

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.825 of 2017

Arising Out of PS. Case No. -. 238 Year- 2014 Thana -
Tariyani District- SHEOHAR

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Devendra Paswan Son of Sri Raghubir Paswan, R/o Village-
Mushari Gote, P.S.- Tariyani, District- Sheohar.

.... Petitioner/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Anshuman, Advocate
Mr. Prashant Prakash, Advocate
Mr. Sanjay Kumar, Advocate

For the Respondent/s : Ms. Gulnar Begum, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 29-03-2018

Interlocutory Application No. 1705 of 2017

This is an application seeking condonation of delay of
469 days in preferring of the present revision petition.

The reason assigned in the Interlocutory Application is
that the petitioner, in order to earn his livelihood had gone to
Delhi and was working in S.P.L. Industry Limited. He could not
be communicated about the judgment in appeal and, therefore,
there was delay in surrendering before the Court below.

For the reasons stated in the Interlocutory Application,
the prayer for condoning the delay of 469 days is allowed. The
delay in the filing of the present revision petition is condoned.



Criminal Revision No. 825 of 2017

The petitioner was tried and convicted by the learned Additional Chief Judicial Magistrate, Sheohar by judgment and order of conviction and sentence dated 22.07.2015 passed in Trial No. 150 of 2015, arising out of Tariyani P.S. Case No. 238 of 2014 for the offence under Section 25(1-B) a/26 of the Arms Act and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- and in default of payment of fine, to further suffer simple imprisonment for fifteen days. The judgment and order of conviction and sentence of the learned Trial Court was affirmed and upheld by the learned District & Sessions Judge, Sheohar by order dated 07.10.2015, in Cr. Appeal No. 10 of 2015.

Hence, the present Revision Petition.

Dr. Anshuman, learned counsel appearing for the petitioner has submitted that out of seven witnesses offered on behalf of the prosecution, Sanjay Paswan and Mohan Singh, who have been examined as P.W.s 3 and 6 and who have been shown to be independent persons who were witnesses to the search and seizure have not supported the prosecution version and have stated before the Trial Court that their signature were obtained by the Police Officer on a blank piece of paper.

It has further been submitted by Dr. Anshuman that a Constable who had accompanied the informant of this case to



the house of the petitioner where he is said to have been arrested has stated that nothing was recovered in his presence and that the officer-in-charge of the police station entered the house of the appellant and came back with a pistol which he showed to him and others. On the basis of the aforesaid deposition of the witnesses referred to above, it has been submitted that the entire case falls at the seams and no reliance can be placed on the statement of anybody that the firearm weapon was recovered from the possession of the petitioner.

The records as well as the judgments impugned reveal that the petitioner was surrounded by the Police Party and a search was made of his person. From his possession, a country made pistol was recovered. The aforesaid pistol was found to be in working condition by the Sergeant Major who has been examined as P.W. 1 of this case.

It has been submitted that the weapon in question may be under working condition but what was to be decided by the Courts below was whether such weapon was recovered from the possession of the petitioner.

In this context, it has been submitted that the Courts below did not care to look for as to how the weapon in question sealed and packed after the recovery. There is nothing on record to demonstrate that the same pistol which was seized from the possession of the petitioner was exhibited and produced before



the Court.

Similarly the statements of the other witnesses also would be of no consequence in the event of the factum of recovery of the weapon not being conclusively established/proved as against the petitioner.

The reasoning and logic assigned by the Trial Court as well as the Appellate Court that now a days persons who become witnesses to the seizure do not support the prosecution case, is not acceptable. Under what circumstances the raid was made is also not known.

From the F.I.R/self statement of the informant of this case, it appears that he had received secret information that the petitioner has been seen with firearm. This information appears to be absolutely doubtful in as much as a firearm is always kept concealed by any accused person; unless it is specifically stated that the weapon was displayed/flaunted.

Dr. Anshuman, learned counsel for the petitioner has also submitted that the manner in which the petitioner was apprehended by the Police Party gives rise to the suspicion that an element of force was used for nabbing the petitioner and showing the recovery of a weapon. This submission gets further corroborated by the fact that the petitioner was found present in his house and no sooner had he come out of his house, he was nabbed and the weapon was recovered.



The statements of P.Ws 3, 6 and 7, do raise doubt about the genuineness of the prosecution version.

The evidence against the petitioner, therefore, is not complete and the prosecution has not been able to establish the case against the petitioner beyond all reasonable doubts.

This Court has been informed that the petitioner has by now remained in jail for about nine months.

For the reasons stated above, the petitioner is definitely entitled to the benefit of doubt. The judgment and order of conviction by both the Court below are not fit to be sustained in the eyes of law and are therefore set aside.

The petitioner is in custody. He is directed to be released from jail forthwith, if not wanted in any other case.

Let a copy of this order be transmitted to the Superintendent of the concerned jail for information, compliance and needful action.

The Criminal Revision petition is accordingly allowed.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02/04/2018
Transmission Date	02/04/2018

