

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.85 of 2015**

Arising Out of PS.Case No. -20 Year- 2013 Thana -RAIL District- LAKHISARAI

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NOOR JAHAN PRAVEEN WIFE OF MD. DILSAJ RESIDENT OF VILLAGE -  
MIRJAPUR, P.S. MUFASSIL, DISTRICT - MUNGER

.... .... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... .... RESPONDENT/S

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**Appearance:**

For the Appellant/s : Mr. Sanjeev Kumar, Adv.

For the State : Mr. Binod Bihari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**Date: 06-12-2017**

During course of hearing of the appeal, it has been argued at the end of learned counsel for the appellant that the trial, due to the reason that charge as well as conviction recorded by the learned lower court, happens to be wrong, make the judgment volatile hence same is fit to be set aside. While the learned Additional Public Prosecutor submitted that though there happens to be some illegality, but the same is curable under Section 464 Cr.P.C. In order to properly appreciate the point relevant Sections of the Arms Act has been gone through as well as lower court record has also been minutely observed. From the lower court record, it is evident that charge has been framed against the appellant under Section 25(1-A)B, 26(1-2), 35 of the Arms Act. From perusal of Section 25 of the Arms Act, it is evident that there happens to be no provision prescribed there under as 25(1-A)B. From the judgment impugned, it is also



evident that appellant has been found guilty for an offence punishable under Section 25(1-A)B of the Arms Act and sentenced to undergo R.I. for four years as well as to pay fine appertaining to Rs.1000/- in default thereof, to undergo S.I. for three months, additionally and in likewise manner, under Section 26(1) of the Arms Act and sentence to undergo S.I. for three years as well as to pay fine appertaining to Rs.1000/- and in default thereof, to undergo S.I. for three months additionally.

**2.** From the facts of the case, it is evident that on account of recovery of arms and ammunition from her conscious possession, either she would have been prosecuted under Section 25(1-A) of the Arms Act or 25(1-B)(a) of the Arms Act. Because of the fact that there happens to be no penal provision prescribed under Section 25 of the Arms Act as 25(1-A)B, on account thereof framing of charge as well as conviction thereunder is found strange enough.

**3.** From the facts of the case, it is evident that appellant was found in possession of prohibited arms in violation of Section 7 of the Act, on account thereof, Section 25(1A) would be applicable and for that minimum sentence is prescribed for five years, which certainly happens to be enhancing the sentence inflicted by the lower court. In likewise manner, though some sort of relaxation on the score of illegality over framing charge is found fit for condonation in terms of Section 464 Cr.P.C., but the present situation did not properly fit in.



4. That being so, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed. The matter is remitted back to the learned lower court to proceed after amending charge in terms of Section 216, 217 Cr.P.C and will pass judgment in accordance with law after hearing both the parties. Appellant is on bail which is extended only for fortnight, during midst thereof, appellant will surrender before the learned lower court with a prayer which the learned lower court will consider in accordance with law, failing which learned lower court will proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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| AFR/NAFR          | A.F.R.     |
| CAV DATE          | N.A.       |
| Uploading Date    | 11.12.2017 |
| Transmission Date | 11.12.2017 |

