

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.511 of 2017

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Ram Ratan Choudhary, Son of Late Sunil Choudhary @ Balle Choudhary, Resident
of Village- Sikandara, P.S.- Sikandara, District- Jamui.

.... Petitioner/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar, Advocate.
Mr. Dhananjay Kumar, Advocate.

For the Respondent/s : Md. Mustaque Alam, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

2. This criminal revision application has been preferred
against the concurrent findings of the trial court as well as appellate
court. The petitioner has been convicted by the 2nd Additional Chief
Judicial Magistrate, Jamui on 03.05.2016 passed in G.R. No. 17 of
2016, arising out of Sikandra P.S. Case No. 2 of 2016, under Sections
25(1-b)a and 26(1) of the Arms Act, to undergo rigorous
imprisonment of three years for each offence and to pay a fine of Rs.
5,000/- and in case of default of making payment of fine to further
undergo one month simple imprisonment however directed to undergo
both the sentences concurrently.

3. Petitioner preferred appeal, against the aforesaid



judgment of conviction passed by the 2nd Additional Chief Judicial Magistrate, Jamui, vide Cr. Appeal No. 7 of 2016 and it was disposed by 2nd Additional Sessions Judge, Jamui whereby he has upheld the judgment of conviction passed by the trial court consequently dismissed the appeal.

4. Learned counsel appearing on behalf of the petitioner points out that there is illegality in the judgment and concurrent findings of both the courts below in many ways, firstly, in his evidence, the informant has disclosed that after receiving information that the petitioner and other criminals have assembled for preparation of committing dacoity, Sanha entry in this regard was recorded in the Station Diary but that Sanha entry has not been brought on record during trial; secondly, prosecution has also failed to prove the ownership of the motorcycle from whose dickey arms and live cartridges were recovered and thirdly, that out of two seizure list witnesses, only one was examined by the prosecution and the court has relied upon his evidence, despite being inimical to him for reason the petitioner is also an accused in a murder case of the brother of the said seizure list witness; infact at his behest the police hatched conspiracy implicating the petitioner falsely in the case.

5. Having considered the rival submissions and on perusal of record, the Court finds that the case of the prosecution is



based on the written information lodged by informant, Vivek Bharti, who was the S.H.O. of Sikandara Police Station and examined as PW-2. He stated that on receiving information, on 02.01.2016 that Ram Ratan Chaudhary, a veteran criminal, wanted in Sikandara P.S. Case No. 135 of 2015, has assembled along with his other associates and making a plan for murder of a local Mukhia, so a Sanha entry in this regard was made thereafter information to senior officers was transmitted then formed a raiding party and proceeded to the place and apprehended Ram Ratan Chaudhary and on search recovered mobile phones and SIM from him and also found bank account numbers of Suman Sinha , Riya Rai and Sonu Kumar scribed on a paper, on query, he revealed that extortion money was used to be deposited in those accounts. Further, he made confessional statement revealing that arms and cartridges have been kept concealed in the dicky of the motorcycle parked beside the bush by side of the Kali temple. Police went there and found one Hero Glamour motorcycle bearing Rg. No. BR-27B-3865 and having opened the seat, two country made pistols and four live cartridges marking of 8MM KF, were recovered and a seizure list was prepared in presence of two seizure list witnesses.

6. The prosecution, in this case, has examined 07 witnesses including the informant, a member of police raiding party as



well as second Investigating Officer. The first Investigating Officer could not be examined as he was suffering from paralytic attack. The contention of learned counsel for the petitioner is that prosecution has failed to prove that motorcycle is stolen one, therefore, recovery of the arms from the said motorcycle cannot be said to be recovery from the possession of the petitioner. The evidence of second Investigating Officer (PW-6) shows that he verified the registration number of the seized motorcycle from the District Transport Office of Nawada and found that registration number is of a tempo belonging to one Birendra Kumar Nirala, so the registration number is not of a motorcycle, so his evidence goes to show that the motorcycle is stolen one and a fake registration number was being used to camouflage the detection. The prosecution has also established that motorcycle was recovered only after disclosure made in the confessional statement of the petitioner admitting the fact that two country made pistols with live cartridges are concealed there. One of the seizure list witnesses (PW-7) admits that seizure list was prepared in his presence and arms were recovered. There is no law that the evidence of police personnel can be disbelieved only being a member of a police force. It is settled principles of law that without any good ground, testimony of a police officer, if the testimony otherwise found reliable, true and independent, cannot be discarded. The Apex Court, in the case of



Mohd. Aslam v. State of Maharashtra reported in **(2001)9 SCC 362**, has held the same proposition that in case of even Panch witnesses/ seizure list witness turning hostile, the evidence of police officer is not vitiated on that account.

7. As far as bringing of *Sanha* entry on record is concerned, it does not make any dent in the prosecution case. The proof relating to charge of recovery of fire arms is concerned, it is established by the prosecution that only on the disclosure of the accused/petitioner, motorcycle was recovered concealed behind the bush and from its dickey, two fire arms and four live cartridges were recovered moreover the registration number was found fake. Besides the evidence of PW-7, one of the seizure list witnesses, other witnesses who are police personnels, have supported the prosecution case relating to recovery of fire arms on the disclosure of the petitioner. So there is no illegality or impropriety in the concurrent findings of both the courts below. Therefore, finding no merit, this revision application stands dismissed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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