

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1052 of 2017

Arising Out of PS. Case No.-1878 Year-2009 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

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Birendra Sharma S/o Late Baleshwar Sharma, Resident of Village- Bishanpur
P.S.- Mahishi, District- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ghuran Sharma @ Ghuran Bhadhai.
3. Raj Kishor Sharma @ Raj Kishor Badhai.
Both Sons of Late Dilo Sharma, Resident of Village- Bishanpur, P.S.-
Mahishi, Dist.- Saharsa.

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Chandra Mohan Jha, Adv.
For the Respondent/s	:	Mr. Dinesh Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 09-05-2023

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The present criminal revision application has been filed
for setting aside the order dated 15.07.2017 passed by Sessions
Judge, Saharsa in Cr. Appl. No. 11 of 2017 arising out of
Complaint Case No. 1878c of 2009 by which the order of
A.C.J.M., Saharsa convicted opposite party nos. 2 and 3 under
Section 379 of the I.P.C. by which they have been imposed of
sentence of one year Rigorous Imprisonment with fine of Rs.
1,000/- (Rupees One Thousand) and in default of fine one

month Simple Imprisonment was set aside the conviction and sentence of the O.P. No.2 and 3.

Learned counsel for the petitioner submits that the petitioner purchased the land on 18.7.2007 total area 36.3 decimals of land and *jamabandi* was also created in his name. He submits that he has cultivated the said land but paddy crop was cut down by the opposite party no. 2 for which he filed complaint case, in which conviction was imposed by the Trial Court under Section 379 of the I.P.C. Learned counsel for the petitioner submits that the Appellate Court has taken the reason that:

“after perusal of exhibits the right, title and possession of the appellants is acceptable at least for indicating that the right and title of the complainant over the land in question require adjudication determining his possession at the relevant time. On this account I do not find it safe to rely on the right, title and interest of the complainant over the plot which is P.O. but this fact has not been appreciated by the learned court below causing unfairenness and injustice. On the other hand, I find that oral evidence of the witnesses have been formally considered without taking pains even to examine merit of the witnesses in support of the complainant. It is well laid principle

that whole evidence of the prosecution witnesses should be considered by the court below just to find out whether they are reasonable and substantiated the charge. On account of discussions, I find learned court below has immensely erred with a result he has recorded absurd finding requiring interference from this court.”

Learned counsel for the petitioner submits that since the petitioner is the purchaser of the land and *jamabandi* in his name, therefore, the reasoning assigned by the Appellate Court is not correct and bad in law and the appellate order is declared illegal and the said order may be set aside.

Upon hearing the parties and going through the records, there are certain things which are admitted, the first is that the land does not belong to petitioner by way of succession rather he is purchaser of the land and there is a civil suit pending between the petitioner and the opposite party and only due to this reason the Appellate Court has narrated in the order sheet that the right, title and possession is the subject of the adjudication and without determining the same the ingredient of Section 379 of the Indian Penal Code cannot be fulfilled and it shall further affect the rights of the parties at the time of deciding the civil dispute.

In this background, this Court is not inclined to interfere in this case and the present Cr. Revision application is hereby **dismissed.**

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	