

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.785 of 2018

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

=====

1. Sanjay Kumar @ Shiv Kumar Yadav S/o Siyaram Yadav, R/o Vill.-
Murgiyachak, P.S.- Sare, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Himanshu Kumar Akela, Adv.

For the Respondent/s : Mr. Parmeshwar Mehta, APP.

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 17-09-2018

Heard the parties.

2. The present Criminal Revision application under Section 397 read with Section 401 of the Code of Criminal Procedure (Cr.P.C.) has been filed against the judgment and order dated 29.04.2017, passed in Criminal Appeal No. 33 of 2006 by the Sri Syed Nasiummudin, Presiding Officer, F.T.C.-II, Biharsharif, Nalanda, whereby, he has dismissed the appeal filed by the appellant/petitioner and confirmed the judgment and order dated 28.02.2018 passed by Sri. D. Mishra, learned Judicial Magistrate -1st Class, Nalanda in Trial No. 1659 of 2006 arising out of G.R. No. 1831 of 2005 (Asthawan P.S. Case No. 171 of 2005), by which, the appellant stood convicted under Section 25(1-b)a of the Arms



Act and was sentenced to undergo R.I. for two years with a fine of Rs. 6,00/- and in default of payment of fine, the petitioner shall undergo further R..I. for six months.

3. From perusal of the record it appears that case of prosecution is that the informant and other police officials were deputed on the occasion of Ganesh Puja to maintain the law and order and near village Murgiya Chak, situated south to Kabristan on Kharanja Road, the appellant/petitioner was seen carrying a rifle. Having seen the accused, informant chased him and arrested him and recovered the rifle loaded with .315 bore live cartridge and on demand no valid paper was produced by the appellant/petitioner. Thereafter, seizure list was prepared before the two independent witnesses, namely, Udai Yadav and Jamuna Yadav. On the basis of which, the Asthawan P.S. Case No. 171/2005 was instituted under Section 25(1-B)a, 26 of the Arms Act.

4. During trial three witnesses were examined. PW1 is the Seargent Major, who has examined and verified the seized articles, PW2 is the informant and PW3 is the Investigating Officer in this case and some documents has also been brought on record viz. Ext. 1 – Inspection Report, Ext. 2, 2/1 – Signature on seizure list, Ext. 3 – Written report, Ext. 3/1- Forwarding letter, Ext. 3/2 Endorsement on written report, Ext. 4 – Formal F.I.R, Ext. 5 – signature of Shiv Ram



on the forwarding letter, Ext. 6 Application made to C.J.M. for permission of inspection of seized arms, Ext. 7 – Sanction order, Ext. 8 – application for sanction order.

5. On behalf of defence, three witnesses have also been examined and their defence is that due to non fulfillment of illegal demand, the appellant/petitioner has falsely been made accused in the case.

6. Learned Trial Court on conclusion of trial convicted under Section 25(1-B)a of the Arms Act and sentenced him in the manner aforesaid.

7. Learned counsel for the revisionist-petitioner has submitted that no independent witness has been examined in the case and even the seizure list witnesses have been examined on behalf of defence and they have not supported the prosecution case of recovery from the possession of the petitioner rather they have stated that their signatures have been obtained forcefully and even no case number has been mentioned in the charge-sheet and though it is alleged that three cartridges were recovered but only one was produced.

8. However, it appears that generally no person from society comes forward to depose against the criminal and in such a situation, only due to the reason that the independent witnesses have not been examined, the evidence of other witnesses, though they are police officials, cannot be brushed aside. So far evidence of defence



witnesses that they signatures were obtained by the police and the revisionist-petitioner has been made accused due to ulterior motive is concerned, it appears that they have not made any complain to any authority, as such, the same was also not found reliable. Other submission that there was no case number mentioned in the seizure list is concerned, the same cannot be acceded to as the seizure list has been proved by the witnesses and the same has been brought on record, as such, I find no illegality in the impugned judgments.

9. However, so far quantum of sentence is concerned, it has been submitted by learned counsel for the revisionist – petitioner that revisionist – petitioner is first offender as there is nothing on record that he is an accused in connection with any other case and as he has already remained in judicial custody for five and half months, his sentence of R.I. for two years may be modified to the period already undergone by him in judicial custody.

10. It appears that minimum sentence of one year has been provided under Section 25(1-b)a and as such, the sentence cannot be reduced to less than a year. However, in view of the submission of learned counsel for revisionist – petitioner and also in view of the fact that there is nothing on record to show that petitioner is an accused in any other case and also considering the young age of the petitioner, the period of sentence of two years rigorous imprisonment awarded to



him under Section 25(1-b)a of the Arms Act is reduced to the period of one year of rigorous imprisonment, however, the fine of Rs. 6,00/- imposed on him shall remain intact and petitioner shall be entitled for set off for the period already remained in custody as per law.

11. With the above modification in sentence, this revision application is dismissed.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.09.2018
Transmission Date	20.09.2018

