

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.814 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- BANKA

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Heera @ Heeralal Mandal Son of Late Ganesh Mandal, R/o Village Ratanpur, P.S.
Barahat, District- Banka

.... Petitioner

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioner : Mr. Ajay Mukherjee, Advocate

For the State : Mr. Shailendra Kumar-2, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the petitioner as well as learned
APP appearing on behalf of the State.

2. This criminal revision application is directed against judgment dated 03.07.2017, passed by 1st Additional Sessions Judge, Banka in Criminal Appeal No.33 of 2016 whereby the appeal filed by the petitioner was dismissed upholding the judgment of conviction and sentence under Sections 25(1-b)a and 26 of the Arms Act passed by the trial court in Banka P.S. Case No.675 of 2015 awarding RI for three years and fine of Rs.2000/- for committing offence under Section 25(1-b)a of the Arms Act and RI for two years and fine of Rs.2000/- for committing offence under Section 26 of the Arms Act and in default of payment of fine to further undergo SI of one month each under both counts however, directed the sentences to run concurrently.



3. Learned counsel for the petitioner challenges the concurrent finding only on sole ground that both seizure list witnesses have not supported the case of the prosecution, so seizure of the arms is not proved by the prosecution beyond all reasonable doubt.

4. However, on perusal of records, the Court finds that altogether six witnesses have been examined in this case including two seizure list witnesses, PW5 and PW6. PW1 to PW4 all are police officials including the Sergeant Major who has tested the recovered fire arm. The case of the prosecution cannot be discarded merely on the basis of seizure list witnesses turning hostile. There is no any infirmity in the evidence of the police officials who have disclosed in their evidence relating to recovery of arms from possession of the petitioner. The Apex Court has reiterated in various judgments time and again that seizure list witnesses turning hostile is not fatal to the prosecution case, if testimony of police witnesses who prepared seizure and conducted search or arrest found trustworthy. In the case of *Modan Singh v. State of Rajasthan* reported in *AIR 1978 SC 1511*, it is held that if the evidence of the IO who recovered the material object is convincing, recovery need not be rejected on the ground that the seizure list witnesses do not support the prosecution case. In the case of *Tahir v. State (Delhi)* reported in *AIR 1996 SC 3079*, it is held that no infirmity is attached to the testimony of police officials merely



because they belong to police force as there is no role of law or evidence which lays down that conviction cannot be recorded on the evidence of police officials if found reliable unless corroborated by some independent witnesses.

5. In the present case no infirmity in the evidence of the police officials who have conducted search and seizure of the illegal arms is pointed out to discredit the prosecution evidence. In the result, finding no merit, the revision application stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	AFR
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