

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1382 of 2018

Arising Out of PS. Case No.-196 Year-2015 Thana- BAIKUNTHPUR District- Gopalganj

Sattan Mahto @ Satan Mahto, son of Ram Prasad Mahto, resident of Village-
Pipra, P.S.- Baikunthpur, District- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mritunjay Prasad Singh, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 22-11-2019

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

2. The application has been filed for setting aside the judgment dated 11.10.2018 passed by the Additional Sessions Judge, 8th, Gopalganj, in Criminal Appeal No.109 of 2016 (Registration No.109 of 2016) by which the judgment and order of conviction and sentence dated 03.08.2016 passed by the Additional Chief Judicial Magistrate, III, Gopalganj, in G.R. No.3670 of 2015/ Registration No.5288 of 2016/ Trial No.2087 of 2016 arising out of Baikunthpur P.S. Case No.196 of 2015, has been upheld.

3. There was recovery of spirit, steel barrels, and six empty drums from the courtyard and door of the appellant and



country made pistol was recovered from his house kept under the bed in the room, for which a case was registered under Sections 420, 272, 273 Indian Penal Code, 47-A of the Excise Act and 25(1-B) (a), 26(1) of the Arms Act.

4. Upon trial, the petitioner was convicted for offence under Sections 25(1-B) (a), 26 of the Arms Act and Section 47 of the Excise Act and sentenced to three years rigorous imprisonment with fine of rupees one thousand under Section 25(1-B) (a) of the Arms Act and in default to undergo three months rigorous imprisonment; further three years rigorous imprisonment with fine of rupees one thousand and in the event of default three months rigorous imprisonment under Section 26(1) of the Arms Act as also three years rigorous imprisonment and rupees one thousand fine and in default to undergo three months rigorous imprisonment under Section 47 of the Excise Act. The sentences were directed to run concurrently. Challenge to the same in the appeal was also rejected.

5. Learned counsel for the petitioner submitted that he would be pressing the application only on the quantum of sentence. He submitted that the petitioner has undergone eleven months of incarceration.

6. Learned APP submitted that the trial Court has



gone into the merits of the matter on the basis of the materials before it and the statement of the witnesses and in view of the recovery made of the firearm from the house of the petitioner, the conviction and sentence is justified. It was submitted that the plea taken by the petitioner that firearm was not recovered from his physical and personal possession is of no help of the petitioner as it has been recovered from his house and, thus, the petitioner was clearly under constructive possession of the same. As far as contention that no independent witness has been examined, it was submitted that the witnesses, who were examined, have clearly stated with regard to recovery and once recovery has been proved by the witnesses, unless they are declared to be untrustworthy, law permits their evidence to be taken into account, which has rightly been done by the trial Court. It was further submitted that the appellate Court has also considered the plea of the petitioner and has negated them on cogent grounds.

7. Having considered the matter and having gone through the materials on record and the judgments of the Courts below, the Court does not find any ground to interfere in the orders impugned.

8. Accordingly, the application stands dismissed.



9. The petitioner, who is on bail, shall surrender before the Court below within two weeks from today to undergo the remaining sentence.

10. The lower court records be returned forthwith.

(Ahsanuddin Amanullah, J)

J. Alam/-

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