

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.963 of 2018

In
CRIMINAL APPEAL (SJ) No.392 of 2018

Arising Out of PS. Case No.-119 Year-2004 Thana- GOPALGANJ TOWN District-
Gopalganj

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Jahangir Ali @ Jahangir Sah, Son of Shah Mohammad Shah @ Sah Mohammad, Resident of Village- Kamalpur, P.O. and P.S.- Barauli, District- Gopalganj, at present Village- Gopalganj Dargah Road, P.S. and District- Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar
2. Imamuddin, Son of Late Kismat Shah, Resident of Village- Gopalganj Dargah Road, P.S. and District- Gopalganj.
3. Mahboob Alam, Son of Late Kismat Shah, Resident of Village- Gopalganj Dargah Road, P.S. and District- Gopalganj.
4. Most. Hasan Bano, Wife of Late Kismat Shah, Resident of Village- Gopalganj Dargah Road, P.S. and District- Gopalganj.
5. Shamshad Ali, Son of Mushtaffa Hussain, Resident of Village- Gopalganj Dargah Road, P.S. and District- Gopalganj.
6. Kailash Sah, Son of Shivnandan Sah, Resident of Village- Chhauci Takki, P.S.- Manjhagarh, District- Gopalganj, At present near Railway Station Gopalganj, P.S. and District- Gopalganj.
7. Bharat Prasad, Son of Unknown, Resident of Village- Chauci Takki, P.S.- Manjhagarh, District- Gopalganj, At present near Railway Station Gopalganj, P.S. and District- Gopalganj.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Ashish Giri, Advocate
For the Respondent/s : Mr.Akhileshwar Dayal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 14-07-2022 Heard Mr. Ashish Giri, learned counsel for the

petitioner and Mr. Akhileshwar Dayal, learned A.P.P. for the

State.

Petitioner in this case is aggrieved by and dissatisfied



with the judgment dated 21st of November, 2017 passed by learned Additional Sessions Judge, Fast Track Court-I, Gopalganj in Cr. Appeal No. 84 of 2016 by which the learned appellate court has been pleased to uphold the judgment of acquittal passed by learned Chief Judicial Magistrate, Gopalganj in G.R. No. 5231 of 2014, Tr. No. 1293 of 2016.

Learned counsel for the petitioner has assailed the impugned judgment on the ground that both the learned court below have failed to consider the evidences brought by the informant-petitioner in form of the Ration Card, certified copy of deposition of Complaint Case No. 430 of 1998 and certified copy of the ordersheet of Title Suit No. 148 of 1999 and Title Suit No. 280 of 2003 to prove the case of the prosecution. It is his submission that all the prosecution witnesses have fully supported the case beyond all reasonable doubts but by recording a wrong and erroneous finding both the learned court below have dismissed the case.

It is submitted that the appellate court could not appreciate that there is no restriction on the part of the appellate court in reviewing and re-looking the entire evidences on which the order of acquittal is based. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the



case of **Sidhartha Vashisht alias Manu Sharma versus State (NCT of Delhi)** reported in **(2010) 6 SCC 1**.

In order to support his submissions, learned counsel has taken this Court through paragraph '18' of the judgment of the learned appellate court. It is submitted that the learned appellate court has recorded a finding with regard to the existence of the houses of Kailash, Rajmati and others on the disputed land without there being any evidence to that effect and such finding is perverse. It is his submission that these houses were built by Kailash, Rajmati and others after obtaining a forged sale deed of the said land.

Learned counsel further submits that presently two Title Suit bearing Title Suit No. 148 of 1999 and Title Suit No. 280 of 2003 are pending between the parties.

Learned counsel further submits with reference to the observations made in paragraph '19' that the learned appellate court has recorded a finding with respect to title and possession of the accused persons over the disputed land, therefore, it would prejudice the case of the petitioner in the Civil Court in pending Title Suits.

This Court has carefully perused the findings recorded in paragraph '18' of the impugned judgment. The case of the



informant-petitioner is that he came in possession of Plot No. 1362 under Khata No. 107 measuring area 10 dhur in Gopalganj Ward No. 10 during life time of his maternal grand-father. He alleges that this land has been sold through three sale deeds fraudulently in collusion with each other. The learned appellate court has found that no documentary evidence at all has been filed on behalf of Jahangir to show his title and possession over the said plot. In course of his evidence he says that one Intesah Sai was his maternal grand-father and Sharifan was his daughter who was the mother of the informant and after death of his maternal grand-father, her mother got share in his property over which he came in possession. The learned appellate court finds that in this regard there is no evidence at all in form of documentary evidence rather in the cross-examination in paragraph '22', '23' and '24' this witness has stated that the houses of Kailash, Rajmati and others stand on the same plot and they have purchased the land and constructed the houses.

The informant claims that those sale deeds are forged and fabricated document but he does not dispute that the houses of Kailash and others are situated on the disputed land from before. Learned appellate court has, thus, found that this witness is contradicting his own statement in course of evidence and



has created a doubt over his credibility.

The appellate court has also discussed the evidence in form of Ration Card (Exhibit 2) and Voters List (Exhibit 3 & 3/1) which were produced by the informant and held that voters list is not a document to prove title and claim of legal heir and hence, it will not be a clinching document in favour of the informant. The informant had not exhibited the sale deeds which were allegedly executed in favour of Kailash Sah.

This Court finds that the appellate court while considering the challenge to the judgment of the learned trial court has minutely gone into the evidence of the informant and from his evidence the court has come to a conclusion that the allegation of forgery and cheating is not proved. This Court finds no error in the findings recorded by the learned appellate court.

So far as the observations with regard to the title and possession of the accused are concerned, this Court finds that the submission on this point is completely misconceived. In fact, after referring Exhibit 'A','B','C', 'D', 'E' to 'E/5' 'G', 'H', 'I' which were filed on behalf of the defence, the learned appellate court has found that the accused Immmudin and others are in title and possession, the court in fact wanted to refer the



dispute with respect to the title and possession which are pending in the Civil Court in the two Title Suits. The language may not be properly coined but by no stretch of imagination it may be said that the learned appellate court has recorded any finding with respect to title and possession over the disputed land in the present case. In no way it is going to prejudice the case of the petitioner pending in the Civil Court.

In the result, this Court finds no reason to interfere with the impugned judgment.

The revision application has no merit. It is dismissed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

