

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.382 of 2019

In
CRIMINAL APPEAL (DB) No.1083 of 2018

Arising Out of PS. Case No.-10 Year-2012 Thana- NATHNAGAR District- Bhagalpur

Niranjan Prasad Sah Son of Late Narayan Prasad Sah Resident of Village -
Sujapur, P.S.- Nathnagar, Distt.- Bhagalpur.At Present Reside At Warsaliganj
Kutubganj, P.S.-Mirjanhat, District-Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gaurav Majumdar Son of Late Anil Majumdar Resident of Village - Sujapur,
P.O. and P.S.- Nathnagar, Distt.- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Indeshwari Prasad Mandal, Advocate
For the State	:	Mr. Chandra Sen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

12 11-11-2024

The present Criminal Revision petition has been preferred by the petitioner against the impugned judgment and order dated 09.03.2018 passed by learned Additional District and Sessions Judge-II, Bhagalpur in Criminal Appeal No. 38 of 2017, whereby learned Appellate Court has set aside the judgment and order of sentence passed by learned A.C.J.M.-XIII, Bhagalpur in G.R. No. 129 of 2012, Trial No. 202 of 2017, whereby learned A.C.J.M-XIII has convicted the O.P. No. 2/Gaurav Majumdar for the offence punishable under Sections 420 and 467 read with Section 34 of the Indian Penal Code and



sentenced him to R.I. for two years along with fine of Rs. 4,000/- under Section 420 IPC and R.I. for three years along with fine of Rs. 5,000/- under Section 467 IPC and in case of default to pay the fine, O.P. No. 2 was directed to further undergo S.I. for two months and three months respectively under Sections 420 and 467 IPC.

2. The criminal case arises out of Nathnagar P.S. Case No. 10 of 2012 dated 16.01.2012 registered for the offence punishable under Sections 420, 467, 471, 323 and 504 of the Indian Penal Code against three accused persons including the O.P. No. 2/Gaurav Majumdar, his father Anil Majumdar and his grand mother Kanaklata Das on the complaint by the petitioner that the agreement for sale was executed by Anil Majumdar for sale of parcel of land in favour of the petitioner for consideration amount of Rs. 11 lac. The agreement for sale was also signed by O.P. No. 2/Gaurav Majumdar as a witness and total amount was also paid towards consideration.

3. After investigation, charge-sheet was submitted against only two accused including O.P. No. 2/Gaurav Majumdar and his father Anil Majumdar. However, Kanaklata Das was exonerated by the police.

4. During Trial, Anil Majumdar died. Hence, the trial



against him abated and only O.P. No. 2/Gaurav Majumdar faced the trial and he was found guilty under Sections 420 and 467 IPC and sentenced accordingly.

5. Against the judgment and order of sentence passed by learned A.C.J.M, Criminal Appeal bearing no. 38 of 2017 was preferred by O.P. No. 2/Gaurav Majumdar against the conviction and order of sentence. Learned Appellate Court found that the agreement for sale was executed by Anil Majumdar, father of O.P. No. 2, in favour of the petitioner/Niranjan Prasad Sah for a parcel of land for consideration amount of Rs. 11 Lac. It was further found that O.P. No. 2/Gaurav Majumdar was only a witness to the execution of the agreement for sale. On the basis of this finding, learned Appellate Court found that no criminal liability can be fastened against O.P. No. 2/Gaurav Majumdar, because he was only a witness, not a party to the agreement.

6. Heard learned counsel for the petitioner and learned APP for the State on the point of admission.

7. Learned counsel for the petitioner submits that the impugned judgment passed by learned Appellate Court is erroneous as error of law has been committed by learned Appellate Court. Substantiating his submission, he further



submits that after execution of the agreement, the petitioner came to know that O.P. No. 2/Gaurav Majumdar has already taken loan from a bank against the document relating to the parcel of land in question. Hence, the petitioner demanded the consideration amount back which was already paid for purchase of the land. But after dilly-dalling, O.P. No. 2 issued three cheques of total amount of Rs. 3,60,000/- and even those cheques have got dishonored and hence, separate criminal case has been lodged by the petitioner against O.P. No. 2/Gaurav Majumdar and that criminal case is still going on in the Trial Court. Hence, learned Appellate Court should have upheld the conviction of O.P. No. 2/Gaurav Majumdar for offence punishable under Sections 420 and 467 of the Indian Penal Code.

8. However, learned APP for the State defends the impugned judgment submitting that there is no illegality or infirmity in the impugned judgment, nor is there any perversity of finding of any facts and the present revision petition is liable to be dismissed at the threshold itself.

9. I perused the entire materials on record and considered the submissions advanced by both the parties.

10. I find that this criminal case arises out of



agreement for sale entered into by the petitioner/Niranjan Prasad Sah with one Anil Majumdar, father of O.P. No. 2/Gaurav Majumdar, for sale of a parcel of land which was in the name of Kanaklata Das, wife of Anil Majumdar, for consideration amount of Rs. 11 lac. As per the evidence, it is further found that total 9 lac was paid towards consideration, out of which 1.5 lac was given to O.P. No. 2/Gaurav Majumdar. It also transpires that when the agreement for sale failed to fructify, O.P. No. 2/Gaurav Majumdar issued three cheques in favour of the petitioner/Niranjan Prasad Sah for total amount of Rs. 3,60,000/- which have got dishonored and separate case has been lodged by the petitioner against the O.P. No. 2/Gaurav Majumdar.

11. I further find that Gaurav Majumdar is only a witness to the agreement and it is his father, Anil Majumdar, who executed the agreement for selling the land in question in favour of the petitioner. Hence, the terms and conditions of the agreement were binding only upon the executant, not on the witness. It is the parties who are responsible to perform their part of contract, not the witness to the execution of the contract. Hence, the terms and conditions of the agreement for sale, which is the basis of criminal case, are not binding upon the



Gaurav Majumdar. He is not responsible for failure of any party to the agreement to perform his part of the contract. Hence, no way he could be held guilty under Section 420 IPC. There is also no question of application of Section 467 IPC, because there is no forgery of any document. The document in question is genuine one, executed by the parties, though the contract has not been honored by the parties. Moreover, Anil Majumdar, the executant, has already died during trial. Hence, learned Appellate Court has rightly set aside the judgment of conviction and order of sentence passed by learned Trial Court against O.P. No. 2/Gaurav Majumdar. Even receipt of part consideration amount by O.P. No. 2 would not make any difference. The receipt would be presumed to be on behalf of the executant.

12. Hence, in the facts and circumstances of the case, there is no illegality or impropriety in the impugned judgment. Learned Appellate Court has rightly set aside the impugned judgment and order of sentence passed by learned A.C.J.M against O.P. No. 2/Gaurav Majumdar.

13. The petitioner has already filed criminal case in regard to dishonor of cheques issued by O.P. No. 2 and that is still at the stage of trial. He can pursue his case. But in this case, Gaurav Majumdar cannot be fastened with any criminal liability.



14. Accordingly, the present Criminal Revision
petition is dismissed *in limine*.

(Jitendra Kumar, J.)

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