

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 229 of 2014

Md. Kausar Ali @ Kaushar Ali, son of Abdul Mannan

... .. **Petitioner**

-Versus-

1. The State of Jharkhand

2. Hurdanand Naik, Son of Late Sukhdeo Naik

... .. **Opposite Parties**

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**CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

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For the Petitioner : Mrs. Gouri Debi, Advocate

For the Opp. Party- State : Mr. Ravi Prakash, A.P.P.

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**Through Video Conferencing**

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11/20.08.2020

Heard Mrs. Gouri Debi, learned counsel appearing on behalf of the petitioner.

2. Heard Mr. Ravi Prakash, the learned A.P.P. appearing on behalf of the Opposite Party- State.

3. This Criminal Revision petition has been filed challenging the legality, propriety and correctness of the judgment and sentence dated 20.02.2014 passed by learned Sessions Judge, Chaibasa in Cr. Appeal No. 82 of 2013 affirming the judgment of conviction and order dated 18.07.2013 passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Chaibasa in C/1 Case No. 46/2009 whereby the petitioner has been convicted under Sections 447 and 427 of the I.P.C. and has been sentenced to undergo three months Rigorous Imprisonment along with fine of Rs. 200/- for the offence under Section 447 I.P.C. and one year's Rigorous Imprisonment with fine of Rs. 2,000/- for the offence under Section 427 of the Indian Penal Code. Both the sentences have been directed to run concurrently. It has also been directed that in default of payment of fine amount, the petitioner has to undergo 3 months and 1 month Simple Imprisonment for the offence under Sections 427 and 447 of the Indian Penal Code respectively.

**Argument on behalf of the petitioner**

4. Learned counsel for the petitioner has submitted that the learned court below has failed to properly consider the sale-deed which was filed by the defence bearing sale-deed dated 19.08.2008 (Exhibit-A) while convicting the petitioner in view of the fact that the complainant as well as the opposite party no. 2 were claiming title on the same land by virtue of different title deeds. She submits that apparently there was title dispute with regard to the land between the parties and accordingly the present case calls for interference as the entire dispute is in the realm of civil dispute.

5. In the alternative, on the point of sentence, the learned counsel for the petitioner submits that the petitioner has remained in custody for a period of 49 days out of the maximum period of conviction being one year and since the present case is of the year 2009, accordingly, the petitioner has faced the rigour of the criminal case for more than ten years. She submits that as per the records of this case, there is no criminal antecedent of the petitioner and the petitioner is also ready to deposit any fine amount if this Court is pleased to modify the sentence of the petitioner by enhancing the fine amount considering the facts and circumstances of this case.

**Argument on behalf of the opposite party- State**

6. Learned counsel for the opposite party- State, on the other hand, opposes the prayer and submits that the learned courts below have duly considered both the sale-deeds, of the complainant as well as the defence. He submits that while convicting the petitioner, the learned court below has recorded that the complainant was claiming the property by virtue of sale-deed of the year 1972 coupled with possession and the petitioner was not in possession of the property. The learned

counsel submits that there is no scope for re-appreciation of evidence by this Court and come to a different finding in revisional jurisdiction. He also submits that there is no illegality or perversity in the impugned judgements calling for any interference by this court.

7. So far as the point of sentence is concerned , the learned counsel for the opposite party submits that in case this Court is inclined to modify the sentence of the petitioner, the fine amount may not be less than Rs. 5,000/-.

### **Findings of this Court**

8. The present case was lodged on the basis of a complaint filed by the complainant against the petitioner. It has been alleged that the complainant was a sole owner and in possession of a piece of land acquired by the complainant from its erstwhile owner namely, Sokra Gope by virtue of registered deed of sale dated 29.03.1972 (Exhibit-1) for valuable consideration. Thereafter, the complainant became the absolute owner of the land and in cultivating possession of the same. Accused did not have any right, title and interest or possession over the land. It has been alleged that the accused , sometimes since the month of March/April, 2009, started dumping iron ore, boulders etc. on a portion of the said piece of land and by doing so, the accused had diminished the value of cultivable land of the complainant and caused a loss of more than Rs. 10,000/-. It was also alleged that the complainant was deprived from using the agricultural land for cultivation.

9. The complaint was filed under Section 447 and 427 of the Indian Penal Code and after enquiry and prima- facie case having been found, cognizance was taken under Sections 447 and 427 of the Indian Penal Code and process was issued against the petitioner. Upon appearance, the substance of

accusation was read over to the petitioner and he pleaded not guilty and claimed to be tried. Thereafter, evidences were led on behalf of the complainant.

10. The prosecution examined altogether three witnesses including the complainant. P.W. 1 has stated that he knew both the parties and also that the complainant was cultivating the land for the last 25 to 30 years. P.W.1 further stated that the accused used to dump manganese and iron ore over the complainant's land and when the complainant objected, the accused gave him threat of assault. This witness has also stated that the complainant sustained monetary loss of Rs. 10,000/- by the act of the accused. This witness was also thoroughly cross-examined during the trial.

11. So far as P.W. 2 is concerned, he also knew the complainant as well as the accused. He also fully supported the prosecution case and has stated that the land was purchased in the year 1972 by the complainant and since then, he has been cultivating the land and in the month of March/April, 2009, the petitioner had dumped iron ore over the land without prior permission of the complainant and due to which, the land had become unfertile. He has also stated that the petitioner did not have any right, title and interest or possession over the land. This witness was also thoroughly cross-examined before the learned trial court.

12. P.W. 3 is the complainant himself. He had also fully supported the prosecution case and he has clearly stated that he purchased the property by way of registered sale-deed and after purchasing the land, he is in possession over the property and used to grow paddy and *Urad*. He has supported the allegation made against the petitioner that in the month of April, 2009, the petitioner dumped iron ore over the land and

also planted a crusher machine over the land without his permission. He has categorically stated that the petitioner had no right or interest over the land. This witness was also fully cross-examined at the stage of trial.

**13.** The accused was also examined under Section 313 of Criminal Procedure Code who denied the allegation. The defence did not examine any witness, but produced some documentary evidences including sale deed dated 19.08.2008 (Exhibit-A).

**14.** This Court finds that the learned trial court, after considering the materials on record, including the sale-deed of the complainant of the year 1972 (Exhibit-1) as well as sale-deed of the petitioner of the year 2008 (Exhibit-A) recorded that both the sale-deeds were in connection with the same property and also recorded that the sale-deed of the year 1972 (Exhibit-1) was executed by one Sokra Gope in favour of the complainant and this fact has been supported by all the three prosecution witnesses including the fact that the complainant has been cultivating the land since last 30 years. The learned trial court also recorded that the possession of the complainant over the said land was not disputed by the defence and the defence had only stated that he got possession of the property in the year 2008, but did not state anything as to how he got possession from the complainant. It has also been recorded that the land was originally sold by Sokra Gope and again the said land was resold by his sons namely Motilal Gope and Bishwanath Gope to the present petitioner in the year 2008. It has also been recorded by the learned trial court that even the sale-deed of the year 2008 of the present petitioner does not disclose that the purchaser of the property i.e. the present petitioner was put in possession of the land in question.

15. This Court finds that the learned trial court had convicted the petitioner by appreciating the materials on record and also considering the sale-deed of the petitioner as well as the complainant, it found that the complainant was in possession of the property and recorded a finding that the basic ingredients of Sections 427 and 447 were satisfied. The learned trial court has also considered the basic ingredients of the alleged offences by a detailed reasoning and found the petitioner guilty of the alleged offence.

16. While considering the basic ingredients of offence under Section 427 of Indian Penal Code the learned trial court found that the basic ingredients of the offence are present in the case of the petitioner and recorded as follows:

*“As per the evidence of the prosecution witnesses it is quite clear that accused had knowledge that his work i.e. dumping of iron ore over the complainant land would caused wrongful loss to him because by that act land would be unfertile and would not be useful for cultivation. As such the act of the accused clearly comes under the purview of the offence of mischief. So far as amount is concerned it is quite clear that complainant has sustained more than Rs. 50/- of monetary loss because he has been deprived to cultivate the said land. However, complainant could not bring the evidence that he has sustained monetary loss of Rs. 10,000/- but it does not make any differences as to prove of the offence committed U/s 427 of the I.P.C. Thus, accused is liable to be convicted for the offence committed U/s 427 of the I.P.C.”*

17. While considering the basic ingredients of offence under Section 447 of Indian Penal Code the learned trial court found that the basic ingredients of the offence are present in the case of the petitioner and recorded as follows:

*“Here, it is quite clear that complainant was in possession over the disputed land. All witnesses has clearly stated in their depositions that the complainant was cultivating the said land since last 30 years. There is no evidence that complainant has ever been dispossessed or has left the possession over the said land, so possession of the complainant has been fully established by the evidence of complainant witnesses. Accused has entered upon the property of the complainant unlawfully without prior permission of the complainant and as such he annoyed the complainant. The act i.e. dumping of iron ore over the complainant’s land certainly intimidate him and would cause annoyance so the basic ingredients of the criminal trespass is present in this facts and circumstances of the case so accused is also liable to be convicted for the offence committed U/s 447 of the I.P.C.”*

**18.** The learned trial court has also considered the argument of the petitioner that the dispute is a civil dispute and any effort to settle civil dispute by applying pressure through criminal prosecution should be deprecated. The learned trial court, on the basis of the materials on record, found that the present case is not purely a civil dispute rather it is also a criminal dispute. This Court is of the considered view that the learned trial court by a well reasoned order found that the basic ingredients of offence under Section 427 and 447 were present in the case and convicted the petitioner under both the sections and merely because there is a dispute in connection with land, the same has no bearing in this case.

**19.** The learned lower appellate court also recorded that that the complainant had purchased the disputed land through the registered sale-deed in the year 1972 from the original recorded owner and was in possession of the property and the same land was purchased in the year 2009 through the registered sale-deed in the year 2008 by the accused from the sons of the

vendor of the sale deed of the year 1972. The learned lower appellate court also considered the materials on record and upheld the conviction of the petitioner.

**20.** This Court has gone through the judgments passed by the learned trial court as well as the learned lower appellate court and finds that the judgments are well-reasoned judgments and upon consideration of the entire evidences on record, the learned courts below have found that the prosecution has been able to prove the alleged offences against the petitioner. Accordingly, this Court does not find any reason to interfere with the judgments passed by the learned courts below.

**21.** However, this Court finds that the facts and circumstances of this case calls for modification of sentence to meet the ends of justice. It has been submitted that the petitioner has remained in custody for a period of 49 days out of the sentence of maximum sentence of one year and the petitioner has faced the rigorous of the criminal case for more than ten years. The sentence of the petitioner is modified to the period already undergone by the petitioner in custody and the fine amount is enhanced by Rs. 5,000/- and thus the total fine amount would be Rs.7,200/-. The total fine amount of Rs.7,200/- is directed to be deposited before the learned court below within a period of 2 months from the date of communication of this judgement and on account of failure to deposit the fine amount, the petitioner would serve the remaining sentence as imposed by the learned court below. Upon deposit of the aforesaid amount within the stipulated period, the bailors will be discharged from their liability under the bail bond and on account of non-deposit, the bail bond of the petitioner will be cancelled by the learned court below so that the petitioner may server the remaining sentence.



22. On deposit of the fine amount of Rs.7,200/- by the petitioner, the same is directed to be remitted to the complainant of the present case upon proper identification.

23. This criminal revision petition is hereby disposed of with modification of sentence.

24. Pending interlocutory application, if any, is dismissed as not pressed.

25. Let the Lower Court Records be immediately sent back to the court concerned.

26. Let a copy of this order be communicated to the learned court below through "FAX/email".

**(Anubha Rawat Choudhary, J.)**

*Pankaj*