

(2022) 11 JH CK 0029
In the Jharkhand High Court
Case No : Acquittal Appeal (C) No.27 Of 2022

Kisundeo Yadav

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 01-11-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 380, 448, 420, 467, 468, 471

Citation : (2022) 11 JH CK 0029

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Ashwini Bhushan, Priya Shrestha

Final Decision : Dismissed

Judgement

Rajesh Kumar, J

1. Heard learned counsel for the appellant and learned counsel for the State.
2. The present acquittal appeal has been filed against the judgment of acquittal dated 07.03.2020, passed by the court of learned Additional Sessions Judge – VII, Deoghar in Criminal Appeal No.76 of 2019 whereby the respondent Nos.02 to 04 have been acquitted from the charge under Section 448 of the Indian Penal Code.
3. It appears that the F.I.R being Deoghar Town P.S. Case No.298 of 1998 was lodged for the offence under Sections 448, 420, 467, 468, 471 and 380/ 34 of the Indian Penal Code and after trial, the accused persons have been convicted only for the offence under Section 448 of the I.P.C, i.e., for house trespass and accordingly they have been convicted for four months simple imprisonment by the court of learned Judicial Magistrate, 1st Class, Deoghar in G.R. Case No.902 of 1998 (T.R. No.1284 of 2019).

Against the said judgment of conviction, an appeal being Criminal Appeal No.76 of 2019 has been preferred and by the impugned judgment dated 07.03.2020,

the appellate court has acquitted the accused persons for the charge under Section 448 of the I.P.C. The appellate court recorded the finding that there is no evidence on record suggesting possession over the land with the present appellant rather the evidence suggests otherwise. There is no time mentioned regarding the entry into the said premises which is the necessary ingredient for conviction under Section 448 of the I.P.C.

4. Learned counsel for the appellant has assailed the said order of acquittal on the ground that there was earlier dispute between the parties and there is order of Sub-Divisional Magistrate, Deoghar also in favour of the appellant. The land was purchased by the appellant and the present respondents were tenant. Subsequently, they have been ousted and the premises was in possession of the present appellant. Subsequently, the respondents have re-entered into the premises by breaking open the lock and as such offence under Section 448 of I.P.C is made out.

5. On the other hand, learned counsel for the State has pointed out that the appellant has himself admitted in his examination that the respondents were in possession of the said land. Further, the time of entry by the alleged accused persons has not been mentioned. The appellate court has considered the entire matter and thereafter finding has been recorded. It has also been submitted that it is also relevant to mention here that the order of the court of Sub-Divisional Magistrate, Deoghar, which has been relied by the appellant, has not been brought on record.

6. Considering the above facts and the materials available on record, this Court finds no reason to entertain the present acquittal appeal, accordingly the same is, hereby, dismissed.