

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.332 of 2017

Arising Out of PS.Case No. -60 Year- 2014 Thana -MUNGER MUFFASIL District- MUNGER

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Ganga Sagar Singh, Son of Late Saryug Das, resident of Village-
Sankri Gali, Chhoti Magiyamari, Naya Tola, P.S.- Taljhari, District-
Sahebganj (Jharkhand).

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

WITH

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Criminal Appeal (SJ) No. 89 of 2017

Arising Out of PS.Case No. -60 Year- 2014 Thana -MUNGER MUFFASIL District- MUNGER

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Arun Singh, Son of Late Rajpati Singh, resident of Village-
Keshopur, Police Station- Muffasil, District- Munger.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.332 of 2017)

For the Appellant/s : Ms. Sushmita Mishra, Adv.

For the State : Mr. S.A. Ahmad, APP

(In CR. APP (SJ) No.89 of 2017)

For the Appellant/s : Mr. Vikram Deo Singh, Adv.

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER



Date: 15-03-2018

Both the appeals, viz. Cr. Appeal (SJ) No. 332 of 2017 and Cr. Appeal (SJ) No. 89 of 2017 have been heard together and are being disposed of by this common judgment.

2. The appellants/Ganga Sagar Singh and Arun Singh have been convicted for the offences punishable under Sections 25(1-B)(a), 25(1-AA) and 26(1) and (2) of the Arms Act, 1959 (*in short "the Act"*) by judgment dated 07.12.2016, passed by the learned 5th Additional Sessions Judge, Munger in Sessions Trial No. 322 of 2015, arising out of Munger Muffasil P.S. Case No. 60 of 2014, and by order dated 08.12.2016, they have been sentenced to undergo rigorous imprisonment for 3 years, to pay a fine of Rs. 5,000/- for the offence under Section 25(1-B)(a) of the Act and rigorous imprisonment for 7 years each and to pay a fine of Rs. 10,000/- each for the offences under Sections 25(1-AA) and 26(1) and (2) of the Act. In the event of non-payment of the total amount of fine of Rs. 35,000/-, the appellants have been directed to suffer further simple imprisonment for 5 years.

3. The appellant/Ganga Sagar Singh (Cr. Appeal (SJ) No. 332 of 2017) was found to be in possession of a bag containing three country made pistols. From the possession of the appellant/Arun Singh (Cr. Appeal (SJ) No. 89 of 2017), Rs.



10,000/- was recovered.

4. The case of the prosecution is based on the self-statement of Abhinav Kumar Dubey, S.H.O., Munger Muffasil Police Station, who has been examined as P.W. 3 at the trial. He has alleged that on secret information that arms are being sold, he raided the orchard near Polytechnic College at village-Keshopur where the police team saw two persons, out of whom, one was carrying a bag. Seeing the police party, the aforesaid two persons started to run away from that place. They were nabbed by the police party and they disclosed their names as that of the appellants. From the possession of the appellant/Ganga Sagar Singh, as stated earlier, three pistol were recovered, whereas from the possession of the appellant/Arun Singh, Rs. 10,000/- only was recovered. It was stated in the self-statement that the aforesaid two persons disclosed that the arms so recovered was sold by the appellant/Arun Singh to the appellant/Ganga Sagar Singh. Appellant/Ganga Sagar Singh has also confessed that if his house is raided, some cartridges also can be recovered.

5. On the basis of the aforesaid self-statement of P.W. 3, a case *vide* Munger Muffasil P.S. Case No. 60 of 2014, dated 30.03.2014, was instituted for investigation under Sections 25(1-B)(a), 25(1-AA) and 26(1) and (2) of the Act.

6. At the trial, eight prosecution witnesses were



examined including the Investigating Officer/Ram Pukar Singh (P.W. 7) and the Sergeant Major/Dinesh Kumar Singh (P.W. 6), the expert who had examined and verified the firearm weapons recovered from the possession of the appellant/Ganga Sagar Singh.

7. The informant of this case (P.W. 3) has supported the prosecution version about the recovery of the weapons, described in the self-statement. He has proved the seizure-list (Ext.-1) and the First Information Report (Ext.-4).

8. Similar statements have been made by P.Ws. 2, 3, 4 and 5. P.Ws. 4 and 5 are the *Chowkidar* and the *Dafadar* of the case respectively, who were made witnesses to the search and seizure.

9. Dinesh Kumar Singh/P.W. 6 in his deposition before the Trial Court has proved the fact that he had examined all the seized arms and found the hammer, trigger and the fire pin to be in working condition. The other articles which were recovered were opined by him to be capable of being used in the manufacturing of arms.

10. The Investigating Officer of this case (P.W. 7) claims to have recorded the statement of the members of the raiding party and had also inspected the arms and had given the same for its verification and report to the Sergeant Major. After the report was received, he obtained the sanction from



the District Magistrate, Munger. He found the appellant/Ganga Sagar Singh to be involved in two other criminal cases apart from the present case.

11. Ms. Sushmita Mishra, learned counsel for the appellant/Ganga Sagar Singh (Cr. Appeal (SJ) No. 332 of 2017), submits that the prosecution story is not believable and the conviction and sentence is not based on cogent evidence. It has been submitted by her that the statement of the witnesses are discrepant inasmuch as all of them have stated different numbers of the members of the police team which had raided the orchard and had found the appellant in possession of a bag containing firearms. Even the place from where the recovery was made, it has been submitted, appears to be doubtful. Lastly, it has been argued that the weapons so recovered were never sealed and the material exhibits were not produced before the Trial Court. Non-sealing of the weapon renders the entire prosecution case doubtful, as the Trial Court did not have any material to satisfy himself that the same weapons were recovered from the possession of the appellant.

12. Apart from all this, it has been submitted by Ms. Mishra, the learned counsel, that assuming but not admitting that the weapons, viz. three pistols were recovered from the possession of the appellant, there was no material to



suggest that any prohibited weapon was recovered, thus, bringing home the mischief of Section 25(1-AA) of the Act. It has been submitted that the three weapons which are said to have been recovered, were all locally made weapons and only because it was inscripted on one of such weapons that it is for Army supply only, it cannot be conclusively held that the weapon was a prohibited one. Anything can be inscripted on a country made weapon. Whether it is prohibited or not would depend upon the manufacturing unit as well as the bore of that weapon.

13. Similarly, it has been argued that the offences under Section 26(1) and (2) of the Act also cannot at all be made out from the facts collected during the course of investigation and trial.

14. Section 26(1) and (2) of the Act read as follows:

"26. Secret Contraventions.-(1)

Whoever does any act in contravention of any of the provisions of section 3, 4, 10 or 12 in such manner as to indicate an intention that such act may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall not be less than six months but which may extent to seven years and also with fine.

(2) Whoever does any act in contravention



of any of the provisions of section 5, 6, 7 or 11 in such manner as to indicate an intention that such act may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and also with fine.”

15. There is no evidence to the effect that any attempt was made by the appellant/Ganga Sagar Singh to prevent such weapons from being seen/known by the officers working with the Railways or on a Ship.

16. Thus, for all practical purposes, it has been argued that conviction under Sections 25(1-AA) and 26(1) and (2) of the Act, is without any justification.

17. Mr. Vikram Deo Singh, learned counsel for the appellant/Arun Singh (Cr. Appeal (SJ) No. 89 of 2017, has submitted that nothing has been recovered from his possession. Recovery of Rs. 10,000/- cannot be, in the absence of any evidence to that effect, be termed as the sale proceeds of the aforesaid arms. Thus, on mere statement of the appellant/Ganga Sagar Singh and that also before the police party that he had purchased those weapons from the appellant/Arun Singh, he cannot be convicted and sentenced for any of the offences under the Act.

18. After having gone through and analyzed the



deposition of the witnesses and the entire prosecution case, this Court is of the view that conviction and sentence of the appellant/Ganga Sagar Singh (Cr. Appeal (SJ) No. 332 of 2017) under Section 25(1-B)(a) of the Act for 3 years and a fine of Rs. 5,000/- is justified.

19. The aforesaid conviction against the aforesaid appellant/Ganga Sagar Singh is upheld and affirmed.

20. However, the conviction of the appellant/Ganga Sagar Singh under Sections 25(1-AA) and 26(1) and (2) of the Act and the corresponding sentences imposed upon him are not fit to be sustained in the eyes of law. The conviction and sentence under the aforesaid sections are, therefore, set-aside.

21. If the appellant/Ganga Sagar Singh has undergone the sentence of 3 years and has paid the fine of Rs. 5,000/-, he be released forthwith from jail, if not wanted in any other case.

22. So far as appellant/Arun Singh (Cr. Appeal (SJ) No. 89 of 2017 is concerned, there is no material against him to warrant his conviction and sentence under any one of the sections under the Act. The conviction and sentence of appellant/Arun Singh are set-aside.

23. The appellant/Arun Singh is on bail. Hence, he is discharged from the liabilities of his bail-bonds.



24. Both the appeals are disposed of accordingly.

25. Let a copy of the judgment be transmitted to the Superintendent of concerned jail as well as Court concerned for necessary compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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