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**(2011) 07 PAT CK 0243**

**In the Patna High Court**

**Case No :** Criminal Appeal No. 11 of 2000 in SLA 23 of 2000

Jayant Kumar Mishra

APPELLANT

Vs

Ranjan Singh, Ganga Mandal and The State of Bihar

RESPONDENT

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**Date of Decision :** 01-07-2011

**Acts Referred:**

**Citation :** (2011) 07 PAT CK 0243

**Hon'ble Judges :** Dharnidhar Jha, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Dharnidhar Jha, J.—The present appeal has been preferred to assail the propriety and correctness of judgment of acquittal dated 18.12.1999 rendered by Sri Arun Kumar Singh, Judicial Magistrate, Ist Class, Bhagalpur in Complaint Case No. 80 of 1986, Trial No. 731 of 1999.

2. The fact of the case was that the two Respondents were residing in a house which was being claimed by the complainant due to purchase from the only heir of late Ranjit Kumar Pathak, namely, Kalpana Pathak by a registered deed of sale dated 26.06.1985. When 2 the Appellant asked the two Respondents to vacate the premises on account of the purchase by him, they abused him and stated to him that they were armed with an agreement to sale dated 19.10.1984 which was executed by late Ranjit Kumar Pathak after receiving a premium amount of Rs. 10,000/-. A Panchayati was also held and the signature of late Ranjit Pathak on the agreement was compared with the specimen signature of the deceased Ranjit Kumar Pathak which had been furnished by him to create Savings Account No. 2353 dated 3rd day of January, 1984 and his writings on the daily register of patients whom he was checking up as a Homoeopathic practitioner and it was found that the signature of late Ranjit Kumar Pathak on the agreement to sale which was purported to be created in favour of the Respondents by him was forged and fabricated. A notice to the above effect was also given to the daughter of Ranjit Kumar Pathak, namely, Kalpana Pathak as to why and how in

spite of the house being sold to the Appellant, the agreement to sale was brought into existence. She denied the execution of the agreement to sale in favour of the Respondents and that further confirmed the 3 fabrications and creation of a false document. The circumstance which was alleged further by the Appellant was that Ranjit Kumar Pathak had died on 26.11.1984 and taking advantage of that situation a forged and fabricated document was created by Respondents to block the transfer of the house taking effect and the possession of promises being taken over by the Appellant.

3. It appears from the impugned judgment that a Title Suit bearing No. 179 of 1986 was also filed and after trial of the suit a judgment was also delivered but the extent of the judgment and finding recorded therein has not been stated by the learned trial Judge as the same may not be admissible on account of findings of fact which might be disputed in a criminal trial.

4. However, the trial court considering the evidence of the Appellant and specially that part of it by which it was pointed out that the house was purchased by him and a Panchayati was held as also the signature appearing on the agreement of sale of Ranjit Kumar Pathak tallied with some documents, like his specimen signature in the 4 bank account and those available on the Homoeopathic register, has rejected the evidence on the ground that none of the documents was produced nor any person could come before the court to state that he had the occasion of comparing the signature on the agreement to sale and with that which was furnished by Ranjit Kumar Pathak while operating a bank account and which was made by him on his Homoeopathic register. It was also found by the learned trial Magistrate that in absence of the evidence of the witnesses, who compared the signatures as also in absence of the evidence of any of the Panches who could have participated in the Panchayati, it could be very difficult to say that the agreement to sale in favour of the Respondents was forged and fabricated. Besides, there was no production of any of the witnesses or Panches or even Kalpana Pathak who could have been one of the most important witnesses as regards the signature of Ranjit Kumar Pathak on the alleged document to say that the same was not that of Ranjit Kumar Pathak. I have already noted down that the document also was not produced. So there was a complete absence of evidence to prove the charges.

5. In that view, the court finds that the learned trial Magistrate did not commit any error in acquitting the Respondents. The order of acquittal passed by the learned Magistrate is justified and in that view the appeal against acquittal is dismissed.