

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.479 of 2017

=====

1. Saroj Kumar, S/o Late Santu Prasad Singh,
2. Manjesh Kumar, S/o Ram Chandra Singh, Both resident of Village-
Rahatpur, P.S.- Ballia, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar

For the Respondent/s : Mr. Sri Ashok Kumar Singh

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL JUDGMENT ORDER

4 19-07-2017 Heard learned counsel for the parties.

2. The petitioners are aggrieved by judgment and order, dated 18.03.2017 passed by the learned Sessions Judge, Begusarai, whereby he has affirmed the judgment of conviction of the petitioners under Section 25(1-B)(a) 26(i) of the Arms Act passed by the learned Judicial Magistrate Ist Class, Begusarai, by an order, dated 21.04.2008. The trial Court had sentenced the petitioners to undergo imprisonment for a term of two years with a fine of Rs. 3000/- and in default of payment of additional fine sentences for one month simple imprisonment for offence punishable under Section 25(1-B)(a) of the Arms Act. For the offence punishable under Section 26(ii) of the Arms Act, punishment of imprisonment for two years was imposed by the trial Court.



Learned appellate Court has, however, reduced the term of sentence to one year from two years.

3. The case of the prosecution briefly narrated, is that the informant along with Sub-Inspector, Gupteshwar Singh, Assistant Sub-Inspector, Suresh Thakur, Assistant Sub-Inspector, Chandra Kishore Khan along with armed police party had proceeded from the Police Station on 31.03.2003 for special drive. Near Bakhada Petrol Pump over NH-31, this police party met the Officer Incharge of Sahebpur Karmal P.S. S.I. Dayanand Kumar, who was leading another patrolling party. Both the parties proceeded for a joint raid. During raid, based on a tip off, they proceeded to Bukaspur and surrounded certain premise belonging to one Rameshwar Singh. The Police thereafter, are said to have apprehended two persons, namely, (Saroj Kumar and Manjesh Kumar), these petitioners. From petitioner No.1 the police party recovered a rifle with one .303 live cartridge. The Police party also searched petitioner No.2 Manjesh Kumar and found unloaded country made pistol from his waist and one .315 bore live cartridge. The seizure was done in the presence of two constables, namely, Vijay Kumar Singh and Bhagwati Mishra and the seizure list was handed over to the accused persons after obtaining their signature.

4. On the basis of charge-sheet submitted by the



Police, cognizance was taken. Thereafter, the trial proceeded which finally resulted into conviction of these petitioners, as indicated above. The appellate Court has affirmed the judgment of conviction and modified the sentence of imprisonment as has been indicated above.

5. Learned counsel appearing on behalf of the petitioners, assailing the impugned judgment and order, has submitted that seizure list witnesses were not examined at the trial. According to him, the Investigating Officer was also not examined at the trial. He has submitted that since only allegation against the petitioners is that they were in possession of fire arms/ammunitions in contravention of Section 3 of the Arms Act, it was obligatory upon the prosecution to establish possession beyond the shadow of all reasonable doubt. He has submitted that non-examination of the seizure list witnesses is fatal to the case of the prosecution. He has also submitted that non-examination of the Investigating Officer is also a serious lacuna in the prosecution case and, therefore, the findings of conviction need interference by this Court.

6. I find substance in the submission made on behalf of the petitioners that in order to establish charge under Section 25 (1-B) (a) of the Arms Act, the fact that the accused was in possession of fire arm/ammunitions must be



proved beyond all reasonable doubt. Seizure memo is a crucial evidence to establish the charge that an accused was in possession of a prohibited item. In the present case, the seizure is said to have been made in the presence of two police personnel, namely, Vijay Kumar Singh and Bhagwati Mishra. The said seizure list witnesses could not be produced by the prosecution for their examinations. In that background, learned counsel has rightly relied on Supreme Court's decision in case of ***Sunder Vs. State(NCT of Delhi*** reported in **(2002) 6 SCC 593**, where the Court recorded acquittal under Section 25 of the Arms Act since the prosecution failed to examine the seizure list witnesses.

7. Learned counsel for the petitioners has also submitted that there is contradiction in the evidence of the informant also inasmuch as he failed to described at the trial the location of the place from where the recovery was made. He is said to have deposed that the Chokidar of the village had identified the place but the said Choukidar has not been examined at the trial.

8. Learned Additional Public Prosecutor, appearing on behalf of the State has justified the conviction and has submitted that the other members of the raiding party proved before the trial Court the fact that fire arms and ammunitions were recovered from the possession of the



petitioners.

9. However, in view of the discussions as above and the submissions advanced on behalf of the petitioners, I find merit in this application. In my view, the prosecution failed to establish charge of possession of the fire arms as required under Section 25(1-B) (a) of the Arms Act.

10. Since in my view, the prosecution failed to prove charge on the basis of the evidence adduced at the trial under Section 25 (1-B)(a) of the Arms Act as a natural corollary the charge under Section 26(i) of the Arms Act cannot be said to have been proved.

11. Accordingly, the impugned orders, dated 18.03.2017 passed by the learned Sessions Judge, Begusarai and order dated 21.04.2008 passed by the learned Judicial Magistrate Ist Class, Begusarai are set aside.

12. This application is accordingly allowed.

The petitioners stand acquitted of the charge and they are discharged from the liabilities of their bail bonds.

(Chakradhari Sharan Singh, J)

ArunKumar/-

U			
---	--	--	--

