

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.178 of 2019

Arising Out of PS. Case No.-62 Year-2004 Thana- ASHTHAWAN District- Nalanda

Saryug Singh, Son of late Pradip Singh, Resident of village - Dumrawan, P.S.-
Asthawan, District - Nalanda.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner : Mr. Rabindra Kumar, Advocate.
Mr. Niraj Kumar, Advocate.
For the State : Mr. Mohammed Arif, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

Date : 25-03-2025

The present Criminal Revision petition has been preferred by the petitioner against the impugned judgment dated 6.10.2018 passed by learned Fast Track Court No. 1, Nalanda at Bihar Sharif in Criminal Appeal No. 091 of 2011 whereby the conviction of the petitioner under Section 25(1-B)(a) and 26(1) of the Arms Act was upheld but sentence was modified.

2. The factual background of the case is that on written report of Officer-in-Charge, Asthawan Police Station,



Nalanda, Asthawan P.S. Case No. 62 of 2004 was registered on 17.03.2004 for the offence punishable under Sections 25(1-B)(a) and 26(ii) of the Arms Act against the sole accused Saryug Singh who is petitioner herein.

3. After investigation, charge sheet was submitted against the petitioner and, thereafter, after taking cognizance, charge was framed and trial was conducted.

4. During trial, altogether five witnesses were examined on behalf of the prosecution which are as follows:-

- (i) P.W.-1 - Kisun Chaudhari
- (ii) P.W.-2 - Visheshwar Paswan
- (iii) P.W.-3 - Pramod Kumar Rai/informant
- (iv) P.W.-4 - Kameshwar Singh, ASI
- (v) P.W.- 5 - Sri Kant Singh, Seargent Major

5. The following documents and materials were also exhibited by the prosecution during trial.

- (i) Ext. - 1 - Seizure list dated 17.02.2006
- (ii) Ext. - 2 - Self recorded statement of the informant for lodging the FIR
- (iii) Ext. - 3 - Formal F.I.R.
- (iv) Ext. - 4 - Signature of the Seargent Major on mechanical report regarding the arms.
- (v) Ext. - 4/1 - Mechanical report of seized arms.
- (vi) Ext. - 5 - Forwarding letter sent by SHO Asthawan Police Station for sanction.
- (vii) Ext. - 6 - Sanction order for launching prosecution.
- (vii) Ext. - 7 - Carbon copy of the forwarding letter of SHO for remanding the accused.



- (viii) Ext. - 8 - Carbon copy of application given by SHO for taking permission to get the examination of seized material.
- (ix) Ext. - 9 - Order sheet dated 7.4.2004.
- (x) Material Ext. -I - Arms and cartridges
- (xi) Material Ext. - II - Fired empty cartridge.
- (xii) Material Ext.-III - Four live cartridges to III/3.

6. The petitioner has also examined one Hussain Ahmad as defence witness No. 1.

7. After hearing the parties and perusal of evidence on record, the learned Trial Court found the petitioner guilty under Sections 25(1-B)(a) and 26(i) of the Arms Act and sentenced the petitioner to simple imprisonment for two years and fine of Rs.2,000/- under Section 25(1-B)(a) of Arms Act and simple imprisonment of one year with fine of Rs.1,000/- under Section 26(i) of the Arms Act.

8. Being aggrieved by learned Trial Court judgment and conviction, the convict preferred Criminal Appeal bearing No. 91 of 2011 whereby learned Appellate Court upheld the conviction of the petitioner but reduced the sentence of imprisonment by reducing it to the period undergone. However, there was no alteration made in the fine imposed on the petitioner by learned Trial Court.

9. Being aggrieved by the impugned Appellate



judgment, the present petition has been preferred by the petitioner.

10. I heard learned counsel for the petitioner and learned APP for the State.

11. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated. The judgment of conviction and order of sentence passed by learned Trial Court as well as learned Appellate Court are not sustainable. Both the courts below have failed to properly appreciate the evidence on record and erroneously passed judgment of conviction and order of sentence.

12. To substantiate his claim, learned counsel for the petitioner further submits that seizure of the Arms and cartridges are not proved beyond reasonable doubt by the prosecution. Both independent witnesses of the seizure of the Arms and cartridges have not supported the seizure of the Arms and cartridges from the petitioner. He further submits that as per the prosecution evidence it is also clear that the seized articles were not sealed and deposited in the safe custody of *Malkhana* of the Police Station and hence, the production of Arms and cartridges in the Court during trial does not prove that the same articles were seized from the petitioner.



13. Learned counsel for the petitioner also submits that even sanction for prosecution under Section 39 of the Arms Act is mandatory, but even sanction is not proved. As such, the judgment of conviction and order of sentence are not sustainable and petitioner is entitled to get acquittal of all the charges.

14. However, learned APP for the State defends the impugned judgment and order of sentence submitting that learned Trial Court and learned Appellate Court have passed their judgments and order of sentence on the basis of proper appreciation of evidence on record. Hence, the present petition is liable to be dismissed.

15. I considered the submission advanced by both the parties and perused the materials on record.

16. As per the prosecution case, when the Police team was in the field for arresting absconders in criminal cases, they got secret information that at village Dumrawan tola Balwa, some anti social elements have assembled. When the Police team visited the place, the petitioner herein started fleeing away, seeing the Police and on chase, he was apprehended and one loaded pistol along with four cartridges was recovered from his possession.

17. P.W. -1 and P.W. - 2 are independent seizure



witnesses and both of them stated in their testimony that they know nothing about the seizure.

18. P.W.-3 is informant who had seized the Arms and Ammunition from the petitioner, but he has nowhere deposited regarding sealing of the seized materials on the spot and deposit of the same in a safe custody of *Malkhana* with identification marks.

19. P.W.-5 Sergeant Major has clearly deposed that he does not know where the material exhibits Arms and Ammunition were deposited till he got for their efficacy test. No witness at all has been examined on behalf of the Prosecution who could have deposed about the sealing of the seized articles and deposit of the same in safe custody.

20. The witness to the sanction order for prosecution is P.W.-4. He has clearly deposed that the format of the sanction order along with signature of the District Magistrate was photostat copy in which particulars of the case has been filled up in ink. It clearly shows that sanction order has not been signed by the District Magistrate after perusal of the material and filling the particulars in the sanction order.

21. In view of the aforesaid facts and circumstances of the case, I find that neither sanction order is proved, nor



seizure of the Arms and Ammunition has been proved beyond reasonable doubt by the prosecution. Hence, the petitioner is entitled to get acquittal of all the charges getting benefit of doubt.

22. Accordingly, the present petition is allowed acquitting the petitioner of all the charges.

(Jitendra Kumar, J)

S.Ali/-

AFR/NAFR	NAFR
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