

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.120 of 2018**

Arising Out of PS. Case No.-34 Year-2015 Thana- SIMULTALLA District- Jamui

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Dinesh Paswan @ Dinesh Hazara S/o Kailu Paswan @ Kailu Hazra, R/o
Village- Kalyanpur, P.S.- Simultalla, District- Jamui.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pankaj Kumar Sinha, Adv.
For the Respondent/s : Mr. Vinod Shankar Modi

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT**

Date : 14.05.2019

This Criminal Revision petition has been filed against the judgment dated 10.02.2017 passed in Criminal Appeal No. 29 of 2016 passed by learned 2nd Additional Sessions Judge, Jamui by which Criminal Appeal has been dismissed and judgment of conviction and sentence dated 16.08.2016 passed by learned C.J.M., Jamui in Trial No. 2085 of 2016 (arising out of Simultalla P.S. Case No. 34 of 2015) G.R. No. 1162 of 2015 convicting petitioner for the offence under Section 25(1-B)a of Arms Act and sentencing to undergo rigorous imprisonment of two years has been affirmed.

2. Prosecution story is based upon self-statement



made by Sri Arbind Kumar who was the officer-in-charge of Simultalla Police Station that on 08.07.2015 at about 1:45 P.M. he was on patrolling duty along with other police personnel when he received information that one criminal Dinesh Paswan is hiding in Community Hall and on receiving such information he reached there at about 4:00 P.M. and as one person tried to flee away he was apprehended on chase who disclosed his name as Dinesh Paswan and from his possession one loaded country made pistol from his left waist and two live cartridges from right pocket of his half pant were recovered and same were seized in presence of two constables.

3. On basis of said complaint Simultalla P.S. Case No. 34 of 2015 was instituted under Section 25(1-b)a, 26 of Arms Act against accused Dinesh Paswan and investigation was handed over to Ashwini Kumar Sub-Inspector and after conducting the investigation and recording the statement of witnesses and obtaining testing report of Sergeant Major the case was found to be true and he submitted chargesheet against the petitioner along with sanction order of the competent authority.

4. Trial court took cognizance against the petitioner



and charges were framed against petitioner under Section 25(1-b)a and 26 of the Arms Act and was read over and explained to him and which were denied by the accused petitioner and he claimed to be tried.

5. Prosecution has examined 4 witnesses to prove the charges:

- P.W.1. Sheo Kumar Mandal, A.S.I.
- P.W.2. Arbind Kumar, Sub-Inspector.
- P.W.3. Ashwini Kumar, Sub-Inspector.
- P.W.4. Mahesh Prasad Singh.

6. Documentary evidence:

- Seizure list. Exhibit-1
- Written Complaint. Exhibit-2
- Arrest Memo. Exhibit-3
- Formal F.I.R. Exhibit-4
- Material Exhibit. Exhibit-5
- Sanction Order of District Magistrate. Exhibit-6.
- Charge-sheet Exhibit-7.
- Report of Sergeant Major Exhibit-8
- Country made Pistol Material Exhibit-1.
- Live cartridges Material Exhibits- 2 to 3.

7. Defence has not produced any oral or documentary evidence.

8. P.W. 2. Arbind Kumar Singh Sub-Inspector is informant of this case and who has identified the accused and has also proved Exhibit-1 seizure list, Exhibit-2 written complaint, Exhibit-3, arrest memo, Exhibit-4



formal F.I.R., Exhibit-5 as well as material exhibit-1 country made pistol, material Exhibit- 2 to 2/2, 3 live cartridges. P.W. 2 in his deposition has stated that on 08.07.2015 at about 4:00 A.M., he along with other police personnel had gone to conduct raid in Kalyanpur where he received information that Dinesh Paswan (petitioner) is hiding in Community Hall and on receiving such information he raided the building and on seeing police party one person tried to flee away and after chase he was apprehended who disclosed his name and from his possession from his waist one loaded country made pistol and from right side pocket of half pant two live cartridges were recovered. In absence of independent witnesses the member of raiding party were made seizure list witnesses. Seizure list was prepared and one copy was handed over to the accused. He has further stated that seized articles in sealed condition have been produced in the court in a sealed bag on which, P.S. Case number M.R. 06/2015 was marked and on opening of the seal bag, one country made pistol and three cartridges were found and on country made pistol police station case number and initial of Sergeant Major and C.J.M. were found. Three live



cartridges, country made pistol, has been marked as material Exhibits.

9. P.W.1 Sheo Kumar Mandal in his deposition has supported the case of prosecution.

10. P.W.3 Arvind Kuamr Sub-Inspector is the I.O. of this case and has proved the place of occurrence and recorded the statement of witnesses. He obtained sanction order from the District Magistrate and he has proved his signature on it which has been marked as Exhibit- 6. After investigation he submitted charge sheet against petitioner accused which has been marked as Exhibit-7.

11. P.W.4. Mahesh Prasad Singh is Sergeant Major and he has proved the Arms Testing Report which has been marked as Exhibit-8 and in his deposition he has stated that on 24.08.2015 in Simultalla P.S. Case No. 34 of 2015 he received the material exhibits after obtaining permission of the court and was handed over to him in a sealed condition and he found the arms in working condition.

12. It has been submitted on behalf of petitioner that prosecution has not examined any independent witnesses and even recovery was not made in presence of



any independent witnesses and the members of raiding party are the witnesses of the seizure list. It has not been stated that effort was made to locate independent witnesses but no one was ready to become a seizure list witness as such members of raiding party were made witnesses. The trial court after appreciating the evidences on record has found that prosecution has been able to prove the charges under Section 25(1-b)a of Arms Act, however, charges under Section 26 of the Arms Act could not be proved and found accused petitioner guilty of charges under Section 25(1-b)a of Arms Act and sentence to undergo rigorous imprisonment of 2 years.

13. Aggrieved by order passed by the Trial Court petitioner preferred appeal however same was dismissed by order dated 10.02.2017 passed by learned 2nd Additional Sessions Judge, Jamui and thereafter present criminal revision petition has been filed.

14. It has been submitted on behalf of counsel for the petitioner that Exhibit-1 is the seizure list which has been prepared at 4:10 A.M. on 08.07.2015 whereas formal F.I.R. Exhibit- 4 was drawn at 7:30 A.M., on 08.07.2015 however, even prior to registration of F.I.R. in the alleged



seizure list F.I.R. number has been given which makes the seizure itself doubtful and suspicious.

15. It has been further submitted that I.O. has failed to establish place of occurrence and there is cutting over word 'Panchayat' which has been overwritten as 'Samudaik'. P.W.2 informant has not stated that articles were seized and sealed and any mark of identification was given as such recovery of the arms and cartridges from the possession of petitioner becomes doubtful. Seizure list witnesses who were the members of raiding party were not examined as witness to prove the alleged seizure. There is nothing on record to suggest that after the arms were seized from the possession of petitioner it was sealed at the place of occurrence and produced by the I.O. in the court in sealed condition. There is no signature of petitioner at the time of sealing of the arms as such it becomes doubtful that the seized arms were recovered from possession of the petitioner accused which makes prosecution case doubtful and charges cannot be said to be proved against the petitioner beyond all shadow of doubts as such judgment of conviction and order of sentence passed by trial court and affirmed by the Appellate Court is



set aside and petitioner is acquitted of charges giving him benefit of doubt. Petitioner who is on bail is discharged from the liability of his bail bond.

Rajiv/-

(S. Kumar, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	30.05.2019

