

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.30 of 2018

Arising Out of PS. Case No.-8 Year-2009 Thana- COMPLAINT CASE District- Sheohar

Daya Shankar Mishra, S/o Late Ram Ayodhya Mishra, Resident of Village- Parsauni Baij, P.O.- Kamrauli, P.S.- Piprahi, District- Sheohar.

... .. Appellant

Versus

1. The State Of Bihar,
2. Ashutosh Mishra, S/o late Ram Ayodhya Mishra, Resident of Village- Parsauni Baij, P.O.- Kamrauli, P.S.- Piprahi, District- Sheohar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sunil Kumar Verma

For the Respondent/s : Mr. Binod Bihari Singh

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date : 08-08-2019

Heard the learned counsel appearing on behalf of the appellant and learned Additional Public Prosecutor for the State.

This Special Leave to Appeal has been filed on behalf of the appellant under Section 378(4) of the Code of Criminal Procedure, seeking leave to file appeal against the Judgment dated 23.03.2018 passed by the Addl. Chief Judicial Magistrate, Sheohar in Case No. C1- 08 of 2009/Tr. No. 379 of 2018, Whereby and whereunder, he acquitted the respondent No. 2 from the charges under Sections 323 and 420 of the Indian Penal Code.

The facts leading to this application is that Sudama Devi, mother of the appellant, filed Complaint Case No. 35 of 2008 in the Court of S.D.J.M., Sheohar at Sitamarhi,



which was sent to Police Station under Section 156 (3) of the Cr.P.C., accordingly, Piprahi P.S. Case No. 41 of 2008, under Sections 420, 467, 468, 471, 323, 504 and 120(B) of the Indian Penal Code was instituted. After investigation, Police submitted Final Form. Thereafter, a protest petition was filed by Sudama Devi, which was treated as Compliant Case No. 08 of 2009 and on inquiry, O.P. No.2 Ashutosh Mishra was summoned for offence punishable under Sections 323 and 420 of the Indian Penal Code.

It is alleged in the compliant petition that complainant Sudama Devi, aged about 85 years used to live with her son Daya Shankar Mishra (Appellant) and her another son, namely, Ashutosh Mishra (Respondent No.2) used to live separate. In absence of Daya Shankar Mishra, Ashutosh Mishra, Respondent No.2, took her at Sheohar for treatment on 25.01.2008 and 28.01.2008, but the treatment was not provided to her, rather, he managed to take her thumb impression and signature on papers saying that her thumb impression and signature are required for her operation. When Daya Shankar Mishra (Appellant) returned then she informed the matter then he went to Sheohar and inquired about the matter and came to know that Ashutosh Mishra had got landed property



transferred from his mother in his favour at registry office. Thereafter, she heard about misdeed of Ashutosh Mishra (Respondent No.2). When she made complaint to Ashutosh Mishra (Respondent No.2) about his misdeeds then he pushed her and threatened for dire consequences.

In course of trial, four witnesses, including Daya Shankar Mishra (Appellant) were examined and several documents were exhibited.

On perusal of the complaint petition and evidences adduced, the learned A.C.J.M., Sheohar at Sitamarhi acquitted the respondent No.2 arrived at the conclusion that prosecution failed to prove the charges under Sections 323 and 420 of the Indian Penal Code.

Learned counsel appearing on behalf of the appellant submits that Ext.2 of the petition, which is Panchanama dated 02.02.2018, clearly, indicates that plot in question was allotted in the share of appellant, but Ashutosh Mishra (Respondent No.2) got transferred the land in question using the thumb impression and signature of her mother Late Sudama Devi (Complainant), but the trial Court committed error in not considering the evidence in right prospective and acquitted Ashutosh Mishra (respondent No.2).



On perusal of the Judgment it appears that in course of trial, Ext.2 of the petition was not brought on record. The learned A.C.J.M., Sheohar on discussing the oral as well as documentary evidence arrived at conclusion that neither the complainant has filed any suit for cancellation of the sale deed nor any competent jurisdiction has declared the sale deed null and void, which is said to be obtained by Ashutosh Mishra (Respondent No.2) to his mother complainant Sudama Devi.

Admittedly, the complainant Sudama Devi has not denied the thumb impression and signature on the sale deed, rather, her claim is that her thumb impression and signature obtained on papers by the respondent No.2 were converted into sale deed, but no attempt was made during the trial on behalf of the complainant to compare the thumb impression and signature of the sale deed with the signature and thumb impression of the register maintained in the office of Sub-Registrar. As such, I find no reason to allow this Special Leave to Appeal and, accordingly, same is dismissed.

(Rajendra Kumar Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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