

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.34 of 2020

Arising Out of PS. Case No.-19 Year-2017 Thana- SUIYA District- Banka

SUSHIL KUMAR MAHALDAR, S/o Kailash Mahaldar Resident of Kumhar
Gali, P.S.- Sultanganj, District- Bhagalpur

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Satish Chandra Mishra

Mr.Md. Nurul Hoda

For the Respondent/s : Mr. Md. Aslam Ansari, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 18-01-2021 Heard the learned counsel for the parties.

The petitioner has been convicted under Section 25(1-B) a of the Arms Act, 1959 and was sentenced to three years with rigorous imprisonment with a fine of Rs. 10,000/-, and for the offence under Section 26(1) of the Arms Act, 1959, he was convicted and sentenced for a period of three months with a fine of Rs. 8,000/-

The sentence of the petitioner under Section 25 (1-B) a of the Arms Act, 1959 has been reduced from three years to two years but no interference has been made under Section 26 (1) of the Arms Act, 1959.



The prosecution case is that while the SSB party were returning to their camp, one person was found to be moving in a suspicious circumstance. He was nabbed and from his possession a country-made fire-arm with two live cartridges and two empty cartridges were found.

The petitioner was put on trial. Five prosecution witnesses have been examined. Out of them, three, who are the official witnesses have supported the prosecution version. However, P.Ws. 4 and 5, who are the seizure list witnesses and also the independent witnesses have not supported the prosecution version. In fact, they have not even identified the appellant.

The learned counsel for the petitioner has submitted that in the event of the seizure list witnesses having gone hostile, there is no material against the petitioner and therefore his conviction and sentence are bad in law and facts.

He further submits that both the Courts have



only reiterated what the informant has stated in the F.I.R. and have not analyzed the evidence.

After having perused both the judgements, this Court is of the view that the seizure list witnesses have not supported the prosecution version. In fact they have not even identified revisionist. There could be myriad reasons for the aforesaid witnesses not in a position to identify the revisionist. Merely on that ground the prosecution version cannot be discarded totally. The other witnesses have testified to the factum of the revisionist having been apprehended with fire arms. There is nothing on record to dispute the assertion of three official witnesses that the revisionist was caught with fire arms. No *mala fide* also could be seen from the trial court records.

Considering this aspect of the matter, the conviction of the petitioner / revisionist is not interfered with.

However, looking at the circumstance in which



the offence is said to have been committed, this Court is of the view that ends of justice would sufficiently be met if the sentence of the petitioner / revisionist is modified to the extent of the period of custody which the petitioner has already undergone.

It has been submitted that the petitioner has remained in jail for ten (10) months by now.

This revision petition stands partially allowed.

The conviction of the petitioner is not interfered with but the sentence is modified to the period of custody which the petitioner has already undergone.

The petitioner has been granted bail during the pendency of the revision petition.

The bail bonds now stand cancelled.

(Ashutosh Kumar, J)

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