

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.34 of 2017

Arising Out of P.S. Case No.-65 Year- 2009 Thana-MUNGER MUFFASIL District-
MUNGER

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Mahendra Sharma, Son of Atwari Sharma, Resident of Village-Mai
Tirasi, P.S.-Mufassil, District-Munger.

.... Appellant

Versus

The State of Bihar

.... Opposite Party/Respondent

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Appearance :

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

Mr. Jyoti Ranjan Jha, Adv.

For the State : Mrs. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 07-03-2018

The appellant/Mahendra Sharma stands convicted for the offences punishable under Sections 25(1A), 25(1C), 25(1B)(a) and 26(1), (2) and (3) of the Arms Act, 1959 (*hereinafter referred to as "the Act"*) by judgment dated 02.11.2016, passed by the learned 5th Additional Sessions Judge, Munger in Sessions Trial No. 545 of 2009, arising out of Munger Muffasil P.S. Case No. 65 of 2009, and by order dated 06.12.2016, he has been sentenced to undergo rigorous imprisonment for 3 years and a fine of Rs. 5,000/- for the



offence under Section 25(1-A) of the Act; rigorous imprisonment for 5 years and a fine of Rs. 10,000/- under Section 25(1-C) of the Act; rigorous imprisonment for 3 years and to pay a fine of 5,000/- under Section 25(1-B)a of the Act; rigorous imprisonment for 5 years and a fine of 10,000/- under Sections 26(1) of the Act and rigorous imprisonment for 7 years each and a fine of Rs. 10,000/- for the offences under Sections 26(2) and (3) of the Act. It has further been stipulated in the order of sentence that in default of a total fine of Rs. 40,000/-, referred to above, the appellant shall undergo simple imprisonment for 6 months. The sentences, however, have been ordered to run concurrently.

2. From the house of the appellant, equipments for manufacturing arms, semi-finished pistols, 5 country made pistols along with two cartridges of .315 bore, a bellow and burning coal were found, for which no explanation could be offered by the appellant.

3. The prosecution case rests on the self-statement of Sub-Inspector/Bhubneshwar Thakur, S.H.O. of Munger Muffasil Police Station, who has been examined as P.W. 1 at the trial. In his self-statement, he has stated that during the course of raid at various places for execution of non-bailable warrants of arrest, the police party arrived near the house of the appellant/Mahendra Sharma. The members of the raiding team



heard the sound of hammer being used inside the house. On hearing the aforesaid sound, P.W. 1 took a decision to raid that house and an attempt was made to find out two independent witnesses. In the event of nobody agreeing for the same, two Constables, namely, Asharfi Ram and Ram Janam Singh, who have been examined as P.W. 3 and P.W. 4, were made witnesses to the search and, thereafter, search of the house was conducted. During course of raid/search, the appellant tried to flee away, but was arrested. The police party found that coal fire was burning inside the house, which was being kept alive by means of a bellow. Many equipments like hammers and files, were also found in the house. Beneath one of the beds, 5 unfinished country made pistols and cartridges were found. Apart from the aforesaid articles, drilling machine and an iron base were also recovered.

4. On the basis of the aforesaid recoveries and the self-statement of P.W.1, Munger Muffasil P.S. Case No. 65 of 2009, dated 16.03.2009, was instituted for the offences under Sections 25(1-B)A/25(1-A)A/25(1-C)a and 26(i), (ii) and (iii) of the Act for investigation.

5. The police after investigation, submitted charge-sheet, whereupon cognizance was taken and the case was tried by the learned 5th Additional Sessions Judge, Munger in Sessions Trial No. 545 of 2009.



6. The Trial Court, after examining 6 witnesses on behalf of the prosecution, convicted the appellant/Mahendra Sharma as aforesaid.

7. Learned counsel appearing for the appellant, while assailing the impugned judgment, submitted that the judgment and order of conviction cannot be allowed to stand in the eyes of law as the conviction has been recorded on inconsistent evidence. There are material contradictions in the statements of the prosecution witnesses. Despite the prosecution witnesses admitting an assemblage of about 30-40 persons at the place and time of the raid, no independent person was made to either witness the seizure or the arrest of the appellant. It was also argued that the report of the Sergeant Major, regarding the seized arms and other instruments, is not worthy of acceptance as the report was prepared only in one day, displaying the mechanical nature in which the report was prepared. The Sergeant Major (P.W. 6) has not disclosed the manner of verification of arms and instruments seized by the police. The seized articles were never sealed and the sack/bag in which those equipments were stored was found to be torn from many sides. It was, thus, argued that the judgment and order of conviction is fit to be set-aside.

8. The informant (P.W. 1) has supported the prosecution version inasmuch as he has deposed that on



16.03.2009 at about 6:00 A.M., he had gone out with his police team to apprehend the appellant in compliance of a non-bailable warrant of arrest issued against the appellant by a Judicial Officer at Munger. No sooner had he arrived near the house of the appellant, banging sound from the house of the appellant was heard by the members of the police party. Since local persons who were requested to become witnesses to the search and seizure refused to oblige, two of the members of the police team were made witnesses to the search and the house of the appellant was entered into. The appellant tried to flee away from the house, but he was arrested. On search of the house, as stated in the self-statement, unfinished pistols, finished pistols, cartridges, drill machine, burning coal, bellow, hammer, file and iron base were found. These articles, according to P.W. 1, were kept in the house of the appellant for manufacturing weapons. The aforesaid articles recovered were exhibited as ME-1 to ME-X, which was proved by P.W. 1. He has also proved the seizure list (Exhibit-2).

9. Binay Shankar Prasad, the Investigating Officer of this case, has been examined as P.W. 2. He has deposed that he took charge of the investigation on 16.03.2009. He saw the place of occurrence. In the house in question, there were passages in the southern and northern side and there was a joint courtyard. He has testified to the fact that drill machine, country



made pistols, cartridges, bellow, base, hammer, file and some springs were recovered. He had recorded the statements of the other witnesses. Finding the case true against the appellant, he had submitted the charge-sheet.

10. Asharfi Ram and Ram Janam Singh (P.W. 3 and P.W. 4), who were made witnesses to the search and seizure, have proved Exhibit-3/1 which are their signature on the seizure list.

11. The Sanction Report (Exhibit-4) has been proved by one Awadhesh Kishore Prasad, who has been examined as P.W. 5. He has proved that Exhibit-4 was issued by the then District Magistrate, Munger, Mr. Lokesh Kumar Singh.

12. The aforesaid equipments, which were recovered from the house of the appellant, were sent for examination/verification to Rajendra Kumar Singh, the Sergeant Major, who has been examined as P.W. 6 at the trial. He has reported that all the recovered pistols were in working condition. However, he has stated that the other equipments which were recovered from the house of the appellant could also be used in manufacturing of weapons and the cartridges found were capable of being exploded, causing lethal results.

13. From the analysis of the deposition of the aforesaid witnesses, it stands established and proved that the house of the appellant was raided from where, apart from semi-



finished pistols, other equipments/machinery were also found which could be used for manufacturing of weapons. Merely because the Investigating Officer (P.W. 2) in para-6 of his cross-examination has stated that the house was jointly possessed by the appellant and his brother, the prosecution case cannot be rendered doubtful. There is no evidence on record to show that apart from the appellant, there was any other occupant of the house. Since only the appellant was found in the house which belonged to him, the issue of the house being in joint occupation of one more person cannot be the basis for doubting the prosecution case.

14. The recovered articles, according to P.W. 1, were kept in a sack/bag which was found to be torn at places. This by itself, could not be sufficient to hold that the weapons which were recovered and produced for inspection of the Court were not the ones which were recovered from the house of the appellant. Similarly, the admission of P.W. 3 that about 30-40 persons had assembled at the house of the appellant, at the time of the raid, would not be of any avail to the appellant.

15. It is absolutely clear from the evidence of P.W. 1 that an attempt was made to make independent persons witnesses to the search and seizure, but nobody agreed for the same. In that event, P.W. 3 and P.W. 4 had to be made witnesses to the seizure. The law in this regard is absolutely



unambiguous that in the absence of or refusal of independent persons becoming witnesses to the seizure, the prosecution case would stand on its legs, if even the members of the raiding team are made witnesses to the search; provided the search is made in terms of the provision of Section 100 of the Code of Criminal Procedure, 1973. There is nothing on record to suggest that the search was not made at the house of the appellant.

16. The report of the Sergeant Major (P.W. 6), though, does not refer to the mode of examination, but is very clear in its import that the pistols were capable of being fired. The cartridges were live and the other equipments could be used for manufacture of weapons. He has specifically stated in his report that all the equipments except Exhibit-7, which was not capable of being sealed, were sealed and sent to the Investigating Officer (P.W. 2) of this case.

17. Thus, this Court finds that offences punishable under Sections 25(1)(a) and 25(1-B)(a) of the Act are squarely made out, proved and established from the case and deposition of the witnesses. However, the conviction of the appellant under Sections 25(1-A), 25(1-C) and Sections 26(1), (2) and (3) are not justified.

18. It appears that the Trial Court wrongly convicted and sentenced the appellant under Section 25(1A) for a period of 3 years. This definitely is a mistake. A wrong provision of law



has inadvertently been taken into account for convicting the appellant. If the conviction would have been under Section 25(1-A) of the Act, the sentence imposed could not have been less than 5 years, but here, the sentence imposed is only for 3 years. It is, therefore, presumed that the appellant has been convicted under Section 25(1)(a) of the Act.

19. Similarly, Sections 25(1-C) and 26(1), (2) and (3) of the Act are not made out from the facts of this case.

20. The aforesaid sections of the Act read hereunder:-

"25. Punishment for certain offences.-

25(1-A)-Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to ten years and shall also be liable to fine.

25(1)(a)-Whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5;

25(1-C)-Notwithstanding anything contained in sub-section (1-B), whoever commits an offence punishable under that sub-section in any disturbed area shall be punishable with imprisonment for a term which shall not be less than three years but



which may extend to seven years and shall also be liable to fine.

26. Secret contraventions.—(1) Whoever does any act in contravention or 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 extend 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.

(3) Whoever on any search being made under section 22 conceals or attempts to conceal any arms or ammunition, shall be punishable with imprisonment for a term which may extend to ten years and also with fine.”

21. There is nothing on record to suggest that there was any violation of the Act in any disturbed area and, therefore, conviction under Section 25(1-C) of the Act is without any basis. Similarly, it cannot be said that the offences were committed by



the appellant in such manner and with such intention that it could not have been known to any public servant or any person employed or working upon a Railway, Aircraft, Vessel, Vehicle or any other means of conveyance.

22. Thus, this Court finds that the conviction of the appellant under Sections 25(1-A), 25(1-C) and 26(1), (2) and (3) of the Act is not justified in the eyes of law.

23. Thus, the conviction and sentence of the appellant under the aforesaid sections are set-aside.

24. As stated earlier, the conviction of the appellant under Section 25(1)(a) and 25(1-B)(a) are upheld and affirmed. For the offence under Section 25(1)(a), this Court is of the view that the sentence of rigorous imprisonment for 4 years and a fine of Rs. 10,000/- would be justified. The sentence imposed under Section 25(1-B)(a) which is rigorous imprisonment for 3 years and fine of Rs. 5,000/- is upheld.

25. Thus the appellant is convicted under Sections 25(1)(a) and 25(1-B)(a) of the Act and is directed to undergo rigorous imprisonment for 4 years and a fine of Rs. 10,000/- for the offence under Section 25(1)(a) of the Act and for the offence under Section 25(1-B)(a) of the Act, he is directed to undergo rigorous imprisonment for a period of 3 years and fine of Rs. 5,000/- and in default of payment of total fine of Rs. 15,000/- he shall suffer further simple imprisonment for 3 months. The



sentences shall run concurrently.

26. The appeal is dismissed, but with the modification in the conviction and sentence, as referred to above.

27. Let a copy of this judgment be transmitted to the Court concerned for necessary compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.03.2018
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