

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.24 of 2018

Arising Out of PS. Case No.-93 Year-2016 Thana- BACHHWARA District- Begusarai

Pramod Rai Son of Late Dhaniklal Rai, resident of Village Chamtha Rajauli,
P.S. Bachhwara, District- Begusarai.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur with
Mr. Pravin Kumar and
Ms. Swati Sinha, Advocates

For the Respondent/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 04-07-2019

Heard Mr. Ajay Kumar Thakur, learned counsel along with Ms. Swati Sinha, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned APP for the State.

2. The petitioner has moved the Court under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') being aggrieved by the judgment and order dated 08.11.2017 passed by the District and Sessions Judge, Begusarai in Cr. Appeal No. 89 of 2017 by which the judgment and order of conviction and sentence dated 22.09.2017 passed by the Chief Judicial Magistrate, Begusarai in G.R. No. 1950 of 2016 arising out of Bachhwara P.S. Case No. 93 of 2016 has been upheld.



3 The petitioner along with co-accused Ramchandra Mahton faced trial in G.R. No. 1950 of 2016 arising out of Bachhwara P.S. case No. 93 of 2016 (Tr. No. 799 of 2017) and, upon trial, was convicted under Sections 25 (1-B)a/ 35 as well as 26/35 of the Arms Act, 1959 and sentenced to undergo rigorous imprisonment of three years and fine of Rs. 5000/- for offence under Sections 25 (1-B)a/35 of the Arms Act and further rigorous imprisonment of three years and fine of Rs. 5000/- for offence under Sections 26/35 of the Arms Act. Criminal Appeal No. 89 of 2017 against the same was also dismissed by judgment and order dated 08.11.2017.

4. The petitioner along with co accused is alleged to have been caught and from the possession of the petitioner a loaded countrymade firearm with five cartridges is said to have been recovered.

5. Learned counsel for the petitioner submitted that the trial itself was not fit to proceed on the basis of the FIR and the supporting documents but unfortunately even after a full fledged trial where admittedly legal provisions have been flouted, both the Trial Court as well as the Appellate Court have failed to appreciate any such issue raised on behalf of the petitioner. It was submitted that there were no independent witnesses while making search and



seizure under Section 100 of the Code and further, any arms and ammunition confiscated, captured or seized has to be in conformity with the requirement of Section 103 (3) of the Arms Rules, 2016. It was submitted that as per seizure list itself, witnesses were part of the raiding team, i.e., the police officers and no independent witness. Learned counsel submitted that the law requires that witnesses should be independent so as to prevent any chance of false implication. It was further submitted that in the deposition itself PW-4, at paragraph no. 18, has stated that nobody was called from the village to be witness to such search and seizure. It was submitted that even with regard to the requirement of law of sealing the weapons and arms, it has come in evidence that from the place of occurrence the arms were brought to the police station unsealed where it was handed over for being kept in the *malkhana*. For such proposition, learned counsel relied upon the decision of the Hon'ble Supreme Court in **Sahib Singh v. State of Punjab** reported as **AIR 1997 Supreme Court 2417**, the relevant being at paragraph no. 7.

6. Learned counsel further drew the attention of the Court to the discussions made in the appellate order and submitted that the court has erred while dealing with the matter, inasmuch as, the submissions and arguments on behalf of the petitioner with



regard to non-consideration of his case, based on the depositions of witnesses, have not been dealt with, muchless considered in the order.

7. Learned APP, upon going through the Lower Court Records, fairly submitted that neither independent witnesses were called nor any attempt was made to call them, as has come during deposition of witnesses themselves and further that the firearm and ammunitions allegedly recovered from the possession of the petitioner were not sealed at the place of occurrence, at least till the time it was deposited in the *malkhana* of the police station.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the orders passed by the Trial Court as well as the Appellate Court cannot be sustained.

9. The law requires some basic exercise to be done by the authorities, moreso as it is a stringent law and, thus, the legislature took ample care to safeguard the rights of individuals, who may be charged with any offence by the authorities of the State while exercising sovereign powers. In the present case, the law relating to search and seizure and confiscation of firearms and ammunitions mandatorily requires that whenever somebody is suspected of or any place is suspected to have any material which



is in contravention of the statutes, the agencies of the State, especially the police, though have a right to go and search the said place but when it comes to recording a seizure, there have to be independent persons who may be present there or if nobody is present, efforts have to be made to call the neighbours who may be there and only upon their refusal to be a witness to the exercise, such fact has to be recorded and then only a person from the raiding party is eligible to act as seizure witness. In the present case, admittedly there are no independent witnesses. The matter becomes worse for the prosecution as in his deposition, P.W. 4, a Sub Inspector, who was a member of the raiding party, has categorically stated that nobody was called from the village to be a witness to the seizure or to sign on the seizure list. Further, as has rightly been pointed out by learned counsel for the petitioner, the law also contemplates that arms and ammunitions allegedly recovered/seized be sealed. This is another safeguard given by the statutes so as to eliminate the possibility of any tampering or false implication. In the present case, this fact has also been admitted that the recovered materials were brought unsealed to the police station and deposited in the *malkhana*.

10. In this connection, reliance was rightly placed by learned counsel for the petitioner on the decision of the Hon'ble



Supreme Court in **Sahib Singh** (supra) which squarely covers the facts and circumstances of the present case.

11. For reasons aforesaid, the application is allowed. The judgment and order impugned dated 22.09.2017 passed in G.R. No. 1950 of 2016 arising out of Bachhwara P.S. Case No. 93 of 2016, as far as it relates to the petitioner as well as the appellate order dated 08.11.2017 passed in Cr. Appeal No. 89 of 2017 are set aside. The petitioner stands discharged from the liability of his bail bonds.

12. Let the Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J)

Anjani/-

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