

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No.44 of 2018

(Against the Judgment of Conviction and order of sentence dated 22.09.2017 passed by learned Sub-Divisional Judicial Magistrate, Jamshedpur in G.R. Case No. 866/2015 and T.R. No. 37/2017 and against appellate judgment dated 22.12.2017 passed by the court of learned Sessions Judge, East Singhbhum, Jamshedpur in Criminal Appeal No. 141 of 2017)

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| Shaikh Arif @ Sk. Arif | ... | Petitioner |
| Versus | | |
| 1. The State of Jharkhand | | |
| 2. Firoz Ahmad | ... | Opposite Parties |

CORAM: HON'BLE MR. JUSTICE NAVNEET KUMAR

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| For the Petitioner | : | Mr. Dilip Kr. Karmakar, Advocate |
| For the State | : | Mr. Anup Pawan Topno, A.P.P. |
| For the O.P. No.2 | : | Md. Asghar, Advocate |
| | | Mr. Manish Kumar, Advocate |

JUDGMENT DATED: 09.02.2024

This Criminal Revision Application has been preferred against the Judgment dated 22.12.2017 passed by the court of learned Sessions Judge, East Singhbhum, Jamshedpur in Criminal Appeal No. 141 of 2017, whereby and whereunder, the learned Sessions Judge, East Singhbhum, Jamshedpur, has dismissed the appeal filed by the appellant (Petitioner herein) against judgment of conviction and order of sentence dated 22.09.2017 passed by learned Sub-Divisional Judicial Magistrate, Jamshedpur, whereby and whereunder, the learned Sub-Divisional Judicial Magistrate, Jamshedpur has found the present petitioner guilty for the offence punishable under sections 419, 420, 467, 468 & 471 of the Indian Penal Code and further convicted the petitioner as under:

Under section 467 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for period of 3 years and to pay fine of Rs. 2,000/- and in default of payment of fine, he was further directed to undergo S.I. for 30 days.

Under section 468 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for period of two years and to pay fine of Rs. 1000/- and in default of payment of fine he was further directed to undergo S.I. for 15 days.

Under section 471 of the Indian Penal Code, sentenced to undergo rigorous imprisonment period of three years and to pay a Rs. 2000/- and in default of payment of fine, he was further directed to undergo S.I. for 15 days.

Under section 420 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for the period of three years and to pay fine of Rs. 4000/- and in default of payment of fine, he was further directed to undergo S.I. for 30 days.

Under section 419 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for the period of one year and six months.

And further directed that all the sentences shall run concurrently.

2. The case of the prosecution in brief is based upon the complaint of opposite party No. 2 stating therein that upon being approached by the accused, he agreed to purchase Holding No. 4 and 5 of Masjid Road, Golmuri. Accused represented himself as Power of Attorney Holder of legal heir of Late Jairam @ R. Jairaman, the owner of said property. The total consideration amount was fixed at Rs. 63,00,000/- and agreement was executed on 23.8.2010. On 24.8.2010, Rs. 15 Lakh cash and Rs. 5 lakhs were paid through cheque to the accused. On 22.01.2011, Rs. 12 lakh was paid through cheque No. 378984 and money receipt was issued. On 2.5.2011, Rs. 8 lakh was paid through cheque and lastly on 13.2.2012 Rs. 10 lakh was paid through another cheque. Altogether total amount of Rs. 50,00,000/- was made. Out of which, cheque amount of Rs. 35,00,000/- was credited in the account of accused Sk. Arif. The

complainant requested for physical verification, but was assured by the accused that everything will be done after executing the sale deed. On 13.2.2012, Sale Deed was executed by the accused as Power of Attorney Holder in favour of the informant, wherein the consideration amount of Rs. 17,00,000/- was shown. But after the said sale deed, possession was not actually delivered and accused on one pretext or another, delayed in delivering the possession. Then the informant inquired into the matter and found that person, who executed the power of attorney in favour of accused were not the real owner and alleged power of attorney is fake and forged. Informant visited Holding Nos. 4 and 5 and found that property is owned by other person namely J.M. George and against the said property, Title Partition Suit is pending between the co-sharers of the said property belonging to Late Poopathy Anamel and her husband Late Raja Ram. Informant requested the accused to return the said amount, but he threatened of dire consequences.

On the basis of said complaint, Complaint case C/1 Case No. 514/2015 was registered and was referred to the P.S. concerned U/s 156(3) Cr.P.C. leading into the institution of Golmuri P.S. Case No. 191/2015 dated 24.03.2015 and investigation was taken up and after investigation and submission of charge-sheet No. 193/2015 dated 30.11.2015, cognizance of offence u/s 406/420/419/467/468/471 IPC against the accused (Petitioner herein) was taken vide order dated 30.11.2015 and charges U/s 406/420/419/467/468/471 I.P.C were framed on 05.04.2016 by Learned J.M. Ist Class Jamshedpur and explained to the accused/petitioner in Hindi, to which, he pleaded not guilty and claimed to be tried.

In course of trial prosecution has produced and examined altogether eight witnesses. No defence witness has been produced.

In due course of time, the prosecution evidence was closed on 19.6.2017 and statement of the aforesaid accused person was

recorded u/s 313 Cr.P.C on 30.7.2017, to which he pleaded to be falsely implicated in present case as he is innocent. The learned trial court after conducting the full-fledged trial, passed the impugned judgement of conviction and order of sentence on 22.09.2017 in G.R. Case No. 866 of 2015 / T.R. case No. 37 of 2017.

3. Further, it appears from the record that being aggrieved by the impugned judgement of conviction and order of sentence dated 22.09.2017 passed by the learned Sub-Divisional Judicial Magistrate, Jamshedpur in G.R. Case No. 866 of 2015 / T.R. case No. 37 of 2017, the accused/petitioner had preferred the appeal before the Court of learned Sessions Judge, East Singhbhum At Jamshedpur in Criminal Appeal No. 141 of 2017, which was also dismissed by the judgment dated 12.12.2017 vide Criminal Appeal No. 141 of 2017, for which the present Criminal Revision has been filed, which is under challenge before this Court.

4. Heard learned counsel Mr Dilip Kumar Karmakar appearing on behalf of the petitioner and learned APP Mr. Anup Pawan Topno appearing on behalf of the State assisted by learned counsel Md. Asghar, appearing on behalf of OP No. 2.

Arguments advanced on behalf of the petitioner-

5. At the outset, learned counsel appearing on behalf of the petitioner submitted that he does not want to argue this case on merit and therefore he is confining his arguments only on the point of sentence.

6. It is submitted on behalf of the petitioner that the petitioner has been found guilty for the offence punishable under sections 419,420,467,468 & 471 of the IPC and he was sentenced, under section 467 of the Indian Penal Code, to undergo rigorous imprisonment for period of 3 years and to pay fine of Rs. 2,000/- and in default of payment of fine, he was further directed to undergo S.I. for 30 days. Under section 468 of the Indian Penal Code, sentenced

to undergo rigorous imprisonment for period of two years and to pay fine of Rs. 1000/- and in default of payment of fine he was further directed to undergo S.I. for 15 days. Under section 471 of the Indian Penal Code, sentenced to undergo rigorous imprisonment period of three years and to pay a Rs. 2000/- and in default of payment of fine, he was further directed to undergo S.I. for 15 days. Under section 420 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for the period of three years and to pay fine of Rs. 4000/- and in default of payment of fine, he was further directed to undergo S.I. for 30 days. Under section 419 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for the period of one year and six months.

7. It has further been pointed out that that said impugned judgement of conviction and order of sentence was also confirmed by the Lower Appellate Court of Sessions Judge, East Singhbhum, Jamshedpur in Criminal Appeal No. 141 of 2017.

8. Further, it is submitted on behalf of the petitioner that the petitioner has remained in jail for about 2 years 3 months and 27 days, from 04.10.2015 to 01.02.2018 and as such, the maximum sentence as awarded by the learned court below, i.e. 3 years, has almost been served by this petitioner. Further it has also been submitted on behalf of the petitioner that he is ready to pay the fine amount by way of compensation in order to give it to the victim PW-3 informant Firoz Ahmed, who is said to have suffered a pecuniary loss.

9. Further, it has been pointed out that the entire dispute arose out of an agreement entered into between the parties, including the informant and this petitioner, for the sale and purchase of the land on the basis of the power of attorney, which is being held by the petitioner.

10. Further, it has also been pointed out from the deposition of the

I.O., particularly, PW-5, that the sale-deed in question was verified from the registry office and found the same to be correct. Further, the agreement dated 23.08.2010, which is said to be executed between this petitioner and the informant and is also found to be correct and the power of attorney was also found to be correct from the registry office but no copy of any document was found along with the power of attorney.

11. Further it has also been pointed out that one Title Suit was also pending and in this view of the matter, it is submitted that basically, it was a civil nature of dispute between the parties and since the petitioner has already served the substantive period of sentence and therefore, it is submitted that no useful purpose is going to be served by sending the petitioner again in jail. Accordingly, it is submitted that the order of sentence, as imposed by the learned court below may be modified.

Arguments advanced on behalf of the State-

12. On the other hand, learned counsel appearing on behalf of the State assisted by learned counsel Md. Asghar, appearing on behalf of the informant-opposite party No. 2 vehemently opposed the contentions raised on behalf of the petitioner and submitted that both the learned Courts below including the Trial Court and the Lower Appellate Court have found the accused/petitioner guilty for the offence punishable under sections 419,420,467,468 & 471 of IPC on the basis of the cogent and reliable evidences, including the oral and documentary evidences and there is no legal point to interfere with the impugned judgement of conviction and order of sentence. It has further been pointed out that the learned trial court has discussed all the documentary evidences adduced on behalf of the prosecution as well as oral evidences and has held the petitioner guilty and convicted therein by the impugned judgement of conviction and order of sentence and further the lower appellate

court has also confirmed the judgement of conviction and order of sentence dated 22.09.2017 passed by Learned Sub- Divisional Judicial Magistrate, Jamshedpur and hence in criminal revision jurisdiction, there is no apparent error on the face of it to interfere with the impugned Judgment by this Court and therefore, it is submitted that this Criminal Revision is liable to be dismissed being devoid of merit.

Appraisal & Findings

13. Having heard the parties, perused the record of this case including the Lower Court Record.

14. It is found that the petitioner above named has been found guilty for the offence punishable under section 419,420,467,468 and 471 of the IPC and further he was sentenced to undergo as follows:

Under section 467 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for period of 3 years and to pay fine of Rs. 2,000/- and in default of payment of fine, he was further directed to undergo S.I. for 30 days.

Under section 468 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for period of two years and to pay fine of Rs. 1000/- and in default of payment of fine he was further directed to undergo S.I. for 15 days.

Under section 471 of the Indian Penal Code, sentenced to undergo rigorous imprisonment period of three years and to pay a Rs. 2000/- and in default of payment of fine, he was further directed to undergo S.I. for 15 days.

Under section 420 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for the period of three years and to pay fine of Rs. 4000/- and in default of payment of fine, he was further directed to undergo S.I. for 30 days.

Under section 419 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for the period of one year and six

months.

And further directed that all the sentences shall run concurrently.

15. Since the petitioner does not want to argue this case on merit and therefore, this Court upholds the judgement of conviction dated 22.09.2017 passed by the learned trial court i.e. learned Sub-Divisional Judicial Magistrate, Jamshedpur in G.R. Case No. 866/2015 and T.R. No. 37/2017 and also the judgment dated 22.12.2017 which was passed by the lower appellate court i.e. learned Sessions Judge, East Singhbhum, Jamshedpur in Criminal Appeal No. 141 of 2017, whereby the lower appellate court had dismissed the said appeal preferred by the petitioner.

16. Accordingly, this court upholds the judgment of guilty of the conviction, under which, petitioner was found guilty for the offences punishable under sections 419,420,467,468 & 471 of the IPC.

17. So far as the order of sentence is concerned, it has been pointed out that the petitioner has already remained in jail from 04.10.2015 to 01.02.2018, i.e. 2 years 2 months 27 days.

18. On perusal of order of sentence, it is found that the maximum sentence awarded by the learned courts below is 03 years and further, the learned court below has also imposed fine to a sum of ₹2000/- under section 467 IPC, and a sum of ₹1000/- under section 468 IPC and a sum of ₹2000/- for the offence under section 471 of the IPC and a sum of ₹4000/- under Section 420 of IPC and no fine has been imposed under section 495 of IPC.

19. It is found that the entire dispute between the parties is related to the sale and purchase of the land arising out of the agreement. The petitioner has already remained in jail for a substantial period of time. There is nothing on record to show about his criminal history. Further it has also been formed that this petitioner is ready to pay a substantive amount of fine by way of compensation under all the

heads / counts, under which, he has been found guilty.

20. Under the facts and circumstances of this case, this Court finds that no useful purpose would be served by sending the petitioner again in jail and the purpose of justice would be meted out, if the sentence of imprisonment is imposed upon the petitioner for a term of the period already undergone by him and a suitable fine be imposed by way of compensation in order to give to the victim PW-3 Firoz Ahmad.

21. In the result, the order of sentence dated 22.09.2017 passed by the learned trial court i.e. learned Sub-Divisional Judicial Magistrate, Jamshedpur in G.R. Case No. 866/2015 and T.R. No. 37/2017 and which was confirmed by the lower appellate court i.e. learned Sessions Judge, East Singhbhum, Jamshedpur in Criminal Appeal No. 141 of 2017 is hereby set-aside and further the order of sentence is altered by imposing a sentence of imprisonment upon petitioner for a term of the period already undergone by him and further a sentence of fine is imposed upon the petitioner to a sum of ₹25,000/- (Rupees Twenty Five Thousand only) by way of compensation in order to give it to the victim PW-3 under all the heads/counts jointly, failing which, the petitioner is directed to undergo Rigorous Imprisonment for 02 years under all the heads / counts jointly and collectively.

22. Since, the petitioner Shaikh Arif @ Sk. Arif is on bail and, therefore, a period of three months' time is given from today to make payment of fine of Rs. 25000/- (Rupees Twenty-Five Thousand only) by way of compensation in order to give it to the victim PW-3 Firoz Ahmad, S/O Haji Wasi Ahmad, resident of H.No. 440, B. Block, Line No.3 Tuiladungri, P.S. Golmuri, Jamshedpur, East Singhbhum.

23. In case of the default of payment of fine amount as awarded by this Court as above within the stipulated period of time, the

petitioner shall undergo Rigorous Imprisonment for a period of two years.

24. The learned trial court is directed to ensure that the said fine amount is deposited within the stipulated period of time and if the same is not deposited by the petitioner, he will serve the sentence as awarded in case of default of payment of fine so awarded, by taking all necessary measures as per the provisions of law to ensure that the petitioner serves the sentence of imprisonment in case of default of payment of fine.

25. The petitioner may be allowed to deposit the said fine amount through the *Nazarat* of the concerned Civil Court. At the moment he deposits the fine amount, he (the petitioner) shall be released forthwith on deposit of the said fine amount and he shall be discharged from the liabilities of bail bonds accordingly.

26. The learned court below is also directed that on deposit of the said fine amount by the petitioner, the notice shall be sent to the victim PW-3 Firoz Ahmad, and, on their appearance, the said fine amount, if so, deposited by the petitioner, shall be disbursed to him.

27. In case, if the said victim is not traceable or not available or not found at the given address, or does not present before the Court after the notice, the same shall be disbursed to the close or near relatives or kith and kin of the said victim PW-3 Firoz Ahmad, as the concerned learned trial court may deem fit and proper and in this regard the court concerned may also involve the Para Legal Volunteer (PLV) of District Legal services Authority(DLSA), Jamshedpur, if required.

28. Accordingly, this Criminal Revision is dismissed with modification in order of sentence as above.

29. Let a copy of this Judgment along with Lower Court Record be sent back forthwith to the concerned court below for its compliance in letter and spirit.

(Navneet Kumar, J.)