

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.37 of 2018

Arising Out of PS. Case No.-15 Year-2005 Thana- SAHPUR District- Bhojpur

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Brij Bihari Pandey S/o-Chhathu Pandey, R/o Village-Banahi, P.S.-Shahpur,
District-Bhojpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Singh
For the Respondent/s : Ms. Reena Sinha

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 06-02-2019

Heard parties.

This criminal revision petition is directed against the order dated 22.02.2016 passed by A.C.J.M., VII Ara (Bhojpur) in Trial No.525 of 2016 (arising out of Shahpur P.S. 15 of 2005) G.R. No. 244 of 2005 instituted under Sections 25 (1-b)a, 26/35 of Arms Act by which petition dated 10.05.2007 seeking discharge under Section 239 of Cr.P.C. has been rejected.

F.I.R. was instituted on 05.02.2005 against petitioner and his wife on the basis of self-statement of A.S.I. Sheo Kumar Singh that on 05.02.2005, raid was conducted in the house of petitioner and one country made revolver along with three cartilages were recovered from his house and wife of petitioner Gangotri Devi was arrested while petitioner escaped and on



such statement, Shahpur P.S. Case No.15 of 2005 dated 05.02.2005 was registered under Section 25 (1-b)a, 26/35 and petitioner and his wife were made accused, however, during pendency of case, wife of the petitioner died and case against her stood abated.

After investigation, charge sheet was submitted on 28.02.2006 and cognizance was taken 28.04.2006 against which petitioner had filed Cr. Mis. No. 52765 of 2006 which was disposed of on 04.01.2007 with liberty to raise all the points at the time of framing of charge.

Petitioner moved an application on 10.05.2007 in the trial court under Section 239 of Cr.P.C. for discharge which was rejected by the trial court on 22.02.2016 and aggrieved by said order, present revision petition has been filed.

The trial court while rejecting the discharge petition of petitioner by its order dated 22.02.2016 has considered all the issues raised by the petitioner. Petitioner has submitted that since he was not arrested on the spot, as such, no proceeding can be initiated against him under Arms Act which has been negatived by the trial court. The trial court held that since arms and ammunition were recovered from the house of the petitioner as such, he was having constructive possession over



the arms and even the wife of petitioner also confessed that arms and ammunition kept in the house belong to the petitioner which were illegal arms. The second point raised by the petitioner was that the search and seizure was not made in presence of independent witnesses and the police personnels have been made witnesses of the search and seizure as such, search and seizure is bad in law. The trial court has held that in absence of independent witnesses there is no option left but Chaukidars of the area were made seizure list witnesses and on this ground, search and seizure made cannot be held to be illegal. It has further held by the trial Court that the recovered firearms were in working condition and the sanction to prosecute petitioner was on record and relying upon various judgments of Apex Court on the issue, rejected the discharge petition holding that there were sufficient evidences before the court for framing the charge. The trial court has referred to judgment of Apex Court **State of Delhi Vs. Gyan Devi [2000 Volume 8 SCC 239]** where the Apex Court has held that at the stage of framing of charge, the trial court is not suppose to examine and assess in detail the materials placed on the record by the prosecution nor is it for the court to consider the sufficiency of material to establish the offence as alleged against



the accused persons. At the stage of charge, the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence as alleged has been made out against the accused persons.

The trial court after considering the evidences against the petitioner available in the case diary and referring to the relevant paragraph of case diary has dismissed the discharge petition filed under Section 239 of Cr.P.C. of the petitioner. The learned counsel for the petitioner has repeated the same arguments which were made before the trial court.

After hearing the parties and perusing the order passed by the trial court, rejecting the discharge petition filed by petitioner under Section 239 of Cr.P.C., this Court does not find any error, irregularity, illegality in the order passed by the trial court, accordingly, the present criminal petition is dismissed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2019
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