

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.402 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- BHABHUA (KAIMUR)

- =====
1. Shyamlal Pasi, Son of Sheomurat Pasi, R/o Village Haliwanta, P.S. Kudra, District Kaimur at Bhabua.
 2. Gudri Pasi, Son of Hazari Pasi, R/o Village Kabaar, P.S. Bhabua, District Kaimur at Bhabua.
 3. Surya Pasi @ Suraj Pasi, Son of Kailash Pasi, R/o Village Chainpur, P.S. Chainpur, District Kaimur at Bhabua.

.... Petitioners

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioners	:	Mr. Tribhuwan Narayan, Advocate
For the State	:	Mr. Nand Kishore Pd., APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 31-10-2017

The petitioners have preferred this revision application against concurrent finding of conviction and sentence awarded by the trial court by judgment dated 08.10.1999 in Trial No.41 of 1999, arising out of Chainpur P.S. Case No.05 of 1993 whereby convicted under Sections 25(1-B) A, 26 and 35 of the Arms Act and sentenced to undergo one year of rigorous imprisonment for each three offences separately but directed to run the sentences concurrently and the same was affirmed by the learned Additional Sessions Judge IVth, Kaimur at Bhabua in Criminal Appeal No.107 of 1999/32 of 2016 without any modification.

2. Learned counsel for the petitioners submits that five witnesses examined in this case by the prosecution inclusive of informant, the I.O., two seizure list witnesses and one formal witness



but out of them both seizure list witnesses have not supported the prosecution case relating to recovery of any arms or ammunition, so on this ground the prosecution case cannot be said to be proved beyond all reasonable doubt. Further submission is that with respect to Gudri Pasi and Surya Pasi @ Suraj Pasi, petitioner nos.2 and 3 that neither any pistol, arms or any cartridges were recovered from their possession nor it was seized from a place which was in joint occupation or in control of these two petitioners. It is further submitted that the prosecution case is that these accused persons were sitting by the side of the road then police came and apprehended them, so even Section 35 of the Arms Act is not attracted in this case, therefore, there is complete lack of evidence against these two petitioners but have been convicted by the trial court and also conviction affirmed by the appellate court. It is also submitted by the learned counsel for the petitioners that the petitioners have no criminal background and the judgment itself reflects that no such evidence regarding criminal antecedent was produced before the court.

3. Contrary to the said arguments, the learned Additional Public Prosecutor for the State submits that the charge under Section 35 of the Arms Act has been proved against Shyamlal Pasi, Gudri Pasi and Surya Pasi @ Suraj Pasi, petitioner nos.1, 2 and 3 and the prosecution case cannot be disbelieved merely on the ground of



seizure list witnesses not supporting the recovery as now a days it is a trend that independent seizure list witnesses do not support the prosecution case out of fear or being apathetic to the circumstances.

4. The prosecution case, in brief, is that the informant, a police official, receiving a secret information in the evening that some criminals were taking liquor and making a plan for committing dacoity reached at the place of occurrence along with police personnel and apprehended four persons, namely, Shyamlal Pasi, Dashrath Pasi, Gudri Pasi and Surya Pasi @ Suraj Pasi. Two passers by were called for personal search of these accused persons and on search one country made pistol was recovered from the waist of Shyamlal Pasi and another pistol was found concealed in the waist of Dashrath Pasi and also two cartridges each one of .315 bore and another of .12 bore were recovered from the pocket of their respective trousers. No licence of the seized arms was produced and in presence of independent witnesses, seizure list was prepared alongwith seizure of arms and further empty pouches of country made liquor and remains of *biri* and other things.

5. Having considered the rival submissions of both sides and on perusal of the records, it is found that the prosecution has proved the charges under Sections 25(1-B) A and Section 26 of the Arms Act against Shyamlal Pasi and Dashrath Pasi, who is said to be dead as per the submission of the learned counsel for the petitioners.



The evidence of Choudhary Prakash Narayan (PW1), the informant as well as of Birendra Rai (PW5), the I.O. of the case have supported the prosecution case. There is no any vital contradiction in their evidence to be disbelieved for such reason. PW1 has proved the recovery of the arms from possession of Shyamlal Pasi and Dashrath Pasi. The arms were concealed under the cloth at the waist of their body and live cartridges were also concealed in the pocket of the trousers and the place where the accused persons are said to be sitting is the side of the road, a public place. The seizure list witnesses Anis Rain (PW2) and Ram Janam Prasad (PW3) though they have proved their signatures signed by both of them on the seizure list but in the cross-examination they have stated to have signed on the blank sheet of paper. That part of the evidence of these two witnesses cannot be believed that they signed on the blank sheet of paper which is against the normal conduct of a person. There is no such complaint, even if such signature is obtained by the police on blank sheet of paper, to any higher authorities of the police or elsewhere, so the prosecution case cannot be disbelieved merely on the ground that the seizure list witnesses have turned hostile to the prosecution case. There is no any material on record that there was any mala fide nursed by the informant to falsely implicate them in this case. There is also no such rule in the Evidence Act that any particular number of witnesses are required to prove the charge, even a solitary trustworthy or reliable



witness may prove the case of the prosecution. So far as Shyamlal Pasi, petitioner no.1 is concerned, the prosecution has proved the charges under Sections 25(1-B) A and 26 of the Arms Act as recovery of the arms was proved against him.

6. As far as rest two petitioners, namely, Gudri Pasi and Surya Pasi @ Suraj Pasi are concerned, their case stand on different footing. There is no prosecution case that any arms was recovered from their possession. Section 25(1-B) a of the Arms Act reads as such:

“(1-B) Whoever—
(a) acquires, has in his possession or carries any
fire-arm or ammunition in contravention of section 3; or
(b).....
(c).....
(d).....
(e).....
(f).....
(g).....
(h).....
(i).....
shall be punishable with imprisonment for a term which shall
not be less than [one year] but which may extend to three
years and shall also be liable to fine:
Provided that the Court may for any adequate
and special reasons to be recorded in the judgment impose a
sentence of imprisonment for a term of less than [one year].”

7. This offence is attracted when a person acquires and keeps in his possession or carries any fire-arm or ammunition in contravention of section 3 of the Act.

8. In the present case with respect to petitioner nos.2 and 3, as earlier observed, no such arm was found in their possession. Section 26 of the Arms Act reads as such:

“26. Secret contraventions.—(1) Whoever does



any act in contravention or any of the provisions of section 3,4, 10 or 12 in such manner as to indicate an intention that such act may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and also with fine.

(2) Whoever does any act in contravention of any of the provisions of section 5, 6, 7 or 11 in such manner as to indicate an intention that such act may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and also with fine.”

9. Since there is no such recovery of any illegal arms or any arms from the possession of petitioner nos.2 and 3 in contravention of Sections 3, 4, 10 or 12 or 5, 6, 7 or 11 of the Arms Act, even there is no such allegation that any attempt was made by them to conceal any arm or ammunition. Section 35 of the Arms Act reads as such:

“35 Criminal responsibility of persons in occupation of premises in certain cases.—Where any arms or ammunition in respect of which any offence under this Act has been or is being committed are or is found in any premises, vehicle or other place in the joint occupation or under the joint control of several persons, each of such persons in respect of whom there is reason to believe that he was aware of the existence of the arms or ammunition in the premises, vehicle or other place shall, unless the contrary is proved, be liable for that offence in the same manner as if it has been or is being committed by him alone.”

10. This offence is attracted against a person when any arms is recovered or is found in any premise, vehicle or any place in joint occupation or under the joint control of several persons. Further condition is that there must be some reason to believe relating to awareness of the existence of such arms or ammunition in the



premises, vehicle or other place unless the contrary is proved but in such case it requires to be proved that he was not aware about the existence of such arms and ammunitions recovered from the premises in occupation of the said person or in joint control of several persons. In the present case the evidence is that the four accused persons including these three petitioners and one Dashrath Pasi, who is not petitioner before this Court were sitting by the side of the road at public place and while they were talking, the police reached there and apprehended and on search of their bodies, country made pistols were recovered concealed in the body of two accused Shaymlal Pasi and Dashrath Pasi and live cartridges kept in the pocket of their trousers were also seized, so this goes to establish that the recovery is not made from anyone premises or any other place having in joint occupation or under the joint control of petitioner nos.2 and 3 as the arms were concealed under the cloth, so it cannot be established that these two were also aware of the existence of such arms. The prosecution has also not established that the accused persons have any criminal antecedent or members of a criminal gang, so the charges under Sections 25(1-B) a, 26 and 35 of the Arms Act with respect to the recovery of the arms is not proved against petitioner nos.2 and 3, namely, Gudri Pasi and Surya Pasi @ Suraj Pasi, so these two are entitled to benefit of doubt, so these two persons are acquitted from the charges under Sections 25(1-B) a, 26 and 35 of the Arms Act.



Since petitioner nos.2 and 3 are on bail, so they are discharged from the liabilities of their respective bail bonds.

11. As far as petitioner no.1, namely, Shyamlal Pasi is concerned, the charges under Sections 25(1-B) a, 26 and 35 of the Arms Act have been proved by the prosecution beyond all reasonable doubt. There is no ground for interfering with the judgment of sentence and conviction passed against him under Sections 25(1-B) a, 26 and 35 of the Arms Act. Since he is on bail, so he is directed to surrender before the court below to undergo the remaining period of sentence, if not then trial court is directed to take all coercive steps to secure his appearance to undergo remaining period of sentence.

12. The criminal revision application stands disposed of in the aforesaid terms.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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