

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.802 of 2016

Arising out of P.S.Case No. 208 Year 2015 Thana Sultanganj District- BHAGALPUR

Nav Tej Thakur, son of Sri Umakant Thakur, resident of village- Purani Durga
Asthan, Sultanganj, P.S. Sultanganj, Dist- Bhagalpur.

.... Petitioner

Versus

The State of Bihar

.... Respondent

Appearance :

For the Petitioner : Mr. Vivekanand Vivek, Advocate.

For the State : Mr. Upendra Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-10-2016

Heard learned counsel for the petitioner and learned counsel
for the State.

2. This revision application is directed against the judgment
dated 3rd June, 2016 passed in Cr. Appeal No. 37 of 2016 by the learned
District & Sessions Judge, Bhagalpur, by which he has dismissed Cr.
Appeal No. 37 of 2016 preferred against the judgment and sentence dated
15.3.2016 and 16.3.2016 respectively passed by the learned Additional
Chief Judicial Magistrate, Bhagalpur, in connection with Sultanganj P.S.
Case No. 208 of 2015 corresponding to G.R. Case No. 3429 of 2015, Trial
No. 772 of 2015.

3. The learned Additional Chief Judicial Magistrate, Bhagalpur, vide aforesaid Judgment and sentence dated 15.3.2016 and 16.3.2016 has convicted the petitioner for the offences punishable under Sections 25 (1-B) (a) and 26 of the Arms Act and sentenced the petitioner to undergo simple imprisonment of two years and to pay a fine of Rs.500/- and in default of payment of fine, to undergo additional simple imprisonment for one month for each of the offences. However, both the sentences were directed to run concurrently.

4. The prosecution case is based on the self statement of one Kripa Shankar Azad, Sub Inspector-cum-Officer in Charge of Sultanganj Police Station wherein it is alleged that on 15.9.2015 at about 10:00 P.M. in the night he along with other Police personnel namely, Tinku Kumar, Satyanand Kumar and Shiv Shankar Prasad were on patrolling duty on the occasion of election. When he reached at village Ghorghat, Sultanganj Bariyarpur main road, on NH-80, he saw that a young person was standing on the northern side of the road. At that time, it was raining. Seeing the light of the vehicle, the said young person tried to conceal himself, but the informant with the help of other Police personnel caught him. As it was a dark night, no independent witness was available and, thereafter, in presence of two constables namely, Tinku Kumar and Satyendra Kumar, the arrested accuseds was searched and, in course thereof, a 9 mm pistol and two live cartridges from its magazine, which

was concealed in the waist of the said person, were recovered.

Accordingly, a seizure list was prepared and a copy of it was handed over to the accused.

5. After investigation, the Police found the case to be true and submitted charge sheet under Sections 25 (1-B) (a) and 26 of the Arms Act.

6. On perusal of the Police report submitted under Section 173(2) of the Code of Criminal Procedure and the other materials on record, the court took cognizance of the offences and framed charges under Sections 25 (1-B) (a) and 26 of the Arms Act.

7. Since the petitioner denied the charges, he was put on trial and, in course of trial, altogether six witnesses were examined on behalf of the prosecution.

8. In addition to the oral evidence of six witnesses, the prosecution also proved certain documents such as; seizure list, signature of witnesses on seizure list and report of the Sergeant Major. The evidences adduced on behalf of the prosecution have elaborately been dealt with by the trial Magistrate in paragraphs No. 11 to 17 of the judgment of conviction and order of sentence which are as under:

“11. The recovered arms, ammunitions and sealed cover of cloth have been marked as material Ext. I, II, III and III/A. These are the whole evidence oral as well as documentary evidence. As stated above, neither any oral nor any documentary



evidence has been produced on behalf of the accused.

12. Now I take up the evidence of prosecution witnesses for discussions.

13. P.W.1 Shyam Sunder Pd. Kashyap is the sergeant major. He has said in his examination-in-chief that on 18.09.2015 he was posted at Lakhisarai as Prachari Prawar. On that date the seized arms and ammunitions relating to Sultanganj P.S. Case No. 208/15 were brought before him in a sealed cover which contains a semi-automatic country made pistol and two live cartridges. He has identified the country made pistol which has been marked as material Ext. II. He has also identified the two live cartridges which have been marked as Ext. III and III/A. He has said that the said arms and ammunitions were effective. He has also identified his signature on examination report of arms and ammunitions which has been marked as Ext. 1. He has identified his signature on the sealed cloth which has been marked as material Ext. 1.

14. P.W.2 Kripa Shankar Azad is the informant of this case. From perusal of his evidence it appears that he has reiterated his earlier version as stated in his self-written report. The self-written statement has been identified by the witness which has been marked as Ext. 3. He has also identified his signature on the seizure list which has been marked as Ext. 2. He has also proved the formal FIR which has been marked as Ext. 4.

15. P.W. 3 and 4 are the member of patrolling party. They are also the seizure list witnesses. From perusal of their respective evidence it appears that they have also fully supported the prosecution case as well as the recovery of arms and ammunitions made from the possession of the accused. They have identified their signature on the seizure list which have been marked as Ext. 2/1 and 2/2.

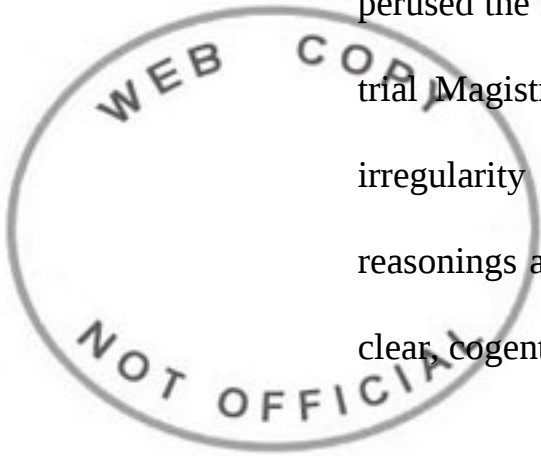
16. P.W. 5 is also member of patrolling party. He has also fully supported the prosecution story on each and every point.



17. P.W. 6 is the I.O. of the case. This witness has said in his evidence that how he conducted the investigation of the case. He has proved the sanction report which has been marked as Ext. 5. All these witnesses have been cross-examined by the defence side but nothing has come out in their respective cross-examination to disbelieve their testimony. As stated above, neither any oral nor any documentary evidence has been adduced on behalf of the accused".

9. The defence of the petitioner is that he is innocent and has been framed in the present case due to highhandedness of the Police. There was no independent witness in this case and all the witnesses examined on behalf of the prosecution are Police personnels. As a matter of fact, they all are interested witnesses. It has been submitted that neither the trial Magistrate nor the appellate court has appreciated the evidence recorded during trial in correct perspective and the learned Magistrate has wrongly held the petitioner guilty of the charges. Similarly, the appellate court has dismissed the appeal without appreciating the facts and law properly.

10. On the other hand, learned Additional Public Prosecutor has submitted that the search and seizure were made from the person of the petitioner in night at a lonely place and no independent person was available at that time. He has further submitted that the Police witnesses cannot be termed to be interested witnesses, as there was no evidence on behalf of the defence that they had any prior enmity with the petitioner.



11. I have heard learned counsel for the parties and perused the materials available on record. I am of the view that neither the trial Magistrate nor the appellate court has committed any illegality or irregularity in appreciating the evidence adduced during trial. The reasonings assigned by the learned Magistrate are well founded. They are clear, cogent and convincing.

12. In view of the concurrent finding of facts by two courts and in absence of any other material to show any illegality or irregularity in assining at a conclusion of guilt of the petitioner, I see no merit in the application.

13. Accordingly, the revision application, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.10.2016
Transmission Date	24.10.2016