

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.5 of 2017

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

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Bikash Yadav, Son of Indradeo Yadav, Resident of village Sabdalpur, P.S.
Sahebpur Kamal, Distt.- Begusarai

.... Petitioner

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioner : Mr. Deepak Kumar, Advocate
Ms. Nivedita Verma, Advocate
For the State : Mr. Ajay Kumar-I, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 25-08-2017

The petitioner files this revision application against the judgment and order dated 16.09.2016, passed by Mr. Anil Kumar Sinha, learned Additional Sessions Judge, 7th, Begusarai whereby he has affirmed the conviction and sentence passed by the trial court holding the petitioner guilty under Section 25(1-B)a of the Arms Act and sentenced him to undergo rigorous imprisonment for a period of two years and also fine of Rs.500/- for committing offence under Section 25(1-B)a of the Arms Act and also awarded the same quantum of sentence for committing offence under Section 26 of the Arms Act however, directed that both sentences shall run concurrently and in case of non-payment of fine further simple imprisonment for 15 days.

2. The petitioner challenges the concurrent findings on three grounds. First that I.O. Saryug Ram (PW3) a member of the



police party along with Dayanand Kumar, S.I. (PW1), informant of the case who apprehended the accused in this case with arms. A member of the police party was made I.O. of the case so he was interested in conviction of the accused. The fact that he was member of the raiding party is itself reflected from the written information of the informant and he places reliance on a decision by filing a copy of the judgment of a Division Bench of this Court, Bhulan Das @ Bhulan Ravidas vs. The State of Bihar passed in Criminal Appeal (DB) No.944 of 2011. In the case of Bhulan Das (supra) A Division Bench of the Court finding Investigating Officer in the said case a member of the raiding party, the Court held that in such circumstance the investigation made by him cannot be said to be above board.

3. Learned counsel for the State submits that police party was going on a drive for execution of warrants against absconding accused in different cases, while the police party including Investigating Officer of the case (PW3) was passing through a lonely place, the petitioner was apprehended by the police and on being search it is alleged that arms and live cartridges were recovered from his possession. It is further contended that independent witnesses, who are seizure witnesses were not examined by the prosecution so defence examined both seizure list witnesses or defence witness and have supported the case of defence. They have denied recovery of arm



from possession of petitioner and all four prosecution witnesses are police personnel.

4. This Court has gone through the records of the case. It is a case of recovery of a country made pistol with two live cartridges from the possession of the petitioner. The seizure list of the arms and cartridges has been marked as Ext.1 in this case but the two seizure list witnesses namely Sharmwas Kumar and Sanjeev Kumar have been examined by the defence obviously recovery of arms has not been proved by them, rather no such recovery was made in their presence. It is a fact that the I.O. of the case, Saryug Ram (PW3) was one of the members of the police party who apprehended the petitioner and search of his body was done leading to recovery of country made pistol and cartridges. During trial prosecution examined altogether four witnesses and all are police personnel. On perusal of FIR of the present case marked as Ext.2, it is evident that Saryug Ram (PW3) a member of raiding party was made I.O. of this case, another police personnel Nageshwar Prasad Singh (PW2) a member of the raiding party also admits this fact in his deposition. The seizure list witnesses have not been examined by the prosecution in this case rather they are produced by the defence. In Bhulan Das @ Bhulan Ravidas (supra) the Division Bench has held that it is the settled principle of law that member of the raiding party should not be the



I.O. of the case as the true and impartial investigation cannot be expected from a person who himself happens to be a member of the raiding party. In such circumstance the investigation made by him cannot be said to be above board. Even the seizure list witnesses were not examined by the prosecution instead the defence has examined these witnesses from their side and denied any such recovery so case of the prosecution becomes doubtful. The trial court has incorrectly held that burden shifted in the case to defence to prove innocence. The burden of proof lies on prosecution in view of Sections 101 and 102 of the Evidence Act. Real onus is on the prosecution to prove its case including the seizure beyond all reasonable doubt. So for aforesaid reason it is held that prosecution has failed to prove its case beyond all reasonable doubt so the conviction and sentence awarded by the courts below to the petitioner/accused are hereby set aside. The petitioner is on bail so he is discharged from the liability of his bail bond.

5. The criminal revision application stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR	NAFR
CAV DATE	NA
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