

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.568 of 2017

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

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1. Nageshwar Mahto Son of Sita Ram Mahto
2. Jai Krishna Mahto, Son of Ram Chandra Mahto. Both Resident of Village-
Paharpur, Police Station-Balia, in the District of Begusarai

.... Petitioners

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioners : Mr. Akhilshwar Prasad Singh, Sr. Advocate
Mr. Amrit Anurag, Advocate
Mr. Surendra Prasad Singh, Advocate
For the State : Mr. Raj Kishor Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 18-08-2018

The present revision application is preferred against the judgment dated 22.2.2017 passed by Sessions Judge, Begusarai in Cr. Appeal No.149 of 2009 whereby he has affirmed the judgment passed by the trial court in Trial No.3676 of 2009 arising out of Balia P.S. Case No.57 of 2003 registered under Sections 25(1-B)a/26(1)/35 of the Arms Act whereby both petitioners were convicted under Sections 25(1-B)a/26(1)/35 of the Arms Act and awarded one year simple imprisonment for offence punishable under Sections 25(1-B) and 35 of the Arms Act and also further simple imprisonment of one year for the offence punishable under Sections 26(1)/35 of the Arms Act and a fine of Rs.1,000/- but on account of default in making payment of fine



further simple imprisonment of one month and directed that both sentences shall run concurrently.

2. In addition to them, one another convict Lochan Mahto was also sentenced three years of rigorous imprisonment for committing offence under Section 25(1-B)a of the Arms Act as well as another three years for committing offence under Section 26 of the Arms Act and a fine of Rs.5,000/- and in default for making payment of a fine further simple imprisonment of three months. However, Lochan Mahto is not petitioner in this revision application.

3. The case of the prosecution in short is that the informant a police officer was on patrolling along with other police personnel in the evening within his jurisdiction. During the patrolling, the informant noticed three persons coming on Rajdoot Motorcycle. Seeing the police personnel they tried to escape away but apprehended by the police. Thereafter, they disclosed their names and on search of the body recovery of country made fire arm along with three live cartridges was made from possession of Lochan Mahto, one of the pillion riders. The Rajdoot Motorcycle belongs to Jai Krishna Mahto petitioner no.2. The owner book was found kept in the dikky of the motorcycle. The police started the investigation and submitted charge sheet against all accused, accordingly, put on trial and during course of trial, four witnesses were examined including two seizure list



witnesses as well as the informant and the I.O. rest six witnesses were not examined by the prosecution.

4. Learned counsel appearing on behalf of the petitioners submits that there is no recovery of any arms or cartridges from the possession of these two petitioners but both have been convicted with the aid of Section 35 of the Arms Act. However, there is no evidence on record supporting the charge under Section 35 of the Arms Act against these two petitioners. Further submission is that prosecution witness nos.1 and 2, Pankaj Kumar and Binod Kumar Singh respectively seizure list witnesses have not supported the prosecution case relating to recovery of the country made pistol. They have only identified their signature on the seizure list and they have not even declared hostile by the prosecution so the prosecution relies on the evidence of these two seizure witnesses, however according to their evidence no seizure was made of any arms in their presence and the signature identified by the witnesses according to them were taken on blank sheet of paper. Further submission is that Section 35 of the Arms Act is not attracted. In the present case, the recovery was not made from Rajdoot Motorcycle owned by one of the petitioners rather it was concealed in the body under cloth by one Lochan Mahto and these petitioners had no knowledge of the arms kept by the said accused the petitioner no.2 had only given him lift on the way.



Learned counsel further submits that P.W.4, I.O. of the case in paragraph-7 of his deposition admits that the seized arm was not produced before the court during the trial or even at the time of remand of the accused and according to him no identification mark was put on seized arm so the prosecution has failed to prove charges against the petitioners beyond all reasonable doubts.

5. Learned counsel appearing on behalf of the State submits that there is recovery of arms from the possession of one of the accused Lochan Mahto and these petitioners were also traveling along with him on the motorbike owned by one of the petitioners so Section 35 of the Arms Act is attracted against them.

6. Having considered rival submissions of both sides and on perusal of the record, it is evident that the case of the prosecution is that while three accused persons were going on a Rajdoot Motorcycle owned by Jai Krishna Mahto one of the petitioner, police on suspicion apprehended and on body search a country made pistol with three live cartridges were recovered from possession of Lochan Mahto one of the pillion riders but no arms were recovered from Rajdoot Motorcycle. Section 35 of the Arms Act reads as such :

“35. Export and re-import of arms and ammunition by sea or air.-(1) A licence in Form XIX may be granted for export of arms or ammunition by sea or air from one place in India and re-import into another



place in India-

(a) by the Central Government or any other officer specially empowered by it, if-

(i) the arms or ammunition are taken by sea or by an International Air Service or across intervening territory not forming part of India, or

(ii) the arms or ammunition form part of the estate of a deceased or insane person who was or is subject to the Indian Navy Act, 1957 (62 of 1957), or whose estate is dealt with under the Army and Air Force (Disposal of private Property) Act, 1950 (40 of 1950), where such arms or ammunition are to be sent to the wife, widow, legal representative or next-of-kin of such deceased or insane person; or

(b) by the licensing authority-

(i) for import, at the place of destination, or

(ii) for export, at the place of dispatch subject to the previous consent of the licensing authority at the place of destination as required under rule 50-

if the arms or ammunition are carried by sea or by an internal air service.”

7. Other charge against the accused persons is under Sections 25(1-B)a/26 of the Arms act. Section 35 of Arms Act deals with constructive criminal responsibility of persons in occupation of premises or any vehicle or other places in case where any arm or ammunition in respect of any offence committed under the Arms Act or being committed or such arm is found in any premises or vehicle in



the joint occupation or under the joint control of several persons. In such case each person is believed to have awareness of existence of such arms in the said premises or the vehicle unless the contrary is proved by the accused. The present case only fact established by the prosecution is that three persons were going on a motorcycle and out of three, one had concealed a country made fire arm under his waist under the cloth so the arm was neither recovered from the motorcycle nor from possession of these two petitioners, more so there is no evidence on the record in view of Section 35 of the Arms Act to show that these two accused persons had the knowledge of existence arms being carried away by another accused Lochan Mahto besides this two seizure witnesses P.W.1 Pankaj Kumar and P.W.2 Binod Kumar Singh, though the prosecution places reliance on evidence of these two seizure witnesses but have not supported the case of the prosecution. They admit the fact that the arm was not seized in their presence and the signatures were taken on a blank sheet of paper rest two other witnesses are police personnel out of them one is the informant and another is the Investigating Officer.P.W.4 Investigating Officer in his evidence admits that the so-called seized arm was not produced before the court during the trial. Further he admits that he had no knowledge whether arms was produced before the Chief Judicial Magistrate at the time of remand of the accused persons as the said fact is not



mentioned in the case diary. He also admits that no identification mark was mentioned or given by the I.O. on seized arm.

8. In view of the aforesaid infirmities found in the evidence of the prosecution, the only conclusion is that the prosecution has failed to prove all charges against these two petitioners beyond all reasonable doubts so they are given benefit of doubt, hence conviction of the petitioners under Sections 25(1-B)a/26(1)/35 of the Arms Act is set aside. Since they are on bail so discharged from their liabilities of bail bond.

9. This revision application stands allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
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