

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.109 of 2017

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Narendra Ray @ Hakim Ray, Son of Sri Bindeshwar Ray, Resident
of Village Banjariya, P.S. Madhuban, District- East Champaran at
Motihari.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Singh, Adv.

For the State : Mr. Jharkhandi Upadhyaya, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 08-04-2017

By the judgment and order, dated
20.11.2006, passed by the learned Judicial Magistrate, Ist
Class, Sikrahana at Motihari, in Trial No. 2120 of 2004,
arising out of Madhuban P.S. Case No. 111 of 2004, the
petitioner stood convicted of the charge of the offences
punishable under Sections 25(1-B)a and 26 of the Arms Act
(*hereinafter referred to as the "Act"*) and has been
sentenced to undergo rigorous imprisonment for a period of
one (1) year with a fine of Rs. 5,000/-. In default of
payment of fine, he has been directed to undergo



imprisonment for a further period of three (3) months for the offence punishable under Section 25(1-B)a of the Act and rigorous imprisonment for a period of six (6) months for the offence punishable under Section 26 of the Act. The sentences were directed to run separately by the trial Court.

2. Against the said judgment and order, dated 20.11.2006, the petitioner had preferred an appeal, giving rise to Cr. Appeal No. 81 of 2006. The Court of learned 12th Additional Sessions Judge, East Champaran, Motihari, has dismissed the said appeal vide judgment and order, dated 23.08.2016, but with alteration in the sentence and in place of the order of the trial Court that the two sentences are to run separately, the sentences have been directed to run concurrently by the learned appellate Court.

3. This criminal revision application, under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, has been filed assailing the findings of conviction and order of sentence passed by the learned courts below.

4. I have heard learned counsel, appearing on behalf of the petitioner, and learned Additional Public Prosecutor representing the State of Bihar.

5. The case of the prosecution is that the



Sub-Inspector of Madhuban Police Station received a secret information that an accused of Madhuban P.S. Case No. 95 of 2003, had come to Uma Cinema Hall and he could be arrested if a raid was conducted. On this information, the said Sub-Inspector of Madhuban Police Station, with a team of other Officers, Constables and *Chowkidars*, conducted a raid at 12.50 P.M. on 08.09.2004. They noticed one person attempting to flee away on seeing the police party, who was apprehended by them. Upon enquiry, he disclosed his name as Nagendra Ray @ Hakim Ray. The police party, thereafter, caused search of the person of the petitioner, but due to his fear, independent witnesses refused to be a witness to the search. Search of the person of the petitioner was made, therefore, in the presence of two *Chowkidars*, namely, Bhagirath Rai and Rajmangal Rai, and on the search being made, two 3.15 bore cartridges and one live cartridge with certain markings on the bottom were recovered from his pocket. The petitioner could not explain the possession of the said cartridges. Accordingly, three cartridges were recovered from his possession and a seizure list was prepared before the said two *Chowkidars*, namely, Bhagirath Rai and Rajmangal Rai. The petitioner was, thereafter, arrested by the police. An F.I.R., being Madhuban P.S. Case No. 111 of 2004 was accordingly registered for the offences punishable



under Sections 25(1-B)a and 26 of the Arms Act.

6. The police, on completion of investigation, submitted the *charge-sheet*. After taking of cognizance and framing of charge, the petitioner was put on trial.

7. At the trial, altogether nine (9) witnesses were examined by the prosecution. All the witnesses, who supported the case of the prosecution, were either official witnesses or members of the raiding party, as is evident from the materials available on the record. Based on the evidence of the said official witnesses/members of the raiding party, learned trial Court recorded conviction of the petitioner of the offences punishable under Sections 25(1-B)a and 26 of the Arms Act. The appeal preferred by the petitioner has been dismissed, as has been noted above, with slight modification in the order of sentence passed by the learned trial Court.

8. Mr. Arun Kumar Singh, learned counsel, appearing on behalf of the petitioner, has submitted that the failure of the raiding team to ensure that search and seizure was made in the presence of independent witnesses is a serious lacuna in the case of the prosecution and on that ground alone, conviction of the petitioner cannot be



sustained. He has submitted that none of the witnesses deposed that any attempt was made for making search and seizure in presence of the independent witnesses, since the raid was conducted at a public place. According to him, the failure of the police officials in ensuring search and seizure, in place of independent witnesses, has weakened the case of the prosecution, and the petitioner on that ground deserves to be given benefit of doubt.

9. In support of his submission, learned counsel, appearing on behalf of the petitioner, has relied on Supreme Court decision in case of ***Sahib Singh Vs. State of Punjab***, reported in **(1996) 11 SCC 685**. He has further submitted that, the District Magistrate while recording sanction for prosecution, under the Arms Act, has merely filled up a printed form, which does not show any application of mind. He has referred to a decision of **PEPSU High Court** in case of ***Chand Singh Vs. The State***, reported in **A.I.R. 1954 PEPSU 132**, and has contended that the sanction itself is bad.

10. I have perused Exhibit-7, which is the sanction order for the prosecution of the petitioner, granted under Sections 25(1-B)a and 26 of the Arms Act, by the District Magistrate, East Champaran, Motihari. Learned counsel, appearing on behalf of the petitioner, is right in



his submission that the said sanction order does not show any application of mind, rather it has been issued by just filling up proforma prepared for issuance of sanction order.

11. Mr. Arun Kumar Singh, learned counsel for the petitioner, is correct in his submission that the said order of the District Magistrate, East Champaran, Motihari, cannot be treated to be a valid sanction order, as contemplated under Section 39 of the Act.

12. Section 39 of the Act is a significant safeguard against false, frivolous and inexpedient prosecution of a person under the Arms Act. It is, therefore, imperative that the authority competent to grant sanction for prosecution, as contemplated under Section 39 of the Act, should restore due consideration to the accusation and the evidence, oral or documentary, produced before him in support of it. Though the order of sanction may be brief, it must disclose that relevant materials were perused by the sanctioning authority and considered before it was made. Though detailed reasons for grant of sanction are not required to be mentioned in the order granting sanction for prosecution, as contemplated under Section 39 of the Act, application of mind by the sanctioning authority must be evident from the



order itself.

13. It is easily noticeable from Exhibit-7 that the sanctioning authority has referred to the request made by the Superintendent of Police, East Champaran, Motihari, through a communication *vide* Memo No. 4831, dated 17.10.2004, seeking sanction for prosecution against the petitioner for the offences punishable under Sections 25(1-B)a and 26 of the Act, in connection with Madhuban P.S. Case No. 111 of 2004. There is nothing else mentioned in the said order granting sanction. In the said sanction order, even the fire arms, recovered from the possession of the petitioner, have not been mentioned. Section 39 of the Act has been enacted with a public purpose, which is to ensure a safeguard against false, frivolous and inexpedient prosecutions. It is not just a formality which is to be completed under Section 39 of the Act. The sanctioning authority has a duty to apply his mind to the facts relating to the offence and then exercise his discretion, which is not evident from the sanction order. Secondly, from the evidence of the prosecution witnesses, I find that the raiding party apparently did not make any attempt to conduct search of the petitioner in presence of two independent witnesses. There is no indication to this effect in their depositions.



14. Taking these aspects in the background, I am of the view, that the prosecution could not prove the case beyond all reasonable doubts at the trial and the findings recorded by the learned courts below, holding petitioner guilty of the offence, cannot be upheld. The findings are palpably erroneous, leading to miscarriage of justice, which requires this Court to interfere in criminal revisional jurisdiction.

15. Accordingly, the judgments and orders, dated 20.11.2006 and 23.08.2016, passed by the learned courts below, are set-aside. The petitioner stands acquitted of the charge.

16. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
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