

(2002) 02 PAT CK 0137

In the Patna High Court

Case No : Criminal Appeal No. 16 of 1991

Prem Chandra and Akhilesh Kumar

APPELLANT

Vs

SheoJi Singh and The State of Bihar

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2002) 4 PLJR 798

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

Advocate : B.P. Verma, for the Appellant; B.P Gupta, for State and Nirmal Kr. Sinha No. 3, for the Respondent

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—along with Vimla Devi was prosecuted of the charges under Sections 420 and 406 of the Indian Penal Code on behest of Bhagirath Pd. Singh (P.W. 5) with accusation that notwithstanding execution of deed of agreement on 1st June, 1983 by the Respondent on receipt of advance of Rs. 3000/- for transfer of 4 and 1/2 decimals of land and subsequent receipt of rest part of the money, no deed of sale was ever executed and left the Registration Office. In the eventual trial, the prosecution examined altogether seven witnesses including Bhagirath Prasad Singh, P.W. 5, Akhilesh Kumar P.W. 1, Rajbali Singh P.W. 2, Mathura Singh P.W. 3, Raghunath Singh P.W. 4 and also the scribe P.W. 6 who had reiterated the prosecution version about negotiation between the parties for transfer of 4 and 1/2 decimals of land, execution of deed of agreement, payment, of advance of Rs. 3000 at the time of execution of deed of agreement, payment of part consideration money and also on receipt of Rs. 6500/-. Sheoji Singh having left Registration office without execution of deed of sale, and the trial court on appreciation of evidence placed on the record, holding Vimla Devi not guilty of charges, rendered verdict of guilt finding Respondent guilty under Sections 420 and 406 of the Indian Penal Code and sentenced him to suffer

rigorous imprisonment for two years, on these counts respectively with a direction that both the sentences shall run concurrently.

2. The aggrieved Respondent carried the matter in appeal before Additional Sessions Judge, Sasaram who on evaluation of evidences laid down on behalf of the parties and on critical analysis of the finding recorded by the court below, acquitted the Respondent of the charges brought against him and accordingly set aside the finding recorded by the learned Magistrate, and in their turn the aggrieved complainant has sought to invoke jurisdiction of this Court in appeal ostensibly for reversal of acquittal passed by the lower appellate courts

3. Various submissions were canvassed on behalf of the Appellants and it is sought to be urged that the finding of lower appellate court was based merely on premises that since the nature of prosecution attracts civil liability, no criminal liability was attributable to the Respondent and hence it is urged at bar that there has been judicial precedent in catena of decision of this Court that nature of such offences would attract both civil and criminal liability and hence the finding recorded by the lower appellate court was not tenable in law. Learned Counsel appearing for the Appellant has taken me to the evidences of witnesses and it is sought to be urged that they had rendered coherent statements about negotiation between the parties for transfer of land, execution of deed of agreement, subsequent payment made by Bhagirath Prasad Singh recorded in deed of agreement and also commission of mischief and also betrayal committed by the Respondent in not getting the sale deed executed, even on receipt of part of consideration money by him. Learned Counsel appearing for the Respondent has resisted the contention raised on behalf of the Appellants.

4. Though good number of witnesses were examined at trial to lend assurance to the prosecution allegation about negotiation between the parties for transfer of 4 and 1/2 decimals of land in favour of Bhagirath Prasad Singh and his daughter, reconciliation made between the parties on behest of some well wishers, when the Respondent allegedly betrayed from the commitment made in the deed of agreement, and also about preparation of deed of sale, securing permission from the Government for execution of deed of sale and also receipt of Rs. 6500/- by the Respondent, pursuant to which he left the Registration office without execution of document, certain facts are undisputed. Barring there being evidences of P.W. 2 Rajbali Singh and P.W. 3 Mathura Singh about receipt of advance of Rs. 3000/- by the Respondent, there has been no evidence whatsoever about payment of rest consideration money by Bhagirath Prasad Singh, though it is alleged by the Appellants that time to time part consideration money was paid to the Respondent, endorsement of which was recorded in deed of agreement (Ext. 1), the allegation attributed to the Respondent about receipt of consideration money, and re-cording endorsement in the deed of agreement was strongly refuted by the Respondent, and even though it was obligatory on part of the Appellants to get disputed hand writing of the Respondent examined by the Expert with that of admitted handwriting that obligation was not

discharged and that apart, factum of execution of deed of agreement, and payment of advance money of Rs. 3000/- though vital part of edifice of prosecution case, its stipulation did not find place in the deed of sale which are ext. 3 series. To crown all, though consideration money for transfer of 4 and 1/2 decimals of land was determined to be Rs. 25,000/-, rightly the lower appellate court noticed that the consideration money incorporated in two sale deeds comes to Rs. 24,000/- and that apart, lower appellate court has noticed inconsistency also about the vendees whose names transpired in both the sale deeds which appears to be in contrast of the assertion made by the prosecution.

5. Admittedly, in some cases the mischief committed by the wrong doer attracts both civil and criminal liability but there cannot be a universal proposition of law, particularly in such cases. The moot point which falls for consideration was as to whether the deed of agreement was executed by the Respondent, whether there was receipt of part of consideration money when the deed of agreement was allegedly executed and whether there has been sub-sequent receipt of part of consideration money, and I am afraid that there has been no clinching evidence on part of Appellants to bring charges against the Respondent No. 1. The liability created by virtue of alleged deed of agreement for execution of deed of sale cannot be determined in the criminal proceeding and admittedly these issues can be properly appreciated before a court of civil jurisdiction and on these premises I find that the finding recorded by the lower appellate court was not meritless, and that apart, this fact cannot be lost sight of that the basic concept for reversing the judgment of acquittal analysed through catena of decisions of the court was that when there were strong mitigating circumstances which could suggest the finding to be perverse and extremely improper, the finding of acquittal could be reversed and since no such case was made out by the Appellants, finding no merit, the appeal is dismissed.