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(3)

Single Bench

IN THE HIGH COURT OF JUDICATURE

AT BILASPUR

CRMP 480/07

Criminal Revision No. 535 Of 2007

APPLICANT

:

Mohammad Dastgir S/o Saddik
aged about 30 years, resident of
Vijay Nagar, presently residing
at Nagar Ramanuj Ganj, P.S.
Ramanuj Ganj, Tahsil Pal,
District Surguja (CG).

VERSUS

RESPONDENTS

:

1. Rahamat Hussain S/o Dildar
aged about 60 years.

2. Yakub S/o Rahamat Hussain,
aged about 40 years.

3. Ayub S/o Rahamat Hussain,
aged 34 years.

4. Firoz S/o Ibrahim, aged
about 18 years.

5. Mubarak S/o Yakub, aged
about 20 years.

6. Sharif S/o Rahamat, aged
about 30 years.

7. Mosowar S/o Ibrahim, aged
about 21 years.

8. Ibrahim S/o Rahamat, aged
about 38 years.

All resident of Village Kanakpur,
Thana Ramanujganj, Tahsil Pal,
District Surguja (CG).

Filed on.....
by Shri.....

1650/07
104/07
Seen (Kuyath)
21/04/07
R. S. S. S. S.

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MEMORANDUM OF CRIMINAL REVISION U/S 397 READ
WITH SECTION 401 OF Cr.P.C.



17/01/2009

(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Mr. Justice Pritinker Diwaker

Cr.M.P. No. 480 of 2007

APPLICANT

Mohammad Dastgir

Versus

RESPONDENTS

Rahamat Hussain & others.

Shri Sunil Tripathi, counsel for the applicant.

CRIMINAL REVISION UNDER SECTION 397 READ WITH
SECTION 401 OF THE CRIMINAL PROCEDURE CODE

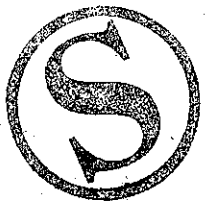
ORDER

(30.11.2009)

Heard on admission.

The present petition is directed against the impugned judgment dated 14.2.2007 passed by Additional Sessions Judge, Ramanujganj (F.T.C.), Sarguja in Criminal Appeal No.61/2006 arising out of the judgment dated 3.2.2006 passed in Criminal Case No. 506/2001 by Judicial Magistrate, First Class, Ramanujganj. By judgment dated 3.2.2006, the learned Magistrate has convicted the respondents for the offence punishable under Section 379 of the Indian Penal Code and sentenced them for three months rigorous imprisonment and fine of Rs.1,000/- each, whereas the appellate court below by the impugned judgment has acquitted the accused/respondents.

2. As per the case of the complainant on 2.11.2001 a complaint case was filed by the applicant alleging in it that he is the owner of piece of land bearing Khasra No.644 and 627 admeasuring 0.29 and 0.12 hectares respectively at village Kanakpur. It is alleged that on 25.10.2001 accused persons have entered the field of the complainant and have forcibly harvested the paddy crop grown by



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him and thereafter they have not only caused the loss of Rs.5,000/- but have also committed the offence of theft of the said crop.

3. In support of its case, the complainant has examined as many as 5 witnesses. Statements of the respondents/accused were also recorded under Section 313 of the Code of Criminal Procedure in which they have denied the charges leveled against them and pleaded their innocence and false implication in the case. Four defence witnesses were also examined by the accused persons.

4. By the judgment dated 3.2.2006 learned Magistrate has convicted the accused persons whereas vide impugned judgment dated 14.2.2007 in an appeal preferred by the accused persons, order of learned Magistrate has been reversed and the accused persons have been acquitted.

5. Contention of the counsel for the applicant is that the learned appellate court has erred in law in reversing well reasoned judgment of the trial Court and there is enough material available on record on which basis the conviction of the accused persons ought to have been maintained by the appellate Court.

6. I have heard counsel for the applicant and perused the material available on record.

7. From the evidence as adduced by the complainant, it is clear that he has failed to establish the fact that he was owner and in possession of the land in question. No document whatsoever has been filed by the complainant showing the ownership or his possession over the land in dispute. One of the witnesses of the



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complainant namely Satnarayan Singh (CW-3) has admitted the fact that some civil dispute is pending between the complainant and the accused persons regarding the land in question and the land in question belongs to one Rahamat Hussain (accused/respondent No.1). He has further stated that he had never seen the complainant sowing the crop of paddy. From the evidence it also appears that Rahamat Hussain (accused/respondent No.1) had purchased the said land from mother of the complainant on 30.12.1960 by a registered sale-deed. In fact most of the witnesses of the complainant have admitted the fact that on account of land in question, dispute is pending between the parties. From the record, it also appears that there is material contradiction in the statement of the complainant's witnesses. Defence witnesses examined by the accused persons establishes the fact that some dispute is pending between the parties and the land in question is not owned and possessed by the complainant. All these aspects have been duly considered by the court below while passing the impugned judgment of acquittal.

8. After hearing counsel for the parties and going through the evidence available on record and being very much conscious of the existing legal position that in a case against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favourable to the accused, reversion of the findings of acquittal by the appellate Court taking the other possible view into consideration, is not permissible in law, this Court is of the view that the judgment impugned acquitting the respondents /accused of the offence punishable under Section under Section 379 of the Indian Penal

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Code, is just and proper and does not call for any interference by this Court.

9. For the reasons aforementioned, there is no merit in the present case and the same is dismissed accordingly.

Sd/-
Pritinker Diwaker
Judge

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