

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.779 of 2016

Arising Out of PS. Case No.-56 Year-2008 Thana- BIHPUR District- Bhagalpur

Mahendra Prasad Yadav, son of Kritee Prasad Yadav, resident of village Narayanpur, P. S. Bihpur (Bhawanipur), District Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sant Lal Mandal, son of Late Makko Mandal
3. Sanjay Mandal, son of Sant Lal Mandal
4. Pradip Mandal, son of Late Deo Narain Mandal, all residents of village Shahpur, P.S. Bihpur (Bhawanipur), District Bhagalpur

... .. Appellants/Opposite Parties

Appearance :

For the Petitioner/s	:	Mr.Amrendra Kumar, Advocate
For the Respondent/s	:	Mr.Jitendra Kumar Singh, APP
For O.P. Nos. 2 to 4	:	Mr. Shivesh Chandra Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

7 25-09-2019 This revision application has been filed by the petitioner-informant for setting aside the judgment and order dated 23.12.2015 (amended as per order dated 22.2.2016), passed in Cr. Appeal No. 46 of 2014 by 4th Additional District and Sessions Judge, Naugachia, Bhagalpur, whereby and whereunder learned District and Sessions Judge has been pleased to acquit the accused opposite party Nos. 2 to 4, who have been convicted by judgment dated 10.4.2014 passed by S.D.J.M., Naugachia in Bihpur (Bhawanipur) in Trial No. 499 of 2014, arising out of P. S. Case No. 56 of 2008, corresponding to G.R. No. 202 and sentenced by order dated 15.4.2014 to undergo R.I. for three years with fine of Rs.3000/- under



Section 420 IPC and in default of payment of fine they shall undergo three months R.I. and also sentenced them to undergo R.I. for three years under Section 406 IPC in addition to compensation of Rs. 7,19,865/- which will be payable in favour of petitioner-informant by the accused persons, O.P. Nos. 2 to 4 within three months and in default of payment they shall undergo three months, three months and two months simple imprisonment respectively and both the sentences were directed to run concurrently.

Prosecution case, in short, is that the informant-petitioner was serving in the Eastern Railway and he retired on 1.4.2005. Accused No.1 was friend of the informant and was running Sathi Bank, accused No.2 was Manager of the Sathi Bank and accused No.3 was the Cashier of the said Bank. These accused persons were running the said Bank with the co-operation of other accused persons. The informant seeing the transaction at the rate of 3% per month in the said Bank, he withdrew Rs.4 lac from the U.C.O. Bank, Narayanpur and deposited the entire amount in the Sathi Bank, Sahpur. It is further alleged that after opening of Account No. 375/05, the informant handed over the said money in the hands of accused Sanjay Mandal. The informant-petitioner further claimed that he



had deposited total amount of Rs.7,19,965/- till 6.6.2007 in the Bank of accused persons and a Pass Book was issued in his name. It is further case of petitioner that when he demanded the money from the accused persons, they closed the said Bank and started doing other employment with the help of money deposited by the informant. Accused Nos. 1 and 2 purchased truck and also started running brick kiln and after having this information the son of informant started Satyagrah (Anshan) at the house of accused No.1 and for that accused No.1 gave assurance to pay Rs.50,000/- per month to the informant but they did not return the said money deposited by him in Sathi Bank of the accused persons. Ultimately, the petitioner-informant lodged Complaint Case No. 42 of 2008 which was registered as Bihpur (Bhawanipur) P. S. Case No. 56 of 2008 and after completion of investigation charge sheet has been submitted under Sections 323, 406, 420, 504 IPC and Section 76 of Chit Fund Act.

It appears that after submission of charge sheet cognizance was taken and during trial charges were framed against the opposite party Nos. 2 to 4 under Sections 323, 406, 420, 504 IPC and Section 76 of Chit Fund Act and altogether eight witnesses have been examined on behalf of prosecution



and Pass Book of the informant was produced and marked as Ext.1.

Learned trial court after conclusion of trial has convicted the opposite party Nos. 2 to 4 and other accused persons under Sections 420, 406 read with Section 34 IPC, acquitting other accused persons, and sentenced them as stated above.

Being aggrieved by the judgment and order of learned trial court, the accused opposite party Nos. 2 to 4 preferred Cr.Appeal No. 46 of 2014 before learned Sessions Judge, who by the order dated 23.12.2015 set aside the judgment and order passed by learned trial court and acquitted opposite party Nos. 2 to 4.

Being aggrieved by the order of learned appellate court, this revision has been preferred before this Court against acquittal.

The ground taken by the petitioner-informant is that learned appellate court without appreciating the evidence available on the record and only on discussion of the evidence of I.O. set aside the judgment and order of learned trial court and submission of learned counsel for the petitioner is that there is no discussion of the entire evidence in the order of



learned appellate court, rather after discussing the evidence of I.O. the judgment and order of learned trial court has been set aside considering the case being civil in nature, which is not just and proper, as such the order of learned appellate court is not sustainable in the eye of law.

On the other hand, learned APP and learned counsel for the opposite party Nos. 2 to 4 have tried to defend the order of learned appellate court but after some argument, they also appreciate that none of the evidence of witnesses has been considered nor they have been discussed nor narrated by appellate court.

Heard both sides.

On perusal of the record it appears that learned appellate court, considering the submission of appellants (opposite party Nos. 2 to 4 here) and the evidence of I.O. has passed the order of acquittal setting aside the judgment of conviction and order of sentence of learned trial court. There appears no appreciation of evidence of witnesses nor of documentary evidence, though being appellate court it has to critically analyze the evidence available on the record. In such view of the matter, the impugned order cannot be sustained. At the same time, it is made clear that this Court does not make any



comment on the evidence available on the record.

Accordingly, the order dated 23.12.2015 and the amended order dated 22.2.2016 are set aside and the matter is remitted back to learned 4th Additional District and Sessions Judge, Naugachia, Bhagalpur for considering it afresh after hearing both the parties and for passing fresh order in accordance with law.

Hence, the revision application is allowed to the extent indicated above.

Let lower court records be sent back to learned appellate court at once.

(Vinod Kumar Sinha, J)

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