

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.760 of 2016

=====

1. Sudhakar Jha Son of Late Dinanath Jha, resident of Village Bishanpur, P.S Dandari, District Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party

=====

Appearance :

For the Petitioner/s : Mr.Abul Kalam, Adv

For the Respondent/s : Dr. Indihar Kumari, APP

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 11-04-2017

The petitioner stood convicted of the offence punishable under Section 25(1-B)a and Section 26 of the Arms Act. He has been sentenced to undergo imprisonment for a period of two and a half years under Section 25(1-B)a with fine of Rs. 1000/- by the judgment and order dated 31.10.2013, passed by the learned Judicial Magistrate, First Class, Begusarai in Trial No. 481 of 2013. The learned 7th Additional Sessions Judge, Begusarai, has affirmed the said judgment of conviction and sentence by order dated 28.04.2016, passed in Criminal Appeal No. 131 of 2013.

Aggrieved, the petitioner has preferred present criminal revision application under Section 397 and 401 of the Code of Criminal Procedure. Briefly narrated, the case of the prosecution is



that police party headed by Sub Divisional Police Officer, Baliya, was conducting raids to apprehend an absconder and in course of that raid, they received secret information that one miscreant Murari Singh had taken shelter in the house of the petitioner. They accordingly raided the petitioner's house. Seeing the police party, the petitioner wanted to escape but was apprehended by the police.

From the Southern Room of the petitioner's house, the police recovered one country made rifle (Musket) from beneath the bed, which was found loaded with live cartridges in presence of two independent witnesses Shashidhar Prasad Singh and Manchan Rajak. The petitioner could not give any satisfactory reply on being questioned by the police. The police submitted chargesheet whereafter the trial commenced. At the trial eight prosecution witnesses were examined including the seizure list witness Manchan Rajak as PW-3. The other seizure list witnesses were not examined. The said PW-3, though proved his signature in the seizure list, which was marked as Exhibit-1/1, he deposed in the cross-examination that he had in fact put his signature on a blank paper and no seizure was made in his presence. Rest of the witnesses were either members of the raiding party or official witnesses.

Learned counsel appearing on behalf of the petitioner assailing the findings recorded by the court below holding the



petitioner guilty of the offence punishable under Section 25(1-B)a of the Arms Act, has submitted that the findings are perverse and the prosecution miserably failed to prove the case against the petitioner, beyond all reasonable doubts. He has further submitted that even if the case of the prosecution, of recovery of the fire-arm from the house of the petitioner is accepted, it cannot be said that the recovery was made from the petitioner's exclusive possession. He further submits that a big joint family of the petitioner lived in the house from where recovery of fire-arm was made and therefore, it could not be said that the recovery was made from the petitioner's exclusive possession. He has next submitted that since no independent witness supported the case of the prosecution, the finding of conviction is perverse.

Dr. Indihar Kumari, learned A.P.P representing the State of Bihar, while supporting the findings recorded by the court below, has relied on a decision of this Court in the case of **Ranbir Singh vs State of Bihar** reported in **2002(4) PLJR 486**. She has contended that the evidence of the police personnel cannot be discarded merely on the ground that they were police personnel. She has submitted, referring to the said decision that in that case also, the seizure list witness had denied his presence, at the time of seizure but this Court upheld the conviction on the logic that the evidence of the members of the raiding party could not be discarded.



Learned counsel appearing on behalf of the petitioner in reply, has submitted that in the case of Ranbir Singh (supra), the court has reduced the sentence from three years to six months, by invoking proviso to section 25 of the Arms Act. He has also submitted that the petitioner was made accused for the first time in the present case in the year 2003 and he has not been implicated in any criminal case since then. He has further submitted that the petitioner is 66 years of age and has already undergone the rigors of facing prosecution for nearly more than a decade.

I find, substance in the submission made on behalf of the State of Bihar that only on the basis that the findings are based largely on evidence of police personnel, the same cannot be held to be bad. The evidence of such witnesses cannot be completely brushed aside unless on evaluation, they appear not to be trustworthy. Further, one of the seizure list witnesses proved his signature on the seizure list. In that view of the matter, the concurrent findings recorded by the court below cannot be said to be suffering from perversity, requiring interference by this Court in criminal revisional jurisdiction.

However, considering the age of the petitioner, the submission that he has got no criminal antecedent and even subsequent to accusation of the case against him in the year 2003, he has not been impleaded in any other criminal case, a lenient needs to



be taken and sentence of imprisonment needs to be reduced.

Accordingly, while upholding the conviction of the petitioner, sentence of imprisonment is hereby reduced to six months. The petitioner is directed to surrender before the court below for serving rest of the sentence.

This application is disposed of with the aforesaid modification.

(Chakradhari Sharan Singh, J)

Ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

