
(2011) 11 PAT CK 0060
In the Patna High Court
Case No : Criminal Revision No. 771 of 2002

Ram Bilash Sah

APPELLANT

Vs

State of Bihar and Chandeswar Sahni

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 406

Citation : (2011) 11 PAT CK 0060

Hon'ble Judges : Amaresh Kumar Lal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Honourable Mr. Justice Amaresh Kumar Lal

1. The accused-petitioner has preferred this criminal revision application against the judgment and order dated 19.08.1994 passed by the learned Additional Sessions Judge, F.T.C.-I in Cr. Appeal no. 79 of 1994/85 of 2001 by which the appeal has been dismissed and the judgment of conviction and sentence passed by the learned Judicial Magistrate, 1st Class, Muzaffarpur, in Complaint Case no. 1127 of 1989, Trial no. 174 of 1994 has been confirmed.

2. The prosecution case, in brief, is that the complainant-opposite party no. 2 is the cultivator of six bighas of land. For purchasing bullock for cultivation, he required Rs. 5000/- for which he approached the petitioner on 11.10.1989 along with the witnesses and he requested him to lend Rs. 5000/-. The petitioner desired that the opposite party should pawn some gold ornaments against borrowing of Rs. 5000/- and the opposite party went to his house and brought two gold kangans and gave them to the petitioner who kept the kangans in his house after weighing them, the weight of the gold kangans was found to be of 4 tolas. He kept the kangans in the house and gave the opposite party Rs. 1000/- and promised orally to give the rest amount on the following day i.e. 12.10.1989 when the opposite party no. 2 approached him on 12.10.1989 he asked to come

on the next day. The complainant-opposite party approached him on 12.10.1989 but he again asked him to come on later day. Later on he went to the petitioner and told to take his money back i.e. Rs. 1000/- and requested to return the gold kangans but he refused. Thereafter, a complaint case was filed by opposite party no. 2.

3. After trial the petitioner was found guilty u/s 406 of the Indian Penal Code and he was sentenced to rigorous imprisonment for one year by the learned trial court vide judgment and order dated 19.08.1994. The petitioner preferred Cr. Appeal no. 79 of 1994 and in the appeal, it is held that the parties have compromised the case and a compromise petition has been filed. But it was erroneously held that the offence u/s 406 of the Indian Penal Code is not compoundable. It is submitted by the learned counsel for the petitioner that petitioner has been convicted u/s 406 which is compoundable with the permission of the Court. It is further submitted that the occurrence has taken place on 12.10.1989, more than 22 years have elapsed and moreover, the petitioner has been in custody for more than a month. He was arrested on 23.08.2002 and bail was granted by this court vide order dated 11.09.2002 and he has been released on 28.9.2002.

4. Good relationship has been restored between the parties.

5. Learned counsel for the State could not controvert the contention of the petitioner

6. Considering the facts and the circumstances of the case, I do not find any ground to reject the petition compounding the offence punishable u/s 406 of the Indian Penal Code. The offence is compoundable with the permission of the Court. The compromise petition has been filed before the learned Appellate Court. Since the compromise petition has been filed by the victim of the occurrence, this compromise petition is accepted and the offence is compounded. The petitioner is acquitted. The impugned judgment and order passed by the courts below are set aside.

7. This revision application is allowed.