

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.181 of 2017

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

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Arun Tiwari, Son of Late Jagarnath Tiwari, Resident of Village-Basant Jagjiban,
P.S. Purnahiya, District-Sheohar.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Dr. Amrendra Kumar, Advocate
Mr. Md. Anisur Rahman, Advocate
For the State : Mr. Md. Mushtaque Alam, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 23-08-2017

This petitioner was accused in Purnahiya P.S. Case No.67 of 2012 relating to the same offence and in view of the order of this Court earlier both cases were amalgamated and the petitioner along with another co-accused was put on trial in Trial No.542 of 2015 by C.J.M., Sheohar whereby he has been convicted for committing offences under Sections 392 and 414 of the Indian Penal Code as well as under Sections 25(1-b)a/35 and 26 of the Arms Act and sentenced to undergo rigorous imprisonment of five years for committing offence under Section 392 of I.P.C. and for remaining offences two years of rigorous imprisonment and a fine of Rs.1,000/- each and in case of default of making payment of fine to further undergo one month simple imprisonment, the petitioner preferred Cr. Appeal



No.18 of 2015 against the judgment and conviction passed by the trial court and the Sessions Judge, by the judgment dated 16.9.2016, upheld the conviction and sentence. Against the concurrent finding of these two courts, the petitioner has preferred this revision application.

2. Learned counsel appearing on behalf of the petitioner submits that in this case the charge under Section 392 of I.P.C. was not proved by the prosecution beyond all reasonable doubt for the reason the informant (P.W.1) as well as his brother Pramod Kumar Mandal (P.W.4) have not identified the petitioner during the trial. Even independent witnesses of seizure list, P.W.1 and P.W.2 have not supported the case of the seizure and one of the police personnels a member of the raiding party was also declared hostile by the prosecution and P.W.6 another police personnel wrongly named this petitioner as Chandraketu Singh another co-accused whereas the learned counsel for the State submits that there is no error or misappropriation of evidence in the judgment either of the trial court or as well as of the appellate court and the prosecution has supported its case beyond all reasonable doubts.

3. I perused the record of the trial court. It is a case of road robbery after the sunset at about 7.30 P.M. on 12.9.2012 for which Purnahiya P.S. Case aNo.67 of 2012 was registered against unknown persons. The informant immediately reported the case to the police authorities and police swiftly turned into action and at 9.00 P.M.



while checking the vehicle on the road, apprehended the petitioner as well as another co-accused Chandraketu Singh, while they were going on a motorcycle and recovered the looted motorcycle as it was being driven by Chandraketu Singh. On search of their bodies, police recovered a country made pistol loaded with cartridges from possession of the petitioner and ten live cartridges from possession of Chandraketu Singh another co-accused for which Purnahiya P.S. Case No.67 of 2012 was lodged against three named accused persons including the petitioner. This Court, by order dated 10.5.2013 passed in Cr. Misc. No.22748 of 2013, directed the trial court to amalgamate both the cases and, accordingly, the accused persons were put on trial. Another fact that transpired during investigation is that leading to confessional statement of the petitioner two looted mobiles of the informant was recovered from another accused Yashwant Singh.

4. I have gone through the evidence. The motorcycle bearing Registration No.BR30D-7674 was immediately recovered from the possession of the accused persons within one and half hour of committing the robbery. As far as allegation against the petitioner is concerned, it is a fact that they are not named in the F.I.R. and not put on T.I.P. during investigation but the informant (P.W.5) and his brother (P.W.4) both were going together on the motorcycle while their motorcycle was robbed but could not identify the petitioner and another co-accused as they had covered their faces. The recovery of



the motorcycle immediately after the occurrence from the possession of Chandraketu Singh another co-accused on which this petitioner was also moving, the presumption under Section 114(A) of the Evidence Act is drawn that the petitioner has committed this offence of robbery. One of the I.Os. Rajiv Kumar, the informant of one of the case has stated that during interrogation the accused persons disclosed that looted mobile of this case has been handed over to one Yashwant Singh leading to that information as disclosed by the accused, later on, the looted mobile was also recovered form the possession of Yashwant Singh and the seizure list too has been proved by the prosecution. So the seizure list independent witnesses going hostile does not affect the prosecution case in view of the other cogent evidence on record leading to recovery of motorcycle and arms from possession of the accused persons including the petitioner, so there is no illegality or impropriety in the concurrent finding of the courts below.

5. Accordingly, this application stands dismissed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
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