

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43273 of 2013

Arising Out of PS. Case No.-494 Year-2012 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

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Kumod Kumar S/O Sri B.P. Choudhary Resident Of Vill+ Post- Rasidpur, P.S-
Bachhwara, Distt- Begusarai At Present Posted As Police Inspector In Police
Line At Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Deepak Sah S/O Late Surendra Sah, Girdhari Sah Hatia Lohapatti, P.S-
Kotwali, District- Bhagalpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Madan Prasad Singh No-2
For the State	:	Mr. Rajendra Singh Shastri ji APP
For Opp.Party No.2	:	Mr. Sandeep Kumar

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 06-02-2018

This application under Section 482 of the Code of the Criminal Procedure has been filed for quashing the order dated 31.7.2013, passed by the C.J.M. Bhagalpur in Bhagalpur Kotwali P.S. case no. 494 of 2012 whereby final form dated 26.6.2013 submitted by the police was accepted.

Learned counsel for the petitioner has submitted that the fire arms belonging to different persons were recovered from the house of the opposite party no.2 which is not permissible in law. Both the fire arms were kept by this opposite party no.2 for illegal purpose and licence was in the name of the person who was not the resident of the locality. He further submitted that the opposite party no.2 has influence over the police and therefore,



final form has been submitted. The petitioner was noticed before passing of impugned order.

Learned counsel for the opposite party no.2 has appeared and submitted that case has been registered for the offence under the Arms Act and during investigation the police found that those arms were licensed arms and were kept in the house of the opposite party no.2 after proper authority of those persons and thereafter the police on proper appreciation of the statement of the witnesses recorded during investigation submitted final form in the case. The learned Magistrate after looking into the entire statements in the case diary has accepted the final form. The counsel for the opposite party no.2 further submitted that it is mentioned in the impugned order itself, that notice was issued to petitioner but none appeared on his behalf.

The protest petition was rejected because the petitioner did not appear to press the petition.

From the impugned order it is apparent that the police submitted final form in the case on 26.6.2013 stating the mistake of fact. The learned Magistrate has further mentioned in the impugned order that one protest petition was filed on behalf of the petitioner on 05.07.2013 but on the date of hearing, none appeared. Learned Magistrate has mentioned in



the impugned order that on earlier dates also no pairvee was made on behalf of the petitioner.

Section 25(1-B) of the Arms Act,1959 is quoted below:-

“(1-B) Whoever-

(a) acquires, has in his possession or carries any fire-arm or ammunition in contravention of section 3; or

(b) acquires, has in his possession or carries in any place specified by notification under section 4 any arms of such class or description as has been specified in that notification in contravention of that section; or

(c) sells or transfers any fire-arm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section(2) of section 8 or does any act in contravention of sub-section(1) of that section; or

(d) being a person to whom sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any fire-arm or ammunition in contravention of that section; or

(e) sells or transfers, or converts, repairs, tests or proves any fire-arm or ammunition in contravention of clause (b) of sub-section (1) of section 9; or

(f) brings into, or takes out of, India, any arms or ammunition in contravention of Section 10; or

(g) transports any arms or ammunition in contravention of section 12; or

(h) fails to deposit arms or ammunition as reacquired by sub-section (2) of section 3, or sub-section (1) of section 21; or

(I) being a manufacturer of, or dealer in, arms or ammunition, fails on being required to do so by rules made under section 44, to maintain a record or account or to make therein all such entries as are required by such rules or



intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries therefrom or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point out where the same are or is manufactured or kept,

shall be punishable with imprisonment for a term which shall not be less than [one year] but which may extend to three years and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than [one year].”

It is admitted position in this case that the recovered fire arms were licensed fire arms. One of the gun belonged to Shiv Shankar Sharma and other gun belonged to Dr. Suraj Narain Singh. Both were having valid license with respect to the aforesaid fire arms. Both the fire arms have been released in their favour by the learned Magistrate.

Learned counsel for the petitioner has submitted that composite order has been passed by the learned Court below which is illegal.

This Court from perusal of the impugned order finds that on the date of hearing on the issue of final form none appeared on behalf of the petitioner although notice was already served. Learned Magistrate has mentioned, in detail, that on earlier



date also none appeared on behalf of the petitioner to press the protest petition and on the date of hearing on the issue of final form also none appeared on behalf of the petitioner.

There is no provision in Code of Criminal Procedure that after filing of the protest petition the Court will wait for the other side to appear and press the protest petition. In the instant case, notice was already issued to the petitioner and he did not appear on the date of hearing on the issue of final form submitted by the police and also to press the protest petition.

In view of such, the Court below has not committed any illegality in passing the impugned order.

Accordingly, the application is dismissed.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
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