

IN THE HIGH COURT OF JUDICATURE AT PATNA
SLA No.69 of 2019

Arising Out of PS. Case No.-506 Year-2009 Thana- PATNA COMPLAINT CASE District-
Patna

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RAJENDRA GOPE @ MUNNI LAL YADAV Son of Late Baldev Yadav
Resident of Village - Simli, (Choti Mandir), P.S.- Malsalami, District- Patna

... .. Appellant/s

Versus

1. The State of Bihar
2. Prem Chand Vishwakarma Son of late Ram Khelawan Mistri
3. Dhananjay Vishwakarma Son of Premchand Vishwakarma
4. Suraj Sharma Son of Premchand Vishwarkarma
5. Smt Ranju Devi Wife of Prem Chand Vishwakarma
All Residents of Village - Damrahi Ghat, P.S.- Malsalami, P.O.- Madho
Mills, District- Patna (Bihar)

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Rudal Prasad, Advocate
For the Respondent/s : Mr.Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

3 26-02-2020 Heard learned counsel for the parties.

This is an application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment of acquittal passed in Complaint Case No.506 of 2009 (Rajendra Gope @ Munni Lal Yadav Vs. Prem Chand Vishwakarma & others) on 30.08.2019 by the learned Judicial Magistrate, 1st Class, Patna City, Patna, whereby respondent Nos.2 to 5 were acquitted of the charge under Sections 420/120B/406 of the Indian Penal Code.



The prosecution case has been narrated in para 2 of the impugned judgment which is being reproduced below:

“The factual matrix of the case are as follows: The complaint petition filed by the complainant namely Rajendra Gope gave rise to this case wherein it has been alleged that the complainant entered into an agreement for sale on dated 28.06.2008 with respect to the property situated in Ward No.32/37/57, circle No.233, Holding no. a part of 105/92, sheet no.293, municipal plot no.158 Area 19 Kari. The accused persons given assurance to the complainant that the aforesaid land has been acquired by the accused in the partition and he has got ownership right over that land. The complainant got finalized the purchase of the aforesaid land for a consideration amount of Rs.5,50,000. It has also finalized between the parties that a cash of Rs.5,19,250 will be paid by the complainant to the accused persons at the time of execution of agreement for sale and cash of the amount will be given



at the time of execution of sale deed. Accordingly, an agreement for sale was executed on dated 28.06.2008 and thereafter the complainant given Rs.5,19,250 by way of two cheque amounting to Rs.1,14,000 and 1,15,000 and rest of the amount Rs.2,90,250/- was given in the form of cash. The entire execution of agreement for sale was prepared in the presence of the witnesses who also put their signature or thumb impression. The accused persons also given assurance that the sale deed will be executed within eleven month. Thereafter, the complainant sent legal notice on dated 13.08.2008 by his advocate to the effect that the sale deed may be executed and the complainant is ready to pay rest of the consideration amount but the said legal notice was never replied by the accused persons. Thereafter, the complainant also met with the accused and asked him to execute sale deed but the accused persons given no assurance nor the possession was given to the



complainant. Again, the complainant sent legal notice on date 21.05.2009 but the same was not replied by the accused. The accused person by giving false assurance, took the money of the complainant. The accused persons have cheated the complainant. Neither the sale deed was executed by the accused nor the money was returned to the complainant.”

After appreciation of evidence brought on the record the learned trial Court came to the finding that the complainant-appellant failed to prove a case of entrustment of property to the respondents to prove a charge under Section 406 of the Indian Penal Code. The trial Court further recorded that each and every non-performance of contract does not make out a case of dishonest intention at the inception of agreement and these facts have not been proved by the complainant. Likewise, no material was there to prove the charge of conspiracy under Section 120B of the Indian Penal Code.

Learned counsel for the appellant has referred to different paras of the judgment of the trial Court for his submission that some lapses in consideration of evidence was



committed by the learned trial Judge.

However, the broader fact which emerges from the allegation levelled by the appellant clearly depicts the charges under different heads could not be proved.

Therefore, I do not find any merit in this application. Accordingly, it stands dismissed.

(Birendra Kumar, J)

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