

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.321 of 2017

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

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Rajendra Yadav, Son of Deep Narayan Yadav, R/o Tintaga, P.S. Rajeshwari O.P.,
Distt-Supaul

.... Petitioner

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioner : Mr. Shashi Bhushan Kumar, Advocate

For the State : Mr. Ajay Kumar-I, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 07-11-2017

Heard learned counsel for the petitioner and the learned
Additional Public Prosecutor appearing on behalf of the State.

2. The petitioner has preferred this revision application
against the order dated 20.06.2016, passed by Mr. Mithilesh Kumar
Dwivedi, learned Additional Sessions Judge Ist, Madhepura in
Criminal Appeal No.18 of 2006/CIS No.312 of 2013 whereby upheld
the conviction and sentence passed by the trial court in Trial No.1779
of 2006 whereby convicted the accused under Sections 25(1-B) a and
26 of the Arms Act and sentenced to undergo two years of RI each for
both offences and fine of Rs.1000/-, in case of not paying the fine
further SI of one month but both sentences shall run concurrently.

3. Learned counsel for the petitioner submits that Kumar
Khand P.S. Case No.100 of 2005 was instituted on 07.07.2005, the
date of offence is mentioned from the date of committing theft and till



08.05.2005. Learned counsel for the petitioner further submits that the seized arms was not produced at the time of examination of PW1, the Sergeant Major who had tested the arms and submitted report. Moreover, one of the seizure list witnesses Upendra Prasad Yadav (PW4) is a co-villager and related with the informant, so being interested witness his evidence cannot be relied upon.

4. Contrary to that the learned counsel for the State submits that the prosecution has proved the recovery of the arms from possession of the petitioner and two independent witnesses, namely, Upendra Prasad Yadav (PW4) and Nunulal Yadav (PW5) have supported the recovery of the arms from possession of the petitioner as well as the seizure list prepared in the case, there is no any major contradiction in the evidence of prosecution witnesses going to the root of the matter.

5. Having considered the rival submissions of both sides and on perusal of records, the Court finds that prosecution has examined seven witnesses and four witnesses examined on behalf of the defence. All the prosecution witnesses have supported the case of the prosecution, there is no any such major contradiction in their evidence to disbelieve it which goes to the root of the prosecution case. Two seizure list witnesses, namely, Upendra Prasad Yadav (PW4) and Nunulal Yadav (PW5) have supported the recovery of the



arms from possession of the petitioner as well as the seizure list prepared by the informant, both the seizure list witnesses are co-villagers and there is no any reason to disbelieve their evidence. Upendra Prasad Yadav (PW4) is not the own brother of the informant. The arms recovered was also produced before the court as a material exhibit by PW3, Brijnandan Prasad Singh, the I.O. of the case is PW7 who has proved the place of occurrence. As far as the date of occurrence dated 08.05.2005 is concerned, it appears a slip of pen because the FIR was lodged on 07.07.2005, on the margin of the written information also there is endorsement dated 07.07.2005 as well as it is recorded in the format of the FIR the date of receiving the information on 07.07.2005, so all these facts go to prove that the FIR was registered on 07.07.2005 with respect to the seizure of the arms from person of the accused in the evening of 06.07.2005, so there is no any error in the concurrent finding of both the courts warranting interference, so there is no infirmity in the judgments passed by both the courts. However, considering age and having no criminal antecedent on record, the sentence is reduced to one year and three months under both counts for both offences under Sections 25(1-B) a and 26 of the Arms Act. With this modification in the sentence the conviction is upheld. The petitioner is on bail, so he is directed to surrender within a fortnight before the trial court to undergo the



remaining period of sentence. If the petitioner does not surrender, in such case, the trial court will take all coercive steps to secure his appearance for undergoing remaining period of sentence.

6. With the aforesaid modification in period of sentence, the criminal revision application stands disposed of.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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