

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.170 of 2018

Arising Out of PS. Case No.-125 Year-2011 Thana- KOCHAS District- Rohtas

Vikash Ranjan Singh @ Golu, S/o Devendra Kumar Singh, R/o Village-
Jagdev Nagar (West Railway Gumti), P.S.- Nawada, District- Bhojpur (Arah)
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Md. Mushtaque Alam, Advocate Mr. Jay Prakash Singh, Advocate
For the Opposite Party/s:		Mr. Satyavarat Verma, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 21-10-2019

Heard learned counsel for the petitioner and 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') against the judgment dated 17.11.2017 passed by the Sessions Judge, Rohtas, in Cr. Appeal No.46 of 2017 by which the judgment and order of conviction and sentence dated 17.07.2017 passed by the ACJM-V cum Sub Judge-XIII, Sasaram, Rohtas, in Kochas P.S. Case No.125 of 2011 has been upheld.

3. The petitioner along with two others is said to have been caught by the public after having shot a person. From possession of others, loaded country made pistol was recovered but from the petitioner no firearm or ammunition was recovered. Upon trial, the



petitioner was convicted and sentenced. The appeal was also dismissed.

4. Learned counsel for the petitioner submitted that even if it is taken that petitioner was caught by the mob, but during trial, the informant has categorically stated that the petitioner was caught outside the vehicle and there being no recovery of any firearm or ammunition and also there being neither any suggestion nor evidence to establish that he was aware of what the other two accused had in their possession, the conviction is bad in law. It was submitted that on the contrary, the informant has categorically stated that from the petitioner only one mobile, ATM card in his father's name and bus ticket were recovered and there was no recovery of any firearm or ammunition.

5. Learned APP fairly submitted that as per materials on record and what has come during evidence of witnesses, including the informant's version it is correct that the petitioner was caught outside the vehicle and no recovery of any firearm or ammunition was made from him. He further submitted that from the entire police papers and the lower court records, it does not transpire that there is any evidence adduced during trial to link the petitioner to the crime or to establish that he had knowledge of weapon being carried by the other two co-accused, much less, its use.



6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that requirement of law with regard to convicting the petitioner under Section 25(1-b)a, 26, 35 of the Arms Act has not been satisfied.

7. For the petitioner to have been found guilty of offence under the aforesaid sections it was required to be proved during trial that he had knowledge of firearms being in possession of the two other persons, who are said to have been travelling with him on the Scorpio vehicle. In the present case, it is not in dispute that there has been no recovery of firearm or ammunition from the petitioner and that he was caught outside the vehicle. Thus, both on being an accomplice with the two other accused as also with regard to the petitioner being aware of the fact of firearm being carried by the other two persons have neither been alleged nor proved during trial. In fact, the Court may observe that such suggestion was not even given by the prosecution while examining the witnesses or even put to the petitioner at the stage of 313 of the Code, with regard to him being aware of firearm and ammunition being possessed by the other two co-accused. In such admitted background, the petitioner is entitled to be given benefit of such lack of material, which is required in law to hold him guilty.



8. For reasons aforesaid, the application is allowed. The judgment of conviction and sentence dated 17.07.2017 passed by the ACJM-V cum Sub Judge-XIII, Sasaram, Rohtas, in GR Case No.3220 of 2011/ Tr. No.708 of 2017/ CIS No.3324 of 2016 relating to Kochas P.S. Case No.125 of 2011 as well as judgment dated 17.11.2017 passed in Cr. Appeal No.46 of 2017 by the Sessions Judge, Rohtas, stand set aside.

9. The petitioner, who is in custody, is directed to be released forthwith.

(Ahsanuddin Amanullah, J)

J. Alam/-

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