

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.1126 of 2024**

Arising Out of PS. Case No.-67 Year-2013 Thana- SAHEBPUR KAMAL District- Begusarai

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Naresh Yadav Son of Late Mahendra Yadav Resident of village- Chaman Tola, Ward No. 15, Durgapur, PS- Muffashil, Distt.- Khagaria (Bihar)

... .. Appellant

Versus

1. The State of Bihar
2. Arun Yadav Son of Sahdeo Yadav Resident of village- Chaman Tola, Ward No. 15, Durgapur, PS- Muffashil, Distt.- Khagaria (Bihar)
3. Yadu Yadav @ Yadunandan Yadav Son of Late Mahendra Yadav Resident of village- Chaman Tola, Ward No. 15, Durgapur, PS- Muffashil, Distt.- Khagaria (Bihar)

... .. Respondents

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**Appearance :**

For the Appellant/s : Ms. Soni Shrivastava, Advocate  
For the State : Mr. Ajay Mishra, Addl.P.P.  
For the Respondent nos.2&3: Mr. Ram Sumiran Rai, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
and  
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA  
ORAL JUDGMENT  
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 12-02-2025**

We have heard Ms. Soni Shrivastava, learned counsel for the appellant, Mr. Ram Sumiran Rai, learned counsel for the respondent nos.2 and 3 and Mr. Ajay Mishra, learned Addl.P.P. for the State.

2. This appeal against acquittal has been preferred by the informant for setting aside the judgment dated 14.03.2024 (hereinafter referred to as the 'impugned judgment') passed in Sahebpur Kamal P.S. Case No.67 of 2013 (Session Trial No.458 of



2014) by the learned Additional Sessions Judge-XI, Begusarai (hereinafter referred to as the 'learned trial court'). By the judgment under appeal, the learned trial court has been pleased to acquit the respondent nos.2 and 3 of the charges under Sections 147, 148, 149, 504 and 302 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act.

### **Prosecution Story**

3. The prosecution case is based on the *fardbeyan* of Naresh Yadav who has been examined as PW-5 in the present case. In his *fardbeyan*, the informant has stated that on 30.04.2013 at 19:15 hours when his father was in his home, (i) Tarun Yadav, (ii) Kampul Yadav, (iii) Bilas Yadav, (iv) Nityanand Yadav, (v) Arun Yadav, (vi) Chandu Yadav and (vii) Umesh Yadav all lashed with weapons came and surrounded his house. It is alleged that at the instance of Subodh Yadav, Tarun Yadav made firing upon his father, Mahendra Yadav, which hit on to his chest due to which his father fell down and died at the spot whereafter the other accused persons fled away. It is alleged that due to prior animosity, the occurrence had taken place resulting in lodging of the FIR.

4. On the basis of the written report of the informant Naresh Yadav (PW-5), the S.H.O., Sahebpur Kamal P.S. registered Sahebpur Kamal P.S. Case No.67 of 2013 dated 01.05.2013 under



Sections 147, 148, 149 and 302 IPC and Section 27 of the Arms Act.

5. After completion of investigation of the case, the Investigating Officer (in short 'I.O.') of the case submitted a charge-sheet. Vide order dated 20.11.2013 against all the accused named in the FIR under Sections 147, 148, 149 and 302 IPC and Section 27 of the Arms Act. The learned A.C.J.M.-1, Saharsa took cognizance of the offence under Sections 147, 148, 149, 504 and 302 IPC and Section 27 of the Arms Act vide order dated 26.11.2013 and after compliance with Section 207 Cr.P.C. case was committed to the court of Sessions on 03.06.2014.

6. The accused persons were explained the charges, they denied the same and claimed to be tried. On 27.11.2015, charges were framed against all the accused persons under Sections 02/149, 147, 148 and 504/149 IPC and Section 27 of the Arms Act.

7. In course of trial, the prosecution examined as many as 8 witnesses and exhibited several documents in support of its case. The list of witnesses and the documents exhibited on behalf of the prosecution are as under:-

**List of prosecution witnesses**

P.W. 1	Dr. Akhilesh Kumar
P.W. 2	Ramesh Yadav
P.W. 3	Lalita Devi
P.W. 4	Rani Devi



P.W. 5	Naresh Yadav (Informant)
P.W. 6	Baba Devi
P.W. 7	Sunil Kumar (1 <sup>st</sup> I.O.)
P.W. 8	Sanjeev Kumar (2 <sup>nd</sup> I.O.)

### **List of Exhibits**

	Ext.1-/P.W. 1	Postmortem report
	Ext. 2/P.W. 2	Signature of witness Ramesh Yadav on <i>Fardbeyan</i>
	Ext. 3/P.W.-2	Signature of witness Ramesh Yadav on inquest report
Not Market as Exhibit	Ext. 2/1/ P.W. 5	Signature of Informant Naresh Yadav on <i>Fardbeyan</i> (not Signed by P.O)
Not market as Exhibit	Ext. 3/1/ P.W. 5	Signature of Naresh Yadav on Inquest
Ext. -4	Ext. -3/2/P.W. 7	Hand -writing & Signature of Sunil Kumar (I.O.) on carbon Copy of death inquest report
Ext. - 5	Ext. 4/P.W. 7	Formal F.I.R
Ext. - 6	Ext. 2/2/P.W. 7	Hand -writing & Signature of Sunil Kumar (I.O.) On the fardbeyan along with the hand writing & signature of then S.H.O. Md. Irshad Alam on Registration & Endorsement of the fardbeyan.
Not marked & Signed	Ext.- 5	C.C. of Judgment of Hon'ble Patna High Court dt. 12-11-2003 in Cr. Appeal no. 448/98, Cri. Appeal no. 518/98 & Cr. Appeal no. 525/98

8. The accused persons in their statement under Section 313 Cr.P.C. denied the allegations against them and also claimed to be innocent. The defence also adduce some documentary evidences which are as follows:-

### **Defence Exhibits**

Ext. - A	Sahebpur Kamal P.S. Case no. 67/13 dt. 01.05.2013
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Ext. - B	Formal Charge of S.T. No. 346/17
Ext. - C	Deposition of Witness Ramesh Yadav in S.T. No. 346/17
Ext.- C/a	Deposition of Witness Lalita Devi in S.T. No. 346/17
Ext.- C/b	Deposition of Witness Rani Devi in S.T. No. 346/17
Ext.- C/c	Deposition of Witness Naresh Yadav in S.T. No. 346/17

9. As stated above, after examining the evidences available on the record, the learned trial court found that the prosecution has not been able to prove its case beyond the shadow of all reasonable doubts and, therefore, acquitted the respondent nos.2 and 3 of the charges under Sections 147, 148, 149, 504 and 302 IPC and Section 27 of the Arms Act.

**Submissions on behalf of the appellant**

10. Ms. Soni Shrivastava, learned counsel for the appellant has assailed the impugned judgment on various grounds. It is submitted that the occurrence in question took place on 30.04.2013 at 19.15 hours and the *fardbeyan* of the informant (PW-5) recorded was at his door in the night hours at 00.15 hours (01.05.2013). It is her submission that there is no inordinate delay in recording of the *fardbeyan*, hence so far as genuineness and authenticity of the FIR is concerned, the same cannot be doubted.

11. It is further submitted that right from beginning the prosecution case was that altogether eight named accused persons had come at the place of occurrence which is the door of the house



of the informant/deceased. The deceased was sitting there. The accused persons were armed with weapons and on the instigation of Subodh Yadav (since deceased) it was Tarun Yadav who had fired upon the father of the informant onto his chest as a result whereof he died at the spot. Despite this being the specific case of the prosecution, the learned trial court has acquitted the respondent nos.2 and 3 who faced the trial in the present case on the ground that the prosecution failed to establish that there was an unlawful assembly and these respondents were part of the said unlawful assembly and had participated in the crime in furtherance of the common object of the said unlawful assembly.

**12.** Learned counsel submits that the learned trial court could not appreciate that all the prosecution witnesses have stated that they identified Arun Yadav, Tarun Yadav and Subodh Yadav and they had also seen five other people whose names they did not know, came there armed with pistol. It is submitted that even if the other five persons could not be identified by the prosecution witnesses and their identity were not disclosed in course of evidence, the prosecution case to the extent that there were five and more persons would not get lost. It is submitted that the learned trial court has not appreciated the evidence of the prosecution witnesses keeping in view the principles of criminal



jurisprudence and has wrongly concluded that the prosecution is not able to prove its case beyond all reasonable doubts.

13. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of **Masalti Vs. State of Uttar Pradesh; AIR 1965 (SC) 202** (paragraphs '15' and '17').

**Submissions on behalf of the respondents**

14. On the other hand, Mr. Ram Sumiran Rai, learned counsel for the respondent nos.2 and 3 submits that in this case the occurrence took place at 19.15 hours. The father of the informant died at the spot but the fardbeyan of the informant was recorded after five hours. It is further submitted that the formal FIR has been registered on 01.05.2013 at 5.15 AM in which the date and time of occurrence is recorded as 30.04.2013 at 19:15 hours. It is thus evident that the occurrence had taken place in the previous evening at 17:15 PM whereas the FIR was recorded on the next day at 5:15 AM, therefore, there was a delay of about 10 hours in registration of the FIR. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **Meharaj Singh (L/Nk.) vs. State of U.P. with Kalu vs. State of U.P. and Others reported in (1994) 5 SCC 188** and paragraph '12' has been relied upon to submit that in such circumstance it is a case of not only delayed



recording of the *fardbeyan* but a case in which FIR has been belatedly registered which will create a huge doubt over the genuineness and authenticity of the prosecution case.

**15.** Learned counsel further submits that apart from the delay in lodging of the FIR, the quality of evidence available on the record would also not inspire confidence of this Court. In his *fardbeyan* the informant (PW-5) has specifically given the name of eight persons who had come at the door of his house. He has stated that it was Subodh Yadav who had instigated Tarun Yadav to kill the father of the informant and on that instigation Tarun Yadav had fired upon his father, no role has been assigned to respondent no.2 or respondent no.3 in the said occurrence. In course of evidence, however, the informant (PW-5) materially improved upon his *fardbeyan* and he has stated in his examination-in-chief only about three named accused persons namely, Arun, Tarun and Subodh. He has stated that he did not know the name of five other persons. In his examination-in-chief, he added the name of Arun with Subodh as order-giver. He has stated that on the order of Arun and Subodh, Tarun had fired upon the deceased. It is submitted that other prosecution witnesses, namely, PW-1, PW-2, PW-3 and PW-4 who are family members of the informant and the deceased and closely related to them have either stated about the presence of only three



persons, namely, Arun, Subodh and Tarun or have stated that apart from them there were other five persons whom they did not identify. None of the witnesses has given the name of other persons. In such circumstance, the learned trial court has not committed any error in taking a view that the prosecution has not been able to prove it a case of unlawful assembly.

### **Consideration**

**16.** We have heard learned counsel for the parties and perused the trial court records. On going through the prosecution evidences, we find substance in the submission of learned counsel for the respondent nos.2 and 3. The informant who is son of the deceased has got recorded his *fardbeyan* at his door after about five hours of the occurrence and then the FIR in this case has been registered after another five hours, therefore, it is evident that the FIR has been registered after about ten hours of the occurrence.

**17.** In the case of **Meharaj Singh** (supra), the Hon'ble Supreme Court has observed in paragraph '12' as under:-

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR



often results in embellishment, which is a creature of an after-thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

**18.** So far as the quality of evidence is concerned, we find that in his *fardbeyan* though the informant has named eight accused persons who had come at his door at the time of



occurrence, in his own evidence, in course of trial, he has named only three persons and has stated that he did not know the other five persons.

**19.** We further find that the other prosecution witnesses who were family members of the deceased and the informant have also named only three persons and about other five persons they have not taken their name and have specifically stated that they did not know their names. The learned trial court has discussed the evidence of the prosecution witnesses in detail. We will briefly discuss the prosecution witnesses hereinafter in order to re-appreciate the evidence at this stage.

**20.** In this case Dr. Akhilesh Kumar (PW-1) has proved the postmortem report (Exhibit '1'). He had conducted the autopsy on the dead body on 01.05.2013 and found the following antemortem injuries on the person of the deceased:-

“(i) Wound of entry  $\frac{3}{4}$ ” X  $\frac{1}{2}$ ” cavity deep over left side of front of chest over second intercostal space about  $2\frac{1}{2}$ ” lateral to the midline with inverted lacerated and charred margin.

(ii) Wound of exit over right side of back of chest. 2” lateral to the mid-line at the level of 10<sup>th</sup> - 11<sup>th</sup> ribs. Posteriorly with everted and lacerated margin. The bullet found entangled in clothes near wound of exits and the cloths found with blood and dried blood found over nostrils and mouth. On exploration the bullet damaged the heart. Left



ventricle of the heart found lacerated with laceration of lungs. Hemothorax were present. Liver pale.”

**21.** The death had taken place between 12 to 36 hours of the examination. In his cross-examination, he has stated that in the entry wound charring is mentioned and their dimension is also mentioned. Bullet was not found inside. That was wearing cloth in which bullet was rolled but the type of cloth is not mentioned that wearing cloth was not produced separately. He had handed over bullet to the police person in bottle but it is not mentioned that it was in a bottle.

**22.** Ramesh Yadav (PW-2) has stated that at the time of occurrence, he was at his *darwaja* feeding the animals. His father was sitting on the cot at the *darwaja* of his house. Subodh Yadav, Arun Yadav, Tarun Yadav and others whom he did not identify, total eight persons came. It is evident from the examination-in-chief of PW-2 that he has not named other five persons. He had informed police and police arrived at his house at 12 o'clock in night and recorded his case at 1 o'clock. He also proved the inquest report on which he had signed as a witness. This Court has perused the inquest report. It is found that the inquest report does not mention any reference of a station diary entry on the basis of the telephonic information from PW-2 or the case number. In his cross-examination, this witness has stated that when he saw his



father, his father was lying flat on the cot. The bed sheet on the cot was soaked with blood. He could not talk to his father and all the assailants had fled away by that time. From the evidence of PW-2, it is crystal clear that he is not an eyewitness to the occurrence. In paragraph '9' of his deposition, he has stated that in Sadar Hospital, Begusarai, police had obtained his signature on the inquest report only. Next day of the occurrence at 8:00 AM, police had prepared paper and had obtained his signature at his door, whereafter he met police at Begusarai while collecting the dead body of his father after postmortem. In paragraph '10' of his deposition, this witness has stated that accused Subodh Yadav has died. Subhak Lal Yadav, Ashok Yadav, Ravinder Yadav, Rajender Yadav, Chunchun Yadav and Ram Vilas Yadav are his *gotiyas*. The defence suggested him that the deceased Mahendra Yadav and his brother Dinesh Yadav were accused in the murder case of Harilal Yadav, who was the grandfather of Nityanand Yadav. From the deposition of PW-2, it is crystal clear that he is not an eyewitness to the occurrence and by the time he reached near the dead body of his father, the accused persons had already fled away.

**23.** Lalita Devi (PW-3) has stated that at the time of occurrence, she was inside her house and was engaged in work. She has stated that when she came outside her house, the accused



persons were present there, total eight persons were present at the place of occurrence and she had seen three of them, she could not identify other accused persons. According to her, the accused persons stayed at the place of occurrence for half an hour. Contrary to this claim of PW-3, the informant (PW-5) has stated that the accused persons had left the place in only five minutes. She has stated that during the occurrence, the accused persons remained outside the house whereas she remained inside the house. It is evident from the deposition of PW-3 that she was inside her house and had not seen the occurrence.

**24.** Rani Devi (PW-4) has also deposed that she was inside her house and was engaged in work at the time of occurrence. She has stated that when she came outside her house on hearing *hulla*, she heard Arun, Subodh and Tarun were hurling abuses upon her father-in-law Mahender Yadav. Arun Yadav and Subodh Yadav abused him in his mother's name and ordered to kill, on which Tarun fired at Mahender Yadav. She has stated that with the named accused persons, total eight persons had come whom she did not identify. PW-4 is wife of Naresh Yadav, who is the informant of this case. In paragraph '5', she has stated that her husband had told her in course of talk that Arun Yadav, Subodh Yadav and Tarun Yadav had fired on her father-in-law. Her



husband had told her this eight days after the occurrence. She had not stated before police that her father-in-law had seen in the torch light. She was suggested that she is a tutored witness which she denied.

25. Naresh Yadav (PW-5) is the informant of the case who has named Arun Yadav, Tarun Yadav and Subodh Yadav but about the other five persons, he has stated that he did not know their names. He has improved upon his earlier version. According to him, on the order of Subodh Yadav and Arun Yadav, Tarun Yadav had fired upon his father Mahender Yadav by a rifle. It is evident that in his *fardbeyan*, PW-5 has not stated that Tarun Yadav was armed with a rifle but in his evidence in course of trial only, he has stated about firing made by Tarun Yadav by rifle. His attention was drawn towards his previous statement made before police. He has stated that in his statement before police he had stated that he had identified only three accused persons. According to him, he was sitting at a distance of two hands from the cot on which his father was sitting at the time of occurrence and the accused persons had left the place in only five minutes. Police had taken away the dead body in the morning. It is evident from the deposition of PW-5 that in his *fardbeyan*, he had not stated that he was sitting with his father at 7:15 hours at his *darwaja*, for the first



time he claimed in his deposition that he was present with his father at the *darwaja*. He made material improvement in his statement in course of trial and his saying that he remained sitting besides his father at the time of occurrence seems highly doubtful as he has not received any injury in the said occurrence even though the assailants are said to be inimical. The credibility of the informant (PW-5) seems doubtful as he has not supported his own case as framed in the *fardebayan*. It is evident that in the *fardebayan* he has named all the eight accused persons out of whom Tarun Yadav, Kampul Yadav, Bilas Yadav, Nityanand Yadav, Arun Yadav, Yaddu Yadav and Umesh Yadav are his co-villager whereas Subodh Yadav is of village Morkahi under Mufassil Police Station. Statement of PW-5 and other witnesses that they did not identify the other five persons would raise huge doubt about the credibility and reliability on the evidence of these witnesses. To this Court, it appears that these prosecution witnesses are closely related family members of the deceased are not eyewitness, they are highly inconsistent and are not corroborated by independent witnesses, hence they would not be in the category of wholly reliable witnesses.

**26.** Baba Devi (PW-6) is the wife of the deceased. She has stated that she was sitting with her husband at the *darwaja*.



Lalita Devi (PW-3), Rani Devi (PW-4), Ramesh Yadav (PW-2) and other members of the family were also there. She has stated that on the order of Arun Yadav and Subodh Yadav, Tarun Yadav had fired upon her husband. Thereafter she became unconscious. In her cross-examination, she has stated that she was told about Arun, Tarun and Subodh by her son and daughter-in-law. In paragraph '29', she has stated that she had no meeting with Darogaji. She has stated in paragraph '33' that she had taken name of only Arun, Tarun and Subodh to police. This witness has stated that there were 15-16 persons at the place of occurrence and she identifies the people of her side. They stayed at the place of occurrence for one hour. From the evidence of PW-6, it is evident that she is not saying that five or more than five accused had arrived at the place of occurrence. To this Court, it appears that she is not consistent and coherent in her evidence.

27. Sunil Kumar (PW-7) was posted as Deputy Superintendent of Police in Sahebpur Kamal Police Station at the time of occurrence. He has stated that when he reached 'Chaman Toll' on getting information of the occurrence on 30.04.2013 at 11:00 PM, he found the dead body of Mahendra Yadav lying in the courtyard of his house. He prepared the inquest report of the deceased and recorded statement of Naresh Yadav (PW-5). This



witness has stated that PW-5 had not stated in his *fardbeyan* that Arun Yadav had ordered to shoot. In paragraph '23' he has stated that he did not find any sign of firing at the place of occurrence. He did not find any blood fallen on the earth. He did not find any blood stain at the cot. He had not recorded statement of the boundary resident of the place of occurrence. According to this witness, none of the prosecution witnesses told him that Arun Yadav had given order. He had not recorded statement of any independent witness.

**28.** Sanjeev Kumar (PW-8) is the Assistant Sub-Inspector of Sahebpur Kamal Police Station who had filed the charge-sheet.

**29.** The evidence of I.O. (PW-7) would show that he had seen the dead body in the courtyard of the house and not on the cot at the *darwaja* of the deceased. He had not found any sign of firing at the place of occurrence. He was not even shown the blood stained bed-sheets. No witness had alleged against Arun Yadav and there is no independent witness in this case. All these evidences would raise huge doubt about the prosecution story.

**30.** We are dealing with an appeal against acquittal and shall keep in mind the principles governing the cases of appeal against acquittal. The principles have been reiterated by the



Hon'ble Supreme Court in catena of decisions and one of them is the case of **H.D. Sundara and Others vs. State of Karnataka** reported in **(2023) 9 SCC 581**. Paragraph '8' whereof is recorded hereunder for a ready reference:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment<sup>1</sup> rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

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1. State of Karnataka v. H.K. Mariyapp, 2010 SCC OnLine Kar 5591



**31.** In ultimate analysis of the entire materials and record, we find no reason to interfere with the judgment of the learned trial court.

**32.** This appeal has no merit. It is dismissed accordingly.

**(Rajeev Ranjan Prasad, J)**

**(Ramesh Chand Malviya, J)**

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AFR/NAFR	
CAV DATE	
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