

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.532 of 2016

Arising Out of PS. Case No.-25 Year-2013 Thana- CHANDRAMANDI District- Jamui

Janki Mandal, Son of Sukhdeo Mandal, resident of Village- Billi Gadi, P.S.-
Chakai, District- Jamui.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 494 of 2016

Arising Out of PS. Case No.-25 Year-2013 Thana- CHANDRAMANDI District- Jamui

Sujit Khaira @ Sujit Kr. Khaira @ Jagdish Kora, son of Mangra Khaira @
Charku Kora, resident of village Baratanr, P.S Chandramandih, Dist. Jamui, at
present village Pasraha, P.S Dharhara, Dist. Munger

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 532 of 2016)

For the Appellant/s : Mr. Prabhat Ranjan Singh, Adv.

For the Respondent/s : Mr. Zeyaul Hoda, APP

(In CRIMINAL APPEAL (SJ) No. 494 of 2016)

For the Appellant/s : Mr. Prabhat Ranjan Singh, Adv.

For the Respondent/s : Mr. Bipin Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 17-10-2019

Criminal Appeal (SJ) No.494 of 2016 wherein Sujit Khaira
@ Sujit Kumar Khaira @ Jagdish Kora is the appellant and
Criminal Appeal (SJ) No.532 of 2016 of 2016 wherein Janki Mandal
is the appellant have been heard analogously and are being disposed
of by a common judgment as, both the appeals arise out of common
judgment of conviction and order of sentence.



2. Both the appellants namely, Janki Mandal as well as Sujit Khaira @ Sujit Kumar Khaira @ Jagdish Kora have been found guilty for an offence punishable under Section 395/34 of the IPC and they each has been sentenced to undergo R.I. for 10 years as well as to pay fine appertaining to Rs.20,000/- and in default thereof to undergo S.I. for one year additionally, under Section 412 of the IPC and each one has been sentenced to undergo R.I. for 10 years as well as to pay fine appertaining to Rs.20,000/- and in default thereof to undergo S.I. for one year additionally, under Section 307/34 of the IPC and each one has been sentenced to undergo R.I. for 10 years as well as fine of Rs.10,000/- and in default thereof to undergo S.I. for one year additionally, under section 353/34 of the IPC and each one has been sentenced to undergo R.I. for two years and under Section 25(1-A) of the Arms Act and each one has been sentenced to undergo R.I. for 10 years as well as to pay fine appertaining to Rs.20,000/- and in default thereof to undergo S.I. for one year additionally, with a further direction that the sentences shall run concurrently vide judgment of conviction dated 30.04.2016 and the order of sentence dated 02.05.2016 passed by the learned Sessions Judge, Jamui in Sessions Trial No.457 of 2013/U.A.P). Case No.53 of 2015 arising out of Chandramandih P.S. Case No.25 of 2013.



3. Before coming to main track, certain salient feature of the present scenario appears necessary to be discussed. While the informant along with other police personnel, as directed by the S.D.P.O., Jhajha had gone to watch over the activity of the members of the outfit organization (Maowadi) they were informed regarding commission of dacoity at the State Bank of India, Nawadih Silphari Branch whereupon, the informant Hare Ram Sah informed the Police Station with a request to rush along with additional police force while he along with his team proceeded towards Nawadih Silphari. During midst of way, they met confrontation with the criminals, who were returning on five motorcycles after commission of dacoity at the State Bank of India, Nawadih Silphari Branch and during course thereof, there was cross firing and during course of hot chase, these two appellants were apprehended while the remaining managed to escape.

It is further evident that on the written report of the Manager of the State Bank of India, namely, Praveen Kumar Chandramandih P.S. Case No.24 of 2013 was registered against unknown wherein only these two appellants got remanded, charge-sheeted, prosecuted and convicted under Sessions Trial No.449 of 2013 and two separate appeals on their behalf are pending which are also going to be heard soon after the judgment. It is needless to say that after arrest as well as recovery of prohibited fire arms,



ammunition, wireless set, cash, on the self statement of a police official namely, Hare Ram Shah this case bearing Chandramandih P.S. Case No.25 of 2013 has been registered wherein both the appellants have been charge-sheeted keeping investigation pending against others, faced trial, met with conviction and these two appeals arise therefor.

As submitted at the end of the learned counsel for the appellants, during the course of investigation an effort was taken at the end of the appellants to have both the cases amalgamated and for that, they have also moved up to this Court (High Court) but in vain and that happens to be the origin of sailing of two cases independently with independent conclusion and, the chapter is found finally closed.

The prosecution case which originates on the self statement of Hare Ram Sah (PW-1) recorded on 09.03.2013 at 2.30 PM at village Jimatpur More near the house of Teni Ram disclosing therein that after having instructed by the Sub-Divisional Police Officer, Jhajha that the activity of members of outfit organization have been perceived towards village Dhurve whereupon instructed to visit the area, he along with other police officials rushed. While they were at Jimatpur Chowk, he received information with regard to commission of dacoity in the State Bank of India, Nawadih Silphari Branch and during course thereof, the dacoits who were



fully armed with engaged in firing. After communicating the information to the police station including the S.D.P.O. as well as requesting to arrive at the place of occurrence with additional police force, he proceeded towards the same and during course thereof, they have seen 9 persons having over 5 motorcycles coming who, seeing the police began to fire and scattered in different direction in order to have safe passage. During course thereof, they have also retaliated and, they succeeded in chasing the culprits fleeing towards particular direction who after seeing being chased by the police left the motorcycle and ran away, however, were apprehended on chase. On query, they disclosed their identity as Sujit Khaira as well as Janki Mandal. Furthermore on search, from the possession of Sujit Khaira A.K.-47 regular folding rifle bearing No. AN-665845A, But no.58648 having 15 live cartridges loaded in magazine so detailed, one hand set and a sum of Rs.5,22,000/-, from the possession of Janki Mandal, one regular carbine bearing No.1A1-163165527, SAF-1999 and Bridge Block AK8-1005-000827, SAF-1999 having endorsement over magazine OFDC-96 having 22 round cartridges of 9 m.m. were found. Apart from that 9-10 cartridges of 9 m.m. and 32 cartridges loaded in the magazine were also seized. One hand set as well as Nokia Mobile has also been recovered and for that seizure list was prepared in presence of two seizure list witnesses. They failed to produce the relevant document with regard to the



possession of the aforesaid arms and ammunition, hand set as well as also failed to explain cash in such huge quantity. Copy of the seizure list was served upon the respective accused who put their signature/LTI in token thereof.

4. There happens to be further disclosure at the end of the informant with regard to details of firing having made at their end. During course of returning they have also seized motorcycle which both the accused have had left during course of chase and for that, seizure list was also prepared in presence of Manoranjan Pandey and Arjun Pandey. The vehicle was searched and there happens to be recovery in terms of seizure list. The apprehended accused also disclosed identity of their associates who succeeded in their escape. Till then the other police official also arrived and then, there happens to be description with regard thereto.

5. As stated above, after registration of Chandramandih P.S. Case No.25 of 2013, investigation commenced and concluded by way of submission of charge-sheet against these appellants only keeping the investigation pending against others and the trial commenced which ultimately concluded in recording finding of guilt followed with sentence, subject matter of the instant appeal.

6. The defence case as is evident from the cross-examination as well as statement recorded under Section 313 Cr.P.C. is that of complete denial. It has also been pleaded that the main



accused after committing dacoity succeeded in their escape but, the police officials only to patronize themselves caught innocent persons and got them involved in this case. That being so, there happens to be complete denial at the end of appellants with regard to recovery of prohibited arms and ammunition, cash, wireless set and mobile from their possession. To substantiate the same, oral as well as documentary evidence have been led at their end.

7. In order to substantiate its case the prosecution has examined altogether six PWs who are, PW-1, Hare Ram Sah (informant), PW2, Durgesh Ram (I.O.), PW-3 Rangeswar Sharma, PW-4, Pradip Kumr, PW-5, Uday Kumar Singh (Sergeant Major) and PW-6, Krishna Prasad Singh and side by side also exhibited self statement (Ext. 1), seizure list (Ext. 2 series). Then there happens to be exhibit of material exhibit and the same runs under material Exhibits I to LXXXV, carbine, magazine, A.K.-47, magazine, ammunition (cartridges).

8. In likewise manner, 2 DWs have been examined at the end of the appellants who are, Manoranjan Pandey (DW-1) and Arjun Pandey (DW-2). They have also exhibited Ext.-A series, the signature of all the seizure list witnesses, Ext.B, C.C. of deposition of Chandra Shekhar Sudhansu (PW-3) in Sessions Trial No.449 of 2013.



9. Many fold argument has been raised on behalf of learned counsel for the appellants while challenging the judgment impugned. It has been submitted that from plain reading of the judgment impugned, it is evident that the learned lower court has proceeded in mechanical manner as, there happens to be no finding at the end of the learned lower court regarding Unlawful Activities (Prevention) Act, 1967, although the appellants have also been charged thereunder. Had there been proper judicious consideration of the materials then in that circumstance, such lapses would not have occurred. That means to say, the mechanical way of consideration of material, align to a judicial proceeding is sufficient to nullify the finding so recorded by the learned lower court.

10. Furthermore, it has also been submitted that although Section 100(5) of the Cr.P.C. did not warrant examination of seizure list witnesses but in the facts and circumstances of the case their presence was utmost required because of the fact that the allegation as levelled on behalf of the prosecution itself divulges that apprehension of these appellants were not from the place where the dacoity was committed, nor the search and seizure regarding arms and ammunition along with cash, hand-set, manner whereunder it has been done create doubt because of the fact that there happens to be no disclosure in the self statement of the informant that when they seized the aforesaid arms, there was a smoke/smell of gun



powder coming out from the barrel in spite of the fact that there happens to be an allegation of cross-firing. In likewise manner, the other improbability which also suggest false implication of the appellants is from the self statement as well as from the search and seizure list. It is evident that A.K.-47 rifle was loaded. There happens to be disclosure of cross-firing since before then, in that circumstance the appellants would not be scared the prosecution party as ultimately they are going to be apprehended by them. So these are the circumstances which suggest the appellants having been treated as sacrificial goat.

11. Now coming to the facts of the case, it has been submitted that save and except to affix that it happens to be A.K.-47 rifle, carbine, magazine during course of evidence none of the witnesses has disclosed that those arms happens to be prohibited arms/ammunition. Prohibited arms/ammunition is defined under Section 2(h) and (i) of the Arms Act. When there happens to be lacking at the end of the prosecution, the conviction and sentence for an offence punishable under Section 25(1-A) of the Arms Act would not justify. Furthermore, it has also been argued that the appellants remained under custody since 2013 and so, the sentence be modified as already undergone.

12. The learned Additional Public Prosecutor while controverting the submissions made on behalf of the learned counsel



for the appellants has submitted that whatever the argument has been advanced at the end of the learned counsel for the appellants is fallacious one because of the fact that A.K.-47 rifle by its nomenclature specify the special category of rifle being automatic in nature and the finding of Sergeant Major (PW-5) do corroborate. So, it happens to be prohibited arms and so conviction and sentence under Section 25(1-A) of the Arms Act is legally entertainable. Furthermore, it has also been submitted that DW-1 and DW-2 are not the witness of search and seizure of arms, ammunition, cash, hand-set (wireless) and so, their evidences could not be found adverse to the prosecution. Moreover, they have admitted their presence as well as presence of other seizure list witness and on account thereof, the seizure is found duly substantiated. As such, the judgment impugned did not attract interference.

13. First of all the evidence of PW-5 is to be seen. PW-5, the Sergeant Major, who on being produced at the end of the I.O. of Chandramandih P.S. Case No.25 of 2013 the arms and ammunition in sealed condition. He examined the same after removing the seal and then, categorized the arms and ammunition by specific mark having over at his end. U-1 is the factory made automatic rifle bearing no.USA-AN-6658 and the aforesaid number is found duly incorporated in the Fardbeyan. That means to say, the weapon so examined by PW-5 happens to be the same weapon which was



seized at the spot from the possession of Sujit Khaira. Then there happens to be details of the carbine, cartridges, seized from Sujit as well as Janki being alive, the weapon being effective. So far cross-examination is concerned, at paragraph 6 he has stated that there was signature of C.J.M. over the seized arms and ammunition but he had not mentioned the same in his report. Then has stated that he is not remembering whether there was any specific marks of identification. He is not remembering whether there was signature of the accused as well as the witnesses over the respective weapons/ammunitions. He has further stated that he had not fired from the weapon but, he had tested the same through different process. On that very score he was not tested. He has further stated that he was not authorised to see whether smoke of gun powder was there or not as the aforesaid job is entrusted to the F.S.L.

14. PW-6 is the witness who had brought the material exhibits and got it exhibited. There happens to be specific disclosure that the same was produced before the court in sealed condition. During cross-examination, he has stated that the bags in which arms and ammunition were kept and sealed do not bear the signature of police official or any authority. He has also stated that there happens to be signature over the arms and ammunition but, he is not knowing whose signature happens to be and the designation of the signatory.



15. Now coming to material witnesses, it is evident that PW-1, PW-3 and PW-4 are over the materials facts while PW-2 is I.O.. P.W-1 has stated that on 09.03.2013 he was directed by the SDPO, Jhajha to proceed towards village Ghutve as activity of members of outfit organization has been reported and so, after constituting a raiding party, he proceeded. While they were at Jimatpur More, he received information over mobile regarding commission of dacoity at State Bank of India, Nawadih Silphari Branch and during course thereof, firing was also done by the miscreants. They proceeded towards the same after informing the SDPO as well as Chandramandih Police Station to come with additional police force. When they were towards Nawadih Silphari, they found 9 persons coming over 5 motorcycles who seeing the police began to fire and, taken different routes in order to escape themselves. During course of chase, they have chased the motorcycles which was driving towards northern direction and, seeing themselves being chased, the miscreants who were two in number, after leaving the motorcycle ran but, were caught. They were interrogated and on search, from the possession of Jujit Khaira a loaded A.K.-47 rifle, cartridges, hand-set (wireless), Rs.5,22,000/- from a bag was seized while from the possession of Janki Mandal loaded 9 m.m. carbine, cartridges, hand-set (wireless), mobile were seized and for that, in presence of Amit Kumr and Nitya Nand



Singh, the search cum seizure list was prepared. They have, on interrogation, also disclosed the identity of their associates who succeeded in their escape (so named). They have also confessed that they along with their associates have committed dacoity at the State Bank of India, Nawadih, Silphari Branch and, the recovered cash happens to be booty thereof. Till then, the SDPO along with other police officials, including CRPF personnel arrived. He recorded his self statement and then, coming to the Police Station got it registered, exhibited the documents and identified the accused.

16. During course of cross-examination, he has admitted registration of two cases, the another one on the written report of the Branch Manager, Further, he also admitted that both the cases were investigated upon by the common I.O. Durgesh Ram (PW-2). Then he was cross-examined with regard to special identity, procedure of investigation, sanction etc. relating to Unlawful Activities (Prevention) Act, 1967. Then there happens to cross-examination with regard to delay in receipt of FIR at the CJM office on 11.03.2013 beyond 24 hours. In paragraph 8 he has stated that during course of cross firing, none of the members of the either side got injured. However, he clarified that other co-accused who managed to escape got injured or not he is unable to say. In paragraph 9 he has stated that he has not put specific mark over the seized article at the place of occurrence nor he sealed the same at the



place of occurrence. There was a slip affixed with the cash so recovered but he had not mentioned the same in his self statement. He had not mentioned the serial number of the cash so received. Then he denied the suggestion that they had left the actual culprit and, got the accused persons implicated with malafide intention. Then there happens to be cross-examination at the end of Janki Mandal and during course thereof, he denied the suggestion that there was no cross firing, they used to sell the cartridges in black market and so, such kind of story has been advanced. Then he denied the suggestion that seizure list happens to be forged and fabricated. He has further stated that he had not affixed paper over the seized article duly signed by the witness and accused. Then he denied the suggestion that accused while going to Baidyanath Dham, was apprehended illegally and got him implicated in this case.

17. PW-3 and PW-4 are the police personnels who were along with PW-1 and, during course of examination-in-chief they have supported the case of the prosecution. PW-3 during cross-examination at paragraph 7 has stated that his signature was not at all obtained over any document. In paragraph 8 he ha stated that he had seen the arms and ammunition openly at the police station after having seized by them. Whether it was sealed subsequently or not he is unable to say. He had seen the aforesaid article before being



deposited at the Malkhana. In paragraph 10 he has disclosed that he had fired 5 rounds.

18. PW-4 during course of cross-examination at paragraph 3 has stated that he is unable to disclose the registration number of the motorcycle as, there was no number plate. At paragraph 4 he has stated that first of all, after meeting with the villagers, they have gone to bank and then, to the police station. He has further stated that as they had apprehended the accused and carried them to the police station so meeting with the accused at the police station does not arise. He has further stated that both the accused were neither arrested at the bank nor at the road rather they were apprehended on chase by them which, he had not stated like so. The aforesaid accused were handed over but no paper was prepared therefor. At the time when both the accused were produced, there was no bleeding from their body. At paragraph 6 he has stated that all the arms and ammunition were recovered by him but no document was prepared by him rather was prepared by Hare Ram.

19. PW-2 is the I.O. He on the alleged date was Officer Incharge of Chakai Police Station and he was entrusted with the investigation of Chandramandih P.S. Case No.25 of 2013. Accordingly, investigation was taken up. He visited the place of occurrence which happens to be 2 kilometer away from village Chorkatta, next to Nawada Bahiyar having boundary East open



space and then at the distance of 2 kilometer Madhopur village lying, west open and then at the distance of 1½ kilometer Nawada village. In likewise manner in the north at the distance of 1½ kilometer Melani village is lying and similar way at the southern side at the distance of 2 kilometer Dhawarar village lying. During course of inspection of place of occurrence he had found empty cartridges and for that seizure list was prepared. Recorded statement of the witnesses, got the seized arms and ammunition examined by the Sergeant Major. Also recorded inculpatory extra judicial confessional statement of Sujit Khaira and Janki Mandal and then, after completing investigation submitted charge-sheet against these accused keeping investigation pending against others. Identified the accused. During course of cross-examination at paragraph 5 he has stated that he was not the member of the raiding party. He has further stated that as per paragraph 74 of the case diary, there happens to be description of direction of Superintendent of Police whereunder the SDPO has been directed to investigate the case, even then he continued with the investigation and submitted charge-sheet. Then there happens to be cross-examination at paragraph 6 relating to Unlawful Activities (Prevention) Act. In paragraph 7 he has admitted to be the I.O. of Chandramandih P.S. Case No.24 of 2013 also registered on the basis of written report of the Branch Manager. In paragraph 8 he has stated that during the course of



investigation none of the witnesses had stated that they have sustained injury. In paragraph 12 he has stated that he had not produced the arms and ammunition before the C.J.M. along with the accused rather he had produced the same after two days on 12.03.2013 and for that, he is unable to give any cogent explanation. He has further stated that there happens to be no specific mark of identification over the seizure of arms and ammunition. He had not taken the finger print. In paragraph 13 he has stated that he had investigated to ascertain the ownership of the motorcycle but could not be traced out. In paragraph 14 he has stated that in spite of direction having from the Dy.S.P. for examination of independent witness, he had not done so. In paragraph 16 he has stated that he had not conducted T.I. parade relating to seized cash. In likewise manner, he had not taken recourse of getting the judicial confession recorded of the accused. In paragraph 17 he has stated that there happens to be no description whether cash was produced before the C.J.M. or not. Then he denied the suggestion that accused persons have falsely been implicated in this case.

On behalf of Janki Mandal, he at paragraph 20 has stated that he had remanded the accused on 10.03.2013 but at which time he is unable to say. In paragraph 11 he has stated that the informant had handed over the arms and ammunition in a sealed cover but had not mentioned it in the case diary. How much articles were sealed he



is unable to say. In paragraph 22 he has stated that save and except the police constable none other have been examined.

20. Two DWs have been examined. Those DWs are seizure list witnesses relating to recovery of motorcycle. In usual phenomenon they have admitted their signature but with an explanation that they along with other including both the appellants/accused were taken into custody by the police. Out of whom appellants were retained while they were released after having their signature on a blank paper.

21. Right from the Fardbeyan there happens to be specific disclosure of serial no. of A.K.-47 rifle as well as carbine which is found duly tallied with the search cum seizure list and, is also found duly corroborated by the evidence of PW-5, the Sergeant Major. There happens to be no cross-examination either from PW-1 (informant), PW-2 (I.O.) or PW-5, the Sergeant Major over serial number and, while material exhibits were produced through PW-6, the defence could not cross-examine nor shown the material exhibits in order to confront that the seized articles were not the same which were seized or, having description in the seizure list, Fardbeyan or in the evidence of PW-4. So, absence of specific mark over the respective weapons, in the facts and circumstances of the case, could not be said that it has caused prejudice to the defence and further, there was any scope left for impersonation. That means to



say, failure, if any, at the end of the prosecution in properly handling the manner of search and seizure during course of which, they failed to put specific mark nor arms and ammunition could cast doubt in the prosecution case, more particularly when the same happens to be material exhibits having no challenge at the end of the appellants.

Moreover, putting of specific mark is only to put safeguard upon the interest of the accused making out any scope of false implication, is found completely watered down by way of presence of serial number in the search and seizure list, in the Fardbeyan as well as in the ballistic examination report and further withdrawing themselves by the appellants in cross-examining the PW-6, or showing before the court at the relevant juncture that the material exhibits are not possessing the same serial number. That being so, the recovery of arms and ammunition is found duly substantiated.

22. Now the next question arose whether the seized articles happens to be prohibited arms and ammunition. Section 2 (1) (h) of the Arms Act defines the prohibited ammunition while Section 2 (1) (i) of the Arms Act carries definition of prohibited arms and for better appreciation the same is quoted below:

“2. Definitions and interpretation.- (1) In this Act, unless the context otherwise requires,-

xxx xxx xxx xxx
xxx xxx xxx xxx

(h) “prohibited ammunition” means any ammunition, containing, or designed or adapted to contain, any noxious liquid, gas or other such



thing, and includes rockets, bombs, grenades, shells, ²[missiles] articles designed for torpedo service and submarine mining and such other articles as the Central Government may, by notification in the Official Gazette, specify to be prohibited ammunition;

(i) “prohibited arms” means-

(i) fire-arms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or

(ii) weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing, and includes artillery, anti-aircraft and anti-tank fir-arms and such other arms as the Central Government may, by notification in the Official Gazette, specify to be prohibited arms;”

There happens to be prohibition to possess the prohibited arms and ammunition in accordance with Section 7 of the Arms Act, and is punishable under Section 25(1-A) of the Arms Act. Furthermore, Rule 3 of the Arms Rules identifies the prohibited arm and classified in under Schedule I, fully covers the weapon, as the finding so recorded by the Sergeant Major (PW-5) explains the same and so the arms and ammunition which has been seized and produced happens to be the prohibited arms and ammunition.

23. Because of the fact that irrespective of disclosure having at the end of the prosecution witnesses, PW-1, PW-3 and PW-4 none of them have specifically identified the appellants having been engaged in firing nor, by way of corroboration any other evidence has been adduced at the end of the prosecution to



substantiate whether the arms so recovered was ever used. There happens to be complete silence in the seizure list that at the time of seizure smell of gun power was coming out from the barrel of carbine as well as A.K.-47 the Sergeant Major did justify the same. In the Fardbeyan and even during the course of evidence, there happens to be no proper allegation attributed against the appellants, that they fired and so, the finding with regard to Section 307/34 of the IPC is not at all found, duly substantiated and in likewise manner, under Section 353/34 of the IPC because of the fact that in absence of evidence of firing at the end of the appellants, they really put any kind of hurdle in due discharge of public duty. Mere fleeing could not be considered to be putting hurdle/obstruction in due discharge of public duty. In likewise manner, there happens to be no conclusive evidence that these appellants were members of the dacoits who committed dacoity at the State Bank of India, Nawadih Silphari Branch nor their identification has been as one of the members of the dacoits as for that another case was instituted wherein appellants were already remanded, contested the trial, convicted and having under challenge under different appeals. Furthermore, none of the Bank officials have been made witness nor any of them has been examined and so, Section 395 of the IPC would also not be attracted. So far recovery of Rs.5,22,000/- is concerned, again there happens to be no evidence to connect that it



happens to be booty. Mere possession of cash would not justify the culpability even unexplained unless and until possession is prohibited in the eye of law. Possession of money irrespective of quantum is not prohibited even unexplained would be subject to I.T.Act. So far, criminal prosecution is concerned, there must be connectivity. Furthermore, institution of other case relating thereto did not justify the finding of the lower court on that score, even under garb of Section 300 of the Cr.P.C. as well as Article 20(2) of the Constitution of India.

24. Now coming to the propriety of judgment impugned, it is evident that the learned lower court has not discussed over Unlawful Activities (Prevention) Act although, the appellants have been charged therefor. Moreover, neither there happens to be investigation by the Dy.S.P. as provided under Section 43 of the Unlawful Activities (Prevention) Act, 1967 nor there happens to be sanction in accordance with Section 45 of the said Act. That being so the further discussion over the issue will be nothing but keyboat.

25. Before concluding it is made clear that as per Section 39, sanction is required for violation of Section 3, and not for Section 7, that means to say, possession of prohibited arms and ammunition.

26. From the evidence available on record, it is abundantly clear that prosecution has succeeded in substantiating its case



beyond all reasonable doubts relating to Section 25(1-A) of the Arms Act and for that, the finding so recorded by the learned lower court is hereby concluded and affirmed. In likewise manner, the sentence so inflicted by the lower court is also duly approved as possession of AK-47 rifle as well as carbine speak a lot about culpability of the appellants.

27. Accordingly, these appeals are partly allowed. The appellants who are in custody will remain under custody till saturation of the period of sentence so inflicted relating to Section 25(1-A) of the Arms Act.

(Aditya Kumar Trivedi, J)

skpathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.11.2019
Transmission Date	05.11.2019

