

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.502 of 2017

Arising Out of PS. Case No.-1483 Year-2000 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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Ashok Kumar Singh @ Shiv Laddu Singh Son of late Tunaku Singh, resident of Village- Balahpur, P.S.- Nayagaon, District- Begusarai at present Swami Sahjanand Nagar, Ward No.-40, P.S.- Town, District- Begusarai.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Chandra Kishore Singh, son of late Baikunth Singh, Resident of Village Chak, P.S.- Matihani, District- Begusarai, at present Mohalla- Lalit Nagar, Hemera, P.S.- Muffasil, District- Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Randhir Kumar No-1
For the Respondent/s : Mr.Upendra Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 27-02-2023 This criminal revision application has been preferred against the judgement dated 20.03.2017 passed by learned Sessions Judge, Begusarai in Criminal Appeal No. 3 of 2017 whereby and whereunder the learned court below has affirmed the order dated 16.12.2016 passed by the learned Sub-Divisional Judicial Magistrate, Begusarai in Comp. Case No. 1483C of 2000 and modified the sentence of punishment to the extent that instead of substantive punishment, the benefit of probation of bond under the provision of Probation of Offenders Act and fine of Rs. 2000/- and in default payment of fine one month simple imprisonment will be proper to meet the ends of justice and



conviction order has been modified to the extent that petitioner has been directed to furnish bond of Rs. 2000/- for keeping piece for two years and also make payment of fine of Rs. 2000/- in favour of complainant.

As per the prosecution case, the complainant Chandra Kishore Singh filed a complaint case before the Chief Judicial Magistrate, Begusarai alleging therein that on 05.07.1998 accused/appellant came the house of complainant and told him to given his old tractor which was purchased by his father in the name of complainant and himself. It is further alleged that when the appellant said that he will repair the broken, unused, old disorder tractor and will pay Rs. 2,000/- per month to him from the income earned from the tractor. The complainant believing on appellant gave the tractor, tailor and other articles of tractor along with documents like owner book to appellant, but the appellant did not pay the agreed amount some time and said that after realization of amount spent n repairing he will pay the rent of tractor. Unfortunately, complainant had to go jail in a case. After returning from jail complainant asked about the tractor to appellant then appellant replied that tractor is not here and there is no trace of tractor. The appellant either sold the tractor or move out the same and did not return the same to the



complainant. During enquiry witnesses were examined and found *prima facie* case against the accused and thereafter cognizance was taken and after full trial the appellant was found guilty and convicted.

During inquiry after examination of witnesses learned Magistrate found *prima facie* case against petitioner and accordingly, cognizance was taken under Section 406 of the Indian Penal Code vide order dated 01.10.2001 and summon was issued against him.

It is submitted on behalf of petitioner that both the trial court as well as appellate court have erred in law as well in fact. Both the courts failed to consider the evidences of witnesses in its right perspective. When the entrustment itself has not been established no conviction under Section 406 IPC can be sustained. It is next submitted that place of occurrence has not been proved during investigation. On behalf of prosecution seven witnesses were examined out of them CW- 2, CW-3 and CW-5 did not turned up for their cross-examination. However on behalf of the defence neither any witnesses were examined nor any evidence was produced.

Having perused the evidence on record including the impugned order, I do not find any irregularity or illegality in the



order. The trial court after considering the evidence on record passed the order of conviction which has already been modified, to the extent that instead of substantive punishment, the benefit of probation of bond under the provision of Probation of Offenders Act and fine of Rs. 2000/- and in default payment of fine one month simple imprisonment.

Considering the same, this court does not find any illegality or irregularity in the finding of the court below and requires no interference by this Court.

Accordingly, this criminal revision application stands dismissed being devoid of merit.

(Prabhat Kumar Singh, J)

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