

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.779 of 2018

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

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Pappu Paswan son of Sudhir Paswan resident of village - Chethariya Pir, P.S. - Kahalgaon, District - Bhagalpur.

.... Petitioner

Versus

The State of Bihar.

.... Respondent

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Appearance :

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

For the Respondent/s : Mr. Iftekhar Mahbood, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 13-09-2018

This revision application is directed against the judgment and order dated 30.6.2016 passed by Additional District and Sessions Judge-VI, Bhagalpur in Cr.Appeal No. 125 of 2014, whereby and whereunder learned Additional District and Sessions Judge has confirmed the judgment and order dated 2.12.2014 passed by Sri Sanjeev Kumar Pandey, Judicial Magistrate, 1st Class, Bhagalpur in G.R.No. 2944 of 2011, Trial No. 130 of 2014, arising out of Kahalgaon P.S.Case No. 402 of 2011 convicting the petitioner under Sections 25(1-B)(a) and 26(1) read with Section 35 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and a fine of Rs.5000/- separately for the offences under Sections 25(1-B)(a) and 26(1) of the Arms Act each and in case of default in payment



of fine he shall undergo rigorous imprisonment for further six months.

2. Prosecution case relates to recovery of loaded country made revolver for which a case has been lodged and it appears that witnesses were examined before the learned trial court and after conclusion of trial the learned trial court has convicted the petitioner under Sections 25(1-B)(a) and 26(1) read with Section 35 of the Arms Act and sentenced to undergo rigorous imprisonment for three years, including a fine of Rs.5000/- separately for the offences under Sections 25(1-B)(a) and 26(1) of Arms Act each and in case of default in payment of fine he has to undergo rigorous imprisonment for a further period of six months.

3. Learned counsel for the petitioner could not show any illegality and inconsistency in the impugned judgments except showing that seizure list witnesses have been declared hostile and they have not supported the prosecution case.

4. Now a days, when no independent witness or villager is ready to come forward and depose in a case, in such a situation only because that seizure list witnesses have turned hostile, the judgment cannot be set aside unless the other evidence available on record is not cogent and consistent. In this case, no doubt the seizure list witnesses have turned hostile but they have proved their signatures also on the seizure list and the other witnesses have consistently stated about the



seizure of the loaded country made revolver from the possession of the petitioner and the seizure list was brought on record and moreover Exts. 5 to 7 show that seized articles were properly examined by the Sergeant Major, who is competent to do so, who has found the seized revolver and cartridges were in workable condition and were fatal to the life and the seized articles have been brought on record as Material Exhibits also.

5. Thereafter learned counsel for the petitioner has confined his argument on the point of quantum of sentence and submitted that in this case sentence is for three years R.I. with a fine of Rs.5000/- for the offence under Sections 25(1-B)(a) and 26(1) of the Arms Act each and in default of payment of fine he has to undergo further R.I. for six months but learned appellate court has set aside the finding of learned court below on the point of charge under Section 26(1) read with Section 35 of the Arms Act as the same is manifestly erroneous and affirmed the sentence for the offence under Section 25(1-B)(a) of the Arms Act.

6. Learned counsel for the petitioner has submitted that this is the first offence of the petitioner he is aged about 27 years, as such taking a lenient view the sentence may be reduced from the period of three years to a period of one year, for which he has already remained in custody and order of fine be set aside.



7. From perusal of the record it appears that there is nothing available on record to show that petitioner has been made accused or convicted in any other case and the petitioner was aged about 27 years at the time of judgment passed by learned court below, i.e., 2.12.2014. Hence, considering the entire materials available on record I find no impropriety or illegality in the judgment of conviction under Section 25(1-B)(a) read with Section 35 of the Arms Act and as such I am not going to interfere with the judgment of conviction affirmed by the appellate court. However, so far sentence is concerned, considering the facts and circumstances of the case, the period of three years R.I. is reduced to one year R.I., the period under which the petitioner has remained in custody and similarly the fine of Rs.5000/- is reduced to a fine of Rs.2000/- and in default of payment of fine he has to undergo simple imprisonment for two months.

8. With the aforesaid modification in sentence, this application is disposed of.

(Vinod Kumar Sinha, J)

spa/-

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