

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1399 of 2018

Arising Out of PS Case No.-188 Year-2012 Thana- HARNAUT District- Nalanda

1. Mahendra Mahto Son of Late Molvi Mahto.

2. Dayanand Mahto @ Langra Son of Mahendra Mahto.

Both resident of Village- Gonama, PS Harnaut, District- Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Sinha, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 22-11-2019

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

2. The petitioners have moved the Court for setting
aside the order dated 27.09.2018 passed by the 6th Additional
District and Sessions Judge, Nalanda at Biharsharif in Criminal
Appeal No. 3 of 2014, by which the judgment and order of
conviction and sentence dated 02.01.2014 passed by the Judicial
Magistrate, 1st Class-cum-Additional Munsif, Nalanda at
Biharsharif in GR No. 2298 of 2012/Trial No. 3766A of 2013
arising out of Harnaut PS Case No. 188 of 2012, has been upheld.



3. The petitioners are accused of dealing in illicit liquor and possessing illegally two countrymade pistols and different types of cartridges.

4. The petitioners faced trial under Sections 272 and 273 of the Indian Penal Code; 25(1-B)(a), 26 and 37 of the Arms Act, 1959 and 47A of the Excise Act. Upon trial, they were convicted under Sections 25(1-B)(a), 26 and 35 of the Arms Act and 47A of the Excise Act and sentenced to undergo rigorous imprisonment of three years and fine of Rs. 10,000/- each under Section 25(1-B)(a) of the Arms Act and upon failure to deposit the fine to undergo further simple imprisonment of six months; under Section 26 of the Arms Act, the sentence was rigorous imprisonment of three years and fine of Rs. 10,000/- each and in default to undergo further simple imprisonment of six months and under Section 47A of the Excise Act, the sentence was rigorous imprisonment of six months. The sentences were directed to run concurrently. Challenge to the same in Criminal Appeal No. 3 of 2014, was rejected.

5. Learned counsel for the petitioners submitted that though there have been procedural lapses, both in the investigation and the trial, but he would be restricting his prayer to the quantum of sentence. It was submitted that petitioner no. 1 is now 68 years



old and has already undergone imprisonment for over 13 months and the petitioner no. 2 is handicapped waist downward as he has no legs. It was submitted that the petitioner no. 2 has undergone imprisonment for about three months. It was further submitted that both the petitioners have no other criminal antecedent.

6. Learned APP, from the Lower Court Records and the judgments of the Courts below submitted that the same are well considered, based on materials before the Court, especially the evidence adduced. However, on the point of quantum, he submitted that in view of the age of petitioner no. 1 and the disability of the petitioner no. 2, the Court may take a sympathetic view.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the application stands disposed off without interfering in the order of conviction. However, with regard to the sentence, in the considered opinion of the Court, the ends of justice would be served by modifying the same to the period of imprisonment already undergone by the petitioners.

8. Accordingly, the judgment of the Courts below stand modified without interfering in the order of conviction but modifying the sentence to the period already undergone. The



petitioners, who are on bail stand discharged of the liability of their bail bonds.

9. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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