

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 854 of 2018

- Rikhiram Thakur S/o Shri Lotan Prasad Aged About 65 Years
R/o Shivaji Ward Thethvarpara, Dongargarh, Thana And Tahsil
Khairagarh, Distt. Rajnandgaon Chhattisgarh

---- Applicant

Versus

- The State Of Chhattisgarh Through Police Station Chuikhadan,
Distt. Rajnandgaon Chhattisgarh, District : Rajnandgaon,
Chhattisgarh

---- Respondent

For Applicant	: Shri Parag Kotecha, Advocate
For Respondent	: Shri Priyank Rath, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

01/07/2019

The present revision arises out of the impugned judgment dated 08.07.18 passed by the Additional Sessions Judge, Khairagarh, district Rajnandagaon in Criminal Appeal No. 43/2016 whereby the learned appellate court has confirmed the conviction and modified the sentence imposed on the applicant as awarded by the learned Judicial Magistrate First Class, Chhuikhadan, district Rajnandgaon vide its judgment dated 30.09.2016 in Criminal Case No. 210/2012 for the offence under Sections 467,468 and 477 A IPC and sentenced to imprisonment till rising of the court and to pay fine of Rs. 1,000/- on each count with default stipulations. Learned trial court has sentenced to undergo SI for one year on each count but it has been modified.

2. Brief facts of the case are that when the applicant was posted as Patwari in patwari Halka No. 25, Chhuikhadan in the year 2008, on 25.11.2008, the applicant knowingly that the disputed property was a government land, mutated the said land in the name of one Vijay Lakshmi under Column No.12 which was mentioned as Medhapa (paithu) and shown her as a Bhooswami and thus committed forgery. It is the further case that taking the benefit of mutation entries Vijay Lakshmi sold the property to five persons. Hence, offence under Sections 467, 468 and 477-A IPC have been registered. After investigation, charge sheet was filed and charges were framed against the applicant under these Sections.

3. In order to prove the guilt of the accused/applicant, prosecution has examined 5 witnesses. Statement of the accused/applicant was also recorded under Section 313 Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties vide impugned judgment of conviction and order of sentence dated 30.09.2016, learned Magistrate has convicted the accused/applicant for the offence under Sections 467,468 and 477-A IPC and sentenced him to undergo RI for 1 year on each count with fine of Rs. 1,000/-. This order was appealed by the applicant and in the appeal, learned appellate court has modified the sentence with imprisonment till rising of the court and fine of Rs.2,000/- on each count. Hence, the present revision.

5. Counsel for the applicant submits that the judgment of learned courts below are illegal and contrary to the facts and against the well settled law. Both the courts below have failed to consider that there is

no prima facie case or material against the applicant. From averrment of the complainant nothing has been stated about the presence of the applicant on the spot and that when and how the incident took place. Learned courts below committed a grave error in registering the criminal case and convicting the applicant in the aforesaid sections. He submits that the applicant had only obeyed the order of Tahsildar and as per his order, mutation has been done. He further submits that the applicant is a public servant and no prosecution sanction had been obtained. He submits that learned courts below did not consider that there was a serious dispute between the parties with regard to the land and therefore, false implication cannot be ruled out at the instance of the complainant. No overt act had been mentioned by the respondent against the applicant and the complaint is vague, false and baseless. Applicant is an innocent person and this is his official duty to follow his superior's order. Lastly, he submits that if the entire evidence is taken as true, even then, no offence can be made out against the applicant. Therefore, judgment dated 08.7.2018 passed in Cr. A. No. 43/2016 is liable to be set aside. counsel for the applicant contends that the Court below has committed a grave error in dismissing the appeal.

6. On the other hand State counsel supports the judgment of conviction.

7. Heard counsel for the parties and perused the material available on record including the impugned judgment.

8. Shri P.S.Dhruv (PW-1) has stated that he was posted as SDM during the said period and he had taken permission from the Collector to lodge FIR against applicant Rikhiram who was the Patwari for

recording the name of Vijay lakshmi as Bhoomiswami of the government land in the revenue records without obtaining prior permission of the competent authority. He has also stated that he has not initiated any proceedings against her. GC Pathy (PW-2) is the TI of Police Station Chhuikhadan who registered the FIR against the applicant as Crime No. 18/09 under Sections 409,467,468 and 471 IPC.

9. All the witnesses have stated that the mutation has been done in illegal manner. Hemant Matsayal (PW-3) was posted as Tahsildar at the time of the incident. He has stated that as per the order of the then Tahsildar, the applicant had mutated the name of one Vijay lakshmi as Bhoomiswami in revenue record which was further sold by her to five persons. In cross examination in para 5 he admitted that in the order of Tahsildar dated 29.08.08, Khasra No.77 Rakba 15.30 acres was recorded in the name of Vijay Lakshmi and therefore the Khasra No.76 Rakba 3.52 acres of the disputed land be also recorded in her name. Prosecution has not produced any old revenue records that earlier what was recorded, what is the present status and what type of forgery has been committed by the applicant. It is the defence of the accused/applicant that he had only followed the order of his superior officer (Tahsildar) who himself has not supported the case of prosecution.

10. In view of the above facts and circumstances of the case, I am of the opinion that there is no material available on record to proceed against the applicant. Prosecution has failed to prove its case beyond reasonable doubt and therefore benefit must go to the applicant. Both the courts below have overlooked the facts and has arrived at the

conclusion of convicting the applicant. Accordingly, the revision petition is allowed and the applicant is acquitted of the charges levelled against him.

Sd/-

(Rajani Dubey)
Judge

suguna