

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.986 of 2017

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

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Deelan Yadav, Son of Ram Chandra Yadav @ Chandar Yadav, Resident of
Village- Balachak, P.O.- Sadanandpur, P.S.- Ballia, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Sandip Kumar Gautam, Advocate.

For the Respondent : Mr. Parmeshwar Mehta, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 23-01-2018

With the consent of the parties, this revision petition has
been heard finally and is being disposed off.

2. The petitioner has challenged the judgment and order
of conviction dated 22.02.2016 passed by the learned Judicial
Magistrate, Ist Class, Begusarai in connection with Case No. 2881 of
2006 arising out of Ballia P.S. Case No. 206 of 2006 under Sections
25(1-B)a, 26/ 35 of the Arms Act and has been sentenced to undergo
R.I. for three years under both the counts and to pay a fine of Rs.
3000/- for both the offences and in default of payment of fine, to
suffer R.I. for a period of three months; the sentences however having
been ordered to run concurrently.

3. In appeal, the aforesaid judgment and order of
conviction has been upheld but the sentence imposed upon the



petitioner has been reduced to a period of one year for both the offences and the fine has been waived off.

4. The petitioner has challenged both the judgments by the courts below.

5. The first informant of this case, Ashok Kumar Singh, is a police officer, and he claims to have gone to the place of occurrence where he found two persons moving in a suspicious manner. One of the accused persons was caught, who disclosed his name as Ravindra Yadav @ Ravinder Yadav @ Rabbo and from his possession a .315 bore cartridge and one pistol was recovered. Aforesaid Ravindra Yadav @ Ravinder Yadav @ Rabbo is said to have named the petitioner as one of his associates who could manage to effect his escape. A seizure list was prepared whereafter the case was registered under various Sections of the Arms Act.

6. The trial court after examining six witnesses on behalf of the prosecution convicted the petitioner as aforesaid.

7. The informant Ashok Kumar Singh has been examined as P.W. 1 who has supported the prosecution version by stating that he had arrested Ravindra Yadav @ Ravinder Yadav @ Rabbo who had disclosed the name of the petitioner as one of the persons, who fled away from the spot.

8. The I.O. of this case viz. Lalan Kumar Das has also



been examined as P.W. 2 and he has testified only with respect to the investigation of the case. Though he has proved the charge sheet as well as the sanction order but has stated that he continued with further investigation against the petitioner and thereafter, submitted charge sheet against him also. The charge sheet against the petitioner has been exhibited as Ext. 5/1.

9. Kishore Kumar (P.W. 3) is another eye witness to the occurrence who also has only stated that out of the two accused persons, only one was arrested and he disclosed the name of the petitioner. He has further stated that both the accused persons including the petitioner were attired in red shirt.

10. Md. Mushtaq and Md. Tanveer are the seizure list witnesses who have been examined as P.Ws. 4 and 5 respectively and they have only talked about the preparation of seizure list in their presence.

11. Birendra Tanti, one of the prosecution witnesses has not supported the prosecution case and has been declared hostile.

12. On behalf of the defence, four witnesses were examined and they have deposed that the petitioner was falsely implicated in this case.

13. From the perusal of the evidence on record, it appears that the implication of the petitioner in the present case is



only on the basis of the confession of Ravindra Yadav @ Ravinder Yadav @ Rabbo, who had disclosed before the police that the petitioner had managed to run away. There is no evidence on record to suggest that while the petitioner fled away from the place of occurrence, he was carrying any firearm.

14. Both the courts below have committed an error in convicting the petitioner for the offences under Arms Act on such evidence. From the record, it further appears that the petitioner is the own brother of co-accused Ravindra Yadav @ Ravinder Yadav @ Rabbo who has been convicted in this case and whose conviction has been upheld up till the High Court but his sentence has been reduced to the period of custody which he had undergone.

15. So far as this petitioner is concerned, there is no material on record except his having being named by a co-accused, to justify his conviction.

16. As such the orders passed by the learned Judicial Magistrate, Ist Class, Begusarai in Case No. 2881 of 2006 arising out of Ballia P.S. Case No. 206 of 2006 and the learned Sessions Judge, Begusarai in Cr. Appeal No. 70 of 2016 are set aside.

17. The revision petition is allowed.

18. If the petitioner is not wanted in any other case, he be released from jail forthwith.



19. A copy of the judgment be communicated to the superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.01.2018
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