

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 1169 of 2018

Arising Out of P.S. Case No.-326 Year-2003 Thana- JADOPUR District- Gopalganj

1. Girish Yadav, Son of Mangaroo Yadav, Resident of Village- Nawada Gamharia, P.S.- Jadopur, District- Gopalganj.
2. Subhash Yadav Son of Nagina Yadav, Resident of Village- Nawada Semra, Tola, P.S.- Jadopur, District- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Pandey No.5, Advocate
For the State	:	Mr. Anil Kumar Singh No. 1, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 27-06-2019

Heard learned counsel for the petitioners and learned
APP for the State.

2. The present application has been filed by the
petitioners under Section 397 read with Section 401 of the Code
of Criminal Procedure, 1973 for the following relief:

“That present Revision Application is directed against the Order dated 05.07.2018 passed in Criminal Appeal No. 61/2013, passed by the Court of Sri Ram Babu Tripathi, the learned Additional Sessions Judge-II, Gopalganj; whereby and where under the learned court above referred has affirmed the judgment of conviction and sentence dated 13.09.2013, passed by Sri Jitendra Kumar the learned Judicial Magistrate 1st Class Gopalganj; passed in GR No 1774/2003// Tr. No 565/2013 (arising out of Gopalganj Jadopur P.S. Case No. 326/2003) by which the Petitioners above



named have been convicted u/s 25 (1-B) (a) and 26 of the Arms Act and was awarded with a Sentence of Rigours imprisonment for 3 years and with a fine of Rs. 3000/- on each of the Petitioners. It has been further ordered that in case of the default of the payment of the fine the corporeal punishment would be enhanced for one month.”

3. The petitioners were accused in Gopalganj (Jadipur) PS Case No. 326 of 2003 dated 18.11.2003 (GR No. 1774 of 2003) registered under Sections 25(1-B)(a) and 26 of the Arms Act, 1959 and 216 A of the Indian Penal Code.

4. After investigation, charge sheet was submitted and pursuant to trial, the petitioners were convicted by judgment and order dated 13.09.2013 passed by the Judicial Magistrate, 1st Class, Gopalganj under Sections 25(1-B)(a) and 26 of the Arms Act, 1959 and accordingly, sentenced to three years rigorous imprisonment each under Sections 25(1-B)(a) and 26 of the Arms Act, 1959 and also fine of Rs. 10,000/-. It was directed that the sentence would run concurrently and in the event of non payment of fine, further simple imprisonment of one month was to be undergone. The petitioners filed Criminal Appeal No. 61 of 2013 before the Sessions Judge, Gopalganj and by judgment and order dated 05.07.2018, the IInd Additional Sessions Judge, Gopalganj dismissed the appeal.



5. Learned counsel for the petitioners submitted that both the trial Court and the appellate Court had not considered the contentions on behalf of the petitioners. It was submitted that the Investigating Officer has not been examined. Learned counsel submitted that the seizure witnesses have not supported the fact of seizure and sentence under Sections 25(1-B)(a) and 26 of the Arms Act, 1959, the ingredients not being satisfied, the conviction and sentence cannot be sustained in law. Learned counsel summed up his argument by submitting that there is no discussion in the trial Court order or the appellate order with regard to why the petitioners have been convicted.

6. Learned counsel has taken the Court through the depositions of the witnesses and has tried to show that there is contradiction with regard to the time of occurrence and the place of occurrence. It was submitted that PW 1, Dineshwar Kumar, who was Officer-in-Charge of Jadopur Police Station at the relevant time and is the informant of the case and the head of the raiding party, had stated that he left the police station and during the course of raid for apprehending Bharat Yadav in his house as he was not there and the information was that he was residing at the house of petitioner no. 1, he reached the place at 5.10 AM, whereas, PW 2, Ramashankar Prasad, a Havildar, who was also a



member of the raiding team, has stated that they had left the police station at 10.00 PM the previous night and had reached the house of petitioner no. 2 at 5.30 AM. Learned counsel submitted that the description of the place of occurrence is also contradictory as has been stated before the Court by PW 1 and PW2. With regard to the manner of entry, it was submitted that PW 1 had stated that they had entered the house and had woken up the petitioners and below the pillow of the cot on which they were sleeping, arms and ammunition were recovered, whereas PW 2 has stated that the door was locked and upon knocking an old lady had opened the same and then the raiding team has entered. It was submitted that PW 7 i.e., Sahdeo Ram, who was a Constable in the local police station is not a material witness as he had not entered the room from where recovery is said to have been made.

7. Learned APP, assisting from the Lower Court Records, submitted that there is no contradiction between the testimony of PW 1 and PW 2, inasmuch as, PW 1 has simply stated that they entered the house and thereafter upon waking up the petitioners, recovery was made from below the pillow of the cot on which they were sleeping, whereas PW 2 has only described the details of such entry i.e., the door being locked and upon knocking an old lady opening the door. It was submitted



that the seizure witnesses have only stated that their signature was taken on a blank paper but have neither denied the signature nor their presence at the place. It was, thus, submitted that there being no denial of the presence of the seizure witnesses at the place of occurrence, as per the deposition recorded by the Court, it cannot be said that the seizure was not there. Learned counsel further submitted that PW 4, Kamta Ram, being the Sergeant Major and ballistic expert had submitted report stating that the cartridges were live. It was submitted that non examination of the Investigating Officer would not prove fatal to the prosecution of the present case as the fact of the petitioners being arrested from the house of petitioner no. 2, after being woken up and the recovery of arms and ammunition from under the pillow, having been established beyond reasonable doubt, the conviction and sentence by the trial Court and the order passed by the appellant Court rejecting the appeal are fully justified.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.

9. From perusal of the trial Court order and the appellate order, the Court finds that there is discussion with regard to the arrest of the petitioners and the seizure of arms and ammunition



and also with regard to the bullet being found to be live. The manner and mode of seizure has also not been controverted by any of the witnesses in their examination or cross examination so as to create a reasonable doubt for giving benefit of the same to the petitioners. On the contrary, the fact of arrest of the petitioners and recovery of arms and ammunition has been proved by cogent and logical evidence of the prosecution witnesses. Further, as has rightly been submitted by learned APP, mere statement of the seizure witnesses that their signature was taken on blank paper would not create a presumption that they were not witness to the seizure. Neither any suggestion has come from the defence during cross examination nor they had stated that they were not present at the place of occurrence and in fact, on the contrary, their signature is not denied by them.

10. Thus, taking an overall view of the matter and the discussions made, both by the trial Court and the appellate Court, in the considered opinion of the Court, the same are well reasoned and based on cogent grounds, and thus, require no interference.

11. For reasons aforesaid, the application stands dismissed.

12. Before parting, learned counsel for the petitioners submitted that the Court may show some leniency with regard to



the sentence awarded to the petitioners. From the materials on record, it appears that the petitioners surrendered before the Court below only on 11.04.2019, despite their appeal having been dismissed on 05.07.2018, i.e., after more than nine months.

13. In such view of the matter, the conduct of the petitioners do not merit any indulgence or leniency to be shown by the Court. Accordingly, such prayer is rejected.

14. The petitioners shall undergo the remaining period of sentence as per the trial Court order.

15. Lower Court Records be returned to the Court below forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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