.3/A- certified copy of registered power of attorney dated 21.12.2012 executed by Chittranjan Mukherjee and his sister Swastika Banerjee in favour of Uma Shankar Mishra, petitioner No.1, Ext.3/B- certified copy of registered power of attorney dated 24.5.2013 executed by Chittranjan Mukherjee and Swastika Banerjee (land owner) in favoour of Sujan Kumar Roy Burman, the complainant, Ext.4- certified copy of revocation of general power of attorney dated 4.4.2013 executed by Chittranjan Mukherjee and his sister by which Ext.3/A has been cancelled/revoked, Ext.5- certified copy of registered sale deed dated 12.1.1938 executed by Babu Kanhaiya Lal in favour of Sidheshwar Mukherjee in respect of 1 Bigha 2 Katha 16 Dhurs of land along with house. The vendee of this deed died leaving behind his son, namely, Chittranjan Mukherjee and two daughters, namely, Manjari Mukherjee and Swastika Banerjee, Ext.5/A- certified copy of registered sale deed dated 6.12.2012 executed by petitioner No.1 Uma Shankar Mishra in favour of Rakesh Ranjan which was registered at Belsand, District Sitamarhi in capacity of power of attorney, Ext.5/B- certified copy of registered sale deed No. 18513 dated 17.10.2012 executed by petitiioner No.1 Uma Shankar Mishra in favour of his son Lalit Narayan Mishra, petitioner No.2, which has been declared null and void ab-initio by Sub-Judge-I, Motihari in T.S.No. 607 of 2013, Ext.5/C- certified copy of registered sale deed No. 22365 dated 28.12.2012 executed by petitioner No.2 which has been declared null and void ab-initio by Sub-Judge-I, Motihari in T.S.No. 607 of

2013 and Ext.6 is certified copy of deposition of Chittranjan Mukherjee adduced in T.S.No. 607 of 2013.

8. On the other hand, no oral or documentary evidence has been adduced on behalf the petitioners.

9. Learned Judicial Magistrate on conclusion of trial has convicted the petitioners under Sections 406, 420, 467, 468, 471 and 120B IPC and sentenced them as stated above, however acquitted the other remaining accused persons from the charges levelled against them.

10. Petitioners have preferred an appeal against the judgment and order passed by trial court and appellate court vide judgment dated 20.8.2018 dismissed the Cr.Appeal No. 28 of 2018 and confirmed the judgment of conviction and order of sentence against the petitioners.

11. Being aggrieved by the same, the present revision application has been preferred by the petitioners.

12. Learned counsel for the petitioners has submitted that even on consideration of evidence available on record, no offences under Sections 406, 420, 467, 468, 471 and 120B IPC are made out against the petitioners as it is admitted fact that petitioners have sold the land on the basis of power of attorney executed by the original landholder and in terms of condition No.1 petitioners were entitled to sell and purchase of the land of the original landholder, as such it cannot be said that any forgery has been committed. Hence, the conviction of the petitioners under Sections 467, 468 and 471 IPC is not sustainable in the eye of law. It has further been submitted that even the offence under Section 420 IPC is not made out as there was inducement on behalf of petitioners to alienate the property of landholder and there was also no intention from the beginning to sell the property of the landholder and as such no offence is made out under Section 420 IPC, at best it is the violation of the terms and conditions of the power of attorney executed in favour of petitioner No.1 and hence criminal intention was lacking.

13. Opposite party No.2 has already appeared and learned counsel for opposite party No.2 has submitted that there is no illegality and impropriety in the impugned judgment passed by learned appellate court as well as the original court. Moreover, the documents made available by opposite party No.2 disclosed that in Title Suit No. 607 of 2013, sale deed dated 17.10.2012 executed by petitioner No.1 in favour of his son, petitioner No.2 (Ext.5/B) and sale deed dated 28.12.2012 executed by petitioner No.2 have already been declared null and void ab-initio and Exts. 3 and 3/A are the power of attorney which have been executed in favour of petitioner No.1 by Chittranjan Mukherjee, Swastika Banerjee and Manjari Mukherjee and later on, on the death of Manjari Mukherjee another power of attorney dated 21.12.2012 has been executed (Ext. 3 & 3/A). On perusal of the same it clearly appears that sale deed has been executed by petitioner No.1 in violation of the condition assigned in the power of attorney and, that too, to his own son, petitioner No.2, as such the aforesaid sale deed was executed in order to get wrongful gain in favour of petitioner No.1 and wrongful loss to the original landholder and there is no evidence available on record to show that a single farthing has been paid to the landlord Chittranjan Mukherjee and Swastika Banerjee, that clearly makes out a case of cheating as well as criminal breach of trust. However, learned counsel for opposite party No.2 also cannot bring out any fact to show that the case comes under the purview of Sections 467, 468, 471 and 120B IPC.

14. Having heard both sides and from perusal of the record it appears that the parties were heard. Argument of the petitioners has been confined that the evidence available on record does not make out a case under Sections 406, 420, 467, 468, 471 and 120B IPC. In the background of submission of the parties, on consideration of the evidence it appears that CW 2, who is the complainant, and a power of attorney was executed by original landlord Chittranjan Mukherjee and Swastika Banerjee vide power of attorney dated 24.5.2013 (Ext.3/B) and he has supported the complaint case and his evidence shows that two sale deeds dated 17.10.2012 and 28.12.2012 (Exts. 5/B and 5/C) have been executed by petitioner

No.1 in favour of his son, petitioner No.2 and no consideration money has been paid and further the same has been done in complete violation of terms and conditions mentioned in the power of attorney executed in favour of petitioner No.1 and in spite of his cross examination it appears that nothing has come to disbelieve the complaint case. CW 1 has also supported the case of the complainant. No doubt, in this case original landholders Chittranjan Mukherjee and Swastika Banerjee have not been examined but they have executed registered power of attorney in favour of complainant opposite party No.2, who has deposed in this case as CW 2.

15. It further appears on perusal of the registered power of attorney dated 26.9.2011 (Ext.3) executed by Chittranjan Mukherjee, Swastika Banerjee and Manjari Mukherjee in favour of petitioner No.1 on the terms and conditions Nos. 1, 2 and 3, which are as follows :

> "1. To negotiate on terms for and to agree to and enter into and conclude any Agreement or sell of our properties at such price which our said Attorney in his absolute discretion thinks proper.
> 2. To receive from the intending Purchasers any earnest amount or full consideration money either by cheque or Demand Draft in our names and deposit the same in our Bank account and to give receipt for the same which will protect the Purchaser or Purchasers.
> 3. Upon such receipt as aforesaid in our names and as our act and deed, to sign, execute and deliver any Conveyance or Conveyances of the said property in favour of the said Purchaser or Purchasers."

So as per terms and conditions of power of attorney though petitioner No.1 is entitled to receive from intending purchaser or purchasers either an earnest money or full consideration money but that has to be in the form of cheque or Bank Draft in the name of original landholders, Chittranjan Mukherjee, Swastika Banerjee and Manjari Mukherjee and further they have to deposit the same in their Bank accoount and give receipt for the same for protection of purchaser or purchasers and further upon such receipt as aforesaid in their names and as their act and deed, to sign, execute and deliver any conveyance or conveyances of the said property in favour of the purchaser or purchasers. Ext.3 and Ext.3/A both disclosed the same. It further appears that sale deed was executed by petitioner No.1 in favour of petitioner No.2 by registered sale deed dated 17.10.2012 (Ext.5/B) and registered sale deed dated 28.12.2012 (Ext.5/C). As per complaint case and evidence no information was given to the original land owners nor any consideration money was deposited in their Bank account nor they have been informed about the same. It further appears from perusal of the record that sale deeds, Exts. 5/B & 5/C, were challenged in Title Suit No. 607 of 2013 and the same were declared null and void ab-initio by Sub-Judge-1. Motihari. However, record shows that the same is pending in First Appeal and as such the matter is sub-judiced. However, what remains on the basis of the documents available on record that two sale deeds have been executed, one on the basis of first power of attorney dated 26.9.2011 and on the basis of power of attorney dated 21.12.2012, another sale deed dated 28.12.2012 was executed. Petitioners have not denied the execution of the aforesaid sale deeds and the aforesaid sale deeds on contest have been declared null and void and ab-initio and there is case of complainant that no consideration money has been given to the original land owners and earnest money or consideration money had to be deposited by way of cheque or Bank Draft in the name of original land owners but no chit of paper has been produced as to whether the amount was deposited in cheque or Bank Draft in the Bank account of original land holders or after that petitioner No.1 executed the sale deeds. It appears that second sale deed has been executed just after execution of second power of attorney. No doubt, submission has been made on behalf of petitioners that in cross examination of CW No.2 disclosed that money has been paid to the landholders, However, paragraph-14 of the cross examination of CW 2 clearly disclosed that जमीन बिक्री का अनूचित प्रतिफल भूस्वामी को नहीं दिया गया जिसका मैने यह मुकदमा किया है भूस्वामी के खाता विवरणी को चेक दिया है 29.11.2012 को स्वास्तीका बनर्जी के खाता में 3 लाख रूपया ललित नारायण मिश्रा द्वारा हस्तान्तरित किया गया है जिसकी जानकारी है 24.05.2011 को 7 लाख, दि0 30.06.2011 को 5 लाख, 21.01.2012 को 350000/— रू0 दि0 20.11.2012 को 3 लाख, 27.11.12 को तीन लाख 17.12.2012 को 90500/— रू0 कुल 305000/— भूस्वामी को ललित नारायण मिश्रा द्वारा दिया गया जिसकी जानकारी मुझे है।.but CW 2 has not been cross examined on the point that aforesaid money has been paid in lieu of sale deed executed by petitioner No.1 in favour of petitioner No.2. Even no suggestion has been given to this witness that consideration money has been paid by petitioner No.1. On the other hand, as per condition of the power of attorney (Ext. 3 & 3/A), agreement amount has to be paid in cheque or Bank Draft to be deposited in the Bank account of original land holders and also receipt has to be filed before executing sale deed.

16. Considering the evidence as discussed above, the following facts appear to be established : (i) a registered power of attorney has been executed by original land owners, namely, Chittranjan Mukherjee, Swastika Banerjee and Manjari Mukherjee in favour of petitioner No.1 for the lands mentioned in the Schedule of the registered power of attorney, (ii) the power of attorney provides that petitioner No.1 to negotiate on terms for and to agree to and enter into and conclude any Agreement or sell of their properties and to receive from the intending purchasers any earnest amount or full consideration money either by cheque or Demand Draft in their names and deposit the same in their Bank account and to give receipt for the same and upon such receipt in their names and as their act and deed, to sign, execute and deliver any Conveyance or Conveyances of the said property in favour of the said Purchaser or Purchasers, (iii) after death of Manjari Mukherjee earlier registered power of attorney dated 29.6.2011(Ext.3) was rectified by registered power of attorney on 21.12.2012 (Ext.3/A) with the above conditions in favour of petitioner No.1, (iv) petitioner No.1 sold part of land in favour of his son, petitioner No.2 by executing sale deed (Ext.5/B), (v) after seven days of the execution of second registered power of attorney another sale deed was executed on 28.12.2012 (Ext.5/C) in favour of petitioner No.2 by petitioner No.1, (vi) though in the above sale deed it is said that consideration money has been paid but there is no evidence to show that consideration money has been paid by cheque or Bank Draft in the bank account of the land owners nor there is evidence that cash has been paid by petitioner No.1, (vii) the evidence disclosed petitioner No.1 in collusion with his son executed sale deeds in favoour of his son without payment of consideration money and thus converted the property of the land owners entrusted to him for his own use.

17. In this case both the petitioners have been convicted under Sections 406/120B, 420, 467, 468, 471/120B IPC and sentenced accordingly.

18. So far Section 406 IPC is concerned, that provides for punishment for criminal breach of trust and criminal breach of trust has been defined in Section 405 IPC which is as follows :

> "S. 405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has mde touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."

Illustration (a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use.

The aforesaid provision clearly shows that in order to constitute offence of criminal breach of trust it must be established that the accused was entrusted with the property or power over the property to anyone and that he dishonestly misappropriated it or converted it to his own use.

19. In the present case also, the evidence as discussed above clearly makes out a case that property of land owners was entrusted to petitioner No.1 by registered power of attorney (Exts. 3 & 3/A) and he dishonestly transferred the same in the name of his son petitioner No.2 (Exts. 5/B & 5/C) and thus converted the same for his own use. In such view of the matter, it appears that petitioner Nos. 1 and 2 have rightly been convicted under Sections 406/120B IPC.

20. Both the petitioners have also been convicted under Section 420 IPC, i.e., for cheating and thereby dishonestly inducing the person deceived to deliver any property to any person. Section 415 IPC provides for 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'.

21. In the present case, the property was entrusted to petitioner No.1 by executing registered power of attorney (Ext.3 & 3/A) and by executing two sale deeds in favour of petitioner No.2 the petitioner No.1 deceives real owners of the land and thereby induces them for the purpose of wrongful gain for himself and wrongful loss to the owners and as such this amounts to cheating. Thus, it appears that prosecution has been able to establish the offence under Section 420 IPC against petitioner No.1. However, in the facts and circumstances, the petitioner No.2 cannot be made responsible for the aforesaid cheating and cannot be made liable for the offence under Section 420 IPC.

22. Both the petitioners have also been convicted under Section 467 IPC, which provides for forgery of document which purports to be a valuable security or a will, etc. Section 468 IPC provides for committing forgery, intending that the document or electronic record forged shall be used for the purpose of cheating. Section 471 IPC provides for fraudulently or dishonestly using as geuine any document or electronic record. Section 463 IPC provides for making any false document or false record with intent to cause damage or injury to the public or to any person or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. But in the present case there is no evidence available on record that any fraud document either in part was prepared by the petitioners in order to commit fraud with the land owners, rather two sale deeds have been executed (Ext.5/B & 5/C) as per terms and conditions of registered power of attorney (Ext.3 & 3/A) and petitioner No.1 is entitled to execute sale deed on behalf of original land owners, only thing is that he has violated the terms and conditions of the power of attorney. As such, I find that the prosecution has not been able to establish the offences under Sections 467, 468, 471/120B IPC against the

petitioners. Learned trial court though discussed the evidence in detail but has not considered the above aspects of the matter while convicting the petitioners under the above sections.

23. On the basis of discussions made above, so far conviction of the petitioners under Section 406/120B IPC is concerned, that appears to be just and proper. Similarly, conviction of petitioner No.1 under Section 420 IPC is concerned, the same also appears to be just and proper. However, conviction of petitioner No.2 under Section 420 IPC and both petitioners under Sections 467, 468, 471 and 120B does not appear to be just and proper.

24. As such the conviction and sentence of petitioner No.2 under Section 420 IPC and conviction and sentence of both the petitioners under Sections 467, 468, 471/120B IPC are set aside. However, conviction of both petitioners under Section 406/120B and conviction of petitioner No.1 under Section 420 IPC are affirmed.

25. Petitioners were sentenced to undergo SI for one year under Section 406/120B and petitioner No.1 was awarded SI for five years and a fine of Rs.10,000/-.

26. Learned counsel for the petitioners has submitted that at the time of judgment passed by learned trial court petitioner No.1 was aged about 71 years, i.e., on 17.4.2018 and petitioner No.2 was aged about 34 years and apart from them petitioners have remained in custody for some time, as such, a lenient view may be taken while considering the sentence.

27. Considering the above facts, so far sentence of both the petitioners under Section 406/120B IPC is concerned, the same is affirmed. However, so far conviction of petitioner No.1 under Section 420 IPC is concerned, in the facts and circumstances of the case and considering the age of petitioner No.1, the same is reduced from the S.I. for five years to S.I. for three and half years and fine of Rs.10,000/- is affirmed. However, the period undergone during trial and investigation

of the case will be set off under proviso of Section 428 of Code of Criminal Procedure.

28. In the result, this revision application is partly allowed with above modification in conviction and sentence.

29. Let L.C.R. of both appellate and original court be returned.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
CAV DATE	27.11.2018
Uploading Date	13.12.2018
Transmission Date	13.12.2018