

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.62 of 2019

Arising Out of PS. Case No.-1511 Year-2001 Thana- Siwan Complaint Case District- Siwan

Hari Singh @ Harinath Singh Late Indradev Singh Resident of Village -
Akolhi, P.S.-Jiradei, District-Siwan, Bihar

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Avanish Kumar Singh, Advocate Mr. Ambar Narayan, Advocate Mrs. Barkha, Advocate
For the Respondent/s	:	Mr. Md. Ashlam Ansari, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

8 29-02-2024 Heard learned advocate for the petitioner and learned
Additional Public Prosecutor for the State.

2. The order of sentence affirmed in Criminal Appeal No.02 of 2017 by a judgment and order dated 30.06.2018 passed by the learned Additional Sessions Judge-II, Siwan in Criminal Appeal No.02 of 2017 affirming the order of conviction and sentence passed against the petitioner in Complaint Case No.1511 of 2001 convicting the petitioner for offence punishable under Sections 406 and 420 of the Indian Penal Code and sentencing him to undergo three years imprisonment on each count of offence under Sections 406 and 420 of the I.P.C. and also to pay fine of Rs.1,000/- each for the said two counts of offences, in default of payment of fine,



further simple imprisonment for a period of one month, is assailed in the instant revision.

3. It is submitted by the learned advocate for the petitioner that the petitioner purchased a Tractor by taking bank loan wherein the complaint was shown as a guarantor. The said Tractor was purchased in the month of June, 1997, in the month of May, 1999 the petitioner proposed the complainant that he would sale the Tractor to the complainant at Rs.1,40,000/-. The complainant agreed and pay a sum of Rs.74,000/- by cash, further amount of Rs.11,000/- was paid by a Bank Draft on 25.05.1999, the rest amount of Rs.55,000/- was due. At this stage, complainant approached the accused to execute a sale letter or an agreement for sale in favour of him. However, the accused took dilatory tactic and was avoiding to execute such agreement. Subsequently, the complainant came to know that the accused is not the actual owner of the said Tractor and the name of the registered owner of the said Tractor is one Kalri Devi.

4. It is alleged by the complainant that the accused by way of deception that he was the owner of the property i.e., the Tractor induced him to pay Rs. 85,000/- for delivery of the property and subsequently it was learnt that the petitioner was



not at all the owner of the property, i.e., the Tractor. The petitioner did not repay the amount and thereby he misappropriated a sum of Rs.85,000/-.

5. The learned advocate for the petitioner frankly submits that he is not willing to advance his argument on the legality, validity and propriety of the order of conviction that has been passed against the petitioner. The learned advocate for the petitioner has appealed this Court to consider that the accused/petitioner is now aged about 77 years. He is suffering from cortical and cerebellar atrophy and has lost his eye side. He is suffering from other ailments too. In the meantime, the accused suffered incarceration for seven months. Therefore, the learned advocate has prayed for modification of the sentence by passing an order of imprisonment which has already been undergone by the petitioner.

6. I have duly considered the submission made by the learned advocate for the petitioner, the learned A.P.P. has not raised any objection regarding the condition of health of the petitioner. At the same time it is submitted by him that the complainant was also a poor farmer, he also paid Rs.85,000/- in spite of his poverty to the accused. The submission made by the learned A.P.P. is accepted but I am inclined to record at the



same time that the complainant has expired in the meantime. The petitioner is not a seasoned offender, he is a villager and runs his life by agriculture. There is no criminal antecedent against the petitioner.

7. Considering such aspect of the matter and in view of the old age, the sentence of imprisonment of the petitioner in both counts of offenses punishable under Sections 406 and 420 of the I.P.C. is reduced to the period which has already been undergone by the petitioner. However, the sentence of payment of fine is affirmed.

8. The petitioner is directed to submit the fine amount in the Trial Court within two weeks from the date of this order.

9. Accordingly, the instant revision is partly allowed.

(Bibek Chaudhuri, J)

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