

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.926 of 2017

Arising Out of PS. Case No.-153 Year-2013 Thana- MUNGER MUFFASIL District- Munger

Manoj Yadav, Son of Late Bateshwar Yadav, resident of Village - Shankarpur,
P.S. Muffasil, District - Munger

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Prince Kumar Mishra, Amicus Curiae
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

ORAL JUDGMENT

Date : 28-07-2022

By this appeal, appellant/convicted accused, Manoj Yadav is challenging the Judgment and order dated 10.01.2017 and 11.01.2017 passed by the learned Ist Additional Sessions Judge, Munger in Sessions Case No. 642 of 2013 arising out of Muffassil P.S. Case No. 153 of 2013, thereby convicting him of the offences punishable under Sections 25(1)(a), 25(1-B) and 26(2) of the Arms Act, 1959. For the offence punishable under Section 25(1)(a) of the Arms Act, the appellant is sentenced to suffer rigorous imprisonment for six years apart from imposition of fine of Rs.5000/- and default sentence of simple imprisonment for six months. For the offence punishable under Section 28(1-B) of the Arms Act, the appellant is sentenced to suffer rigorous imprisonment for two years apart from



imposition of fine of Rs.1000/- and default sentence of simple imprisonment for one month. For the offence punishable under Section 26(2) of the Arms Act, the appellant is sentenced to suffer rigorous imprisonment for six years apart from imposition of fine of Rs.5000/- and default sentence of simple imprisonment for six months. Substantive sentences are directed to run concurrently by the learned trial court. For the sake of convenience, the appellant shall be referred to in his original capacity as “an accused”.

2. Facts leading to the prosecution of the accused projected from the police report can be summarized thus:-

A. The incident in question took place on 16.03.2013. On that day, Police Officers had gathered at the Police Club for the purpose of participation in the election of the Police Association. First Informant P.W. 1, Shashi Kant Sinha was also present there. He received secret information that a small gun factory is being operated at Adarsh Gram Tikarampur Mathar Ghat. Hence by forming a team of police officers, he left for effecting search and seizure. At about 1 P.M. of 16.06.2013, the police could trace out the place where the firearms were being manufactured. The accused was found to be operating the drill machine. He came to be apprehended on the spot of the



incident itself which was in the middle of the highted grass near village Tikarampur Mathar Ghat. That spot so also the person of the accused came to be searched in presence of Puch witnesses taken from the police party itself namely P.W. 2 Bishwa Bandhu Kumar, the In-charge of outpost of Purabsarai, P.W. 3 Anil Kumar, Incharge of Basudeopur outpost. From person of the accused, one country made pistol came to be seized. From the spot of the incident one drill machine, one base machine, five empty cartridges, few hexa blades, hammer, piece of iron plate so also semi manufactured hammer and body of the pistol came to be seized under the seizure memo. The accused failed to furnish necessary licence issued under the Arms Act. Accordingly, P.W. 1 Shashi Kant Sinha, Sub-Inspector lodged the FIR with Muffassil Police Station which resulted in registration of Crime No. 153 of 2013 for the offences punishable under Sections 25(1-A), 25(1-AA), 25(1-b)AC and 26(ii) of the Arms Act came to be registered against the accused.

B. Routine investigation followed. Investigating Officer P.W. 7, Mukesh Kumar Paswan recorded the statement of witnesses, inspected the spot of the incident, sent the seized articles for examination and report of the Ballistic Expert and on completion of investigation, the accused came to be charge



sheeted.

C. The learned trial court was pleased to frame the charge for the offences punishable under Sections 25(1-A), 25(1-AA), 25(1-B) and 26(ii) of the Arms Act against the accused with an accusation that he was found to be possessing the prohibited arms and was found to be manufacturing the prohibited arms etc. The accused pleaded not guilty and claimed trial.

D. In order to bring home the guilt to the accused, the prosecution has examined in all eight witnesses. First Informant Shashi Kant Singh, the Police Sub-Inspector who headed the raiding party is examined as P.W. 1. P.W. 2 and P.W. 3, namely, Bishwa Bandhu Kumar and Anil Kumar are the members of the raiding party, who acted as Punch witnesses while effecting seizure. P.W. 4 Ranjeet Kumar another member of the raiding party. P.W. 5 Brajesh Kuamr is also a member of the raiding party. P.W. 6 Arbind Kumar Singh is a Sergeant Major who had examined the seized articles and submitted his report. P.W. 7 Mukesh Kumar Paswan is the Investigating Officer whereas P.W. 8 Awadh Kishore Prasad is a Legal Assistant in the office of the Prosecutor who was examined for proving the sanction order Ext. 5 issued by the District



Magistrate.

E. The defence of the accused was that of total denial. He however did not enter in the defeance.

3. Upon hearing the parties, the learned trial court by the impugned Judgment and order was pleased to convict the appellant/accused and to sentence him as indicated in the opening para of this Judgment.

4. I have heard Mr. Prince Kumar Mishra, the learned Advocate appointed to act as Amicus Curiae as none appeared for the appellant when the appeal was listed for hearing on the last occasion. Similarly none appeared for the respondent-State. After hearing the learned Amicus Curiae and on perusal of the record and proceedings, this appeal is being decided.

5. The appellant/accused is convicted of the offence punishable under Section 25(1-B) of the Arms Act and is sentenced to suffer rigorous imprisonment for two years apart from imposition of some fine and default sentence. Section 3 of the Arms Act prohibits acquisition and possession of any firearm or ammunition, unless and until the holder thereof is having a valid licence granted under Section 13 of the said Act. The Contravention of this provision is made punishable under



Sections 25(1-B) of the Arms Act. Acquisition or possession of the firearms, so also carrying of the firearms without a valid licence is made punishable under this provision.

6. The learned trial court has also convicted the accused of the offence punishable under Section 25(1)(a) of the Arms Act, for which he is sentenced to suffer rigorous imprisonment for six years apart from imposition of some fine and default sentence. This is an offence for contravention of provisions of Section 5 of the Arms Act, 1959. Without a valid licence issued by the competent authority in accordance with the provisions of the Arms Act, 1959, a person cannot use, manufacture, obtain, procure, sell etc. or expose or offer for sale or transfer etc. any firearm or other arms as prescribed, so also the ammunition. In other words, manufacture as well as sell, transfer, repair etc. of the arms and ammunition can be done by a person licenced under Section 5 of the Arms Act. If a person is found to be manufacturing, procuring, selling, transferring etc. any firearm or ammunition in contravention of this enabling provision of Section 5 of the Arms Act, he becomes liable for punishment as prescribed by Section 25 of the Arms Act.

7. On the backdrop of this legal provisions, let us examine evidence adduced by the prosecution on record which



is comprising of the version of interested witnesses i.e. the members of the raiding party. There is no independent witness examined by the prosecution in the case in hand. However that by itself cannot cast a shadow of doubt on the prosecution case because it is wise presumption of law even recognized by the legislation that the official acts are regularly done. Only if it is shown that version of the official witness examined in this case is not trustworthy and reliable then alone the prosecution case can be doubted. On this backdrop, it is in evidence of P.W. 1 Shashi Kant Sinha that on 16.06.2013, on the basis of secret information he along with his team conducted raid at the village Tikarampur Mathar Ghat and found that the accused was doing some work on the drilling machine. This witness has spoken about seizure of a country made pistol, semi manufactured pistol, five empties, one drill machine and one base machine etc. from the spot of the incident in presence of P.W. 2 Bishwa Bandhu Kumar and P.W. 3 Anil Kumar. As per his version, those articles were seized by effecting seizure memo. This witness then lodged the FIR and thereafter further investigation was conducted by P.W. 7 Mukesh Kumar Paswan. Though this witness was cross-examined in order to test the veracity of his version, there is nothing in his cross-examination which would



create doubt in his testimony. No doubt the raiding party was having the stamp pad with it but that fact cannot make me to disbelieve the version of this witness. On the contrary it goes to show that the raiding party had taken necessary precaution prior to effecting the raid by taking all necessary things with it for conducting the raid.

8. P.W. 2 Bishwa Bandhu Kumar and P.W. 3 Anil Kumar were the members of the raiding team. According to the prosecution case because of non-availability of independent witnesses, services of these two members of the raiding party were taken as Panch witnesses. These two witnesses seems to be the Officers of the rank of the In-charge of the Police Outpost. As per their version after effecting the raid, the accused was found on the spot of the incident, operating the drill machine. Both these witnesses have spoken about seizure of one country made pistol, five empties as well as semi manufactured firearm and some articles. These witnesses have proved the seizure memo Ext.2 by which the articles found on the spot of the incident as well as the firearm on the person of the accused came to be seized. I see no reason to disbelieve version of these official witnesses in respect of search and seizure effected during the course of raid.



9. P.W. 4 Ranjeet Kumar and P.W. 5 Brajesh Kumar are the police officers who had also accompanied the raiding team. Their evidence is in consonance with the case of the prosecution and both of them have also spoken about effecting seizure of the firearm, semi manufactured firearm as well as base machine, drill machine etc. from the spot of the incident in presence of the accused.

10. It is in evidence of P.W. 7 Mukesh Kumar Paswan, the Investigating Officer that he took up investigation of the subject crime on 16.06.2013 itself. This witness has stated that seized articles were sent by him to the concerned office of the Police Department for Balletic Examination under orders of the learned Chief Judicial Magistrate, Munger. P.W. 6 Arbind Kuamr Singh, the Sergeant Major had conducted balletic examination of the seized articles. Evidence of this witness shows that the seized country made pistol was in working condition. This witness had examined the hammer, the trigger as well as the firing pin of the country made pistol. Similarly he had examined five empties seized from the spot of the incident, so also semi manufactured hammer and body of the pistol. P.W. 6, Arbind Kumar Singh deposed that the other articles such as drill machine, base machine, hexa blades, hammer, plates of the



iron are instruments for manufacturing the firearms. This witness had proved his report Ext.5. The only relevant question in his cross-examination was to the effect that his examination of the articles was faulty. This witness denied that fact. Thus there is nothing to falsify the evidence of P.W. 6 Arbind Kumar Singh. By evidence of this witness, the prosecution has proved that a country made pistol, semi manufactured hammer and body of the pistol, empties apart from the drill machine and a base machine etc. came to be seized from the accused on 16.06.2013.

11. The sanction for prosecution as envisaged by Section 39 of the Arms Act is formally proved by the prosecution through evidence of P.W. 8 Awadh Kishore Prasad , the Legal Assistant in the Prosecution Branch of the State.

12. This is the evidence adduced by the prosecution in the case in hand which shows that from possession of the accused, one country made pistol, one semi manufactured hammer, a semi manufactured body of the pistol and five empties apart from drill machine and base machine etc came to be seized on 16.06.2013.

13. Now let us examine which offence under the charge was proved against the accused.



14. The accused was charge for commission of the offence punishable under Section 25(1-B) of the Arms Act, 1959. This offence is in respect of possession of the firearm or ammunition in contravention of Section 3 of the Arms Act which deals with issuance of licence for this purpose. Undoubtedly the accused was possessing a country made pistol apart from semi manufactured firearm as well as ammunition in the form of empties on 16.06.2013 and as such, the offence punishable under Section 25(1-B) of the Arms Act 1959 is proved against the accused for which he is suitably sentenced by the learned trial court. I find no fault in convicting the accused for this offence as well as in the sentence imposed on him for this offence.

15. By the impugned Judgment and order, the accused is also convicted for the offence punishable under Section 25(1)(a) of the Arms Act, 1959 for which he is sentenced to suffer rigorous imprisonment for six yeas apart from imposition of some fine and default sentence. Section 25(1)(a) of the Arms Act, as stated in the forgoing para deals with manufacture as well as sell etc. of the arms and ammunition. Thus manufacturing as well as dealing in firearms commercially is made punishable by Section 25(1) of the Arms



Act. The contravention of this provision carries stringent punishment which can extend up to seven years. If this Court look at the record and proceedings of this case then it is clear that the learned trial court had not framed the charge for this offence punishable under Section 25(1)(a) of the Arms Act, 1959, against the accused. The accused was not made to answer the charge that he was manufacturing as well as dealing in the firearms and ammunition commercially. No such case was put up to the accused in order to enable him to defend himself by framing the charge to that effect. There was omission to frame the charge for the offence punishable under Section 25(1)(a) of the Arms Act, 1959 and as such, conviction of the accused and the resultant sentence for the said offence cannot stand the scrutiny of law. Failure of justice is writ large from the record because nobody can be punished without making him aware as to the act of the offence allegedly committed by him and without granting him the opportunity to defend himself from those allegations. Section 464 of the Code of Criminal Procedure deals with this contingency. No doubt this Court can in suitable case, on account of omission to frame charge, direct the trial court to frame such charge or order new trial but the case in hand is that of the year 2013. The accused herein is



undergoing the sentence imposed on him by the learned trial court as his sentence is not suspended during pendency of the appeal. It appears that he has almost undergone the sentence as imposed upon him by the learned trial court. Therefore, it will not be proper to again put him to the ordeal of facing new trial by framing the charge for the offence.

16. Now comes the issue regarding conviction and resultant sentence imposed on the appellant for the offence punishable under Section 26(2) of the Arms Act. Section 26 of the Arms Act deals with secret contraventions. Doing of any act in contravention of provisions of Section 3, 4, 10 and 11 of the Arms Act in such a manner so as to indicate an intention that such act may not be known to any public servant etc. is made punishable by this Section. The ingredient of this Section is acting in such a manner indicating an intention of the offender that such an act should not come within knowledge of a public servant etc. Mere holding or possessing a firearm is not sufficient to record conviction under Section 26 of the Arms Act. The prosecution is enjoined to indicate the material which may reflect intention of an accused to conceal the firearm in such a manner that the public servant may not know the concealment. To make out the offence under this Section, the



prosecution is required to bring on record the special circumstances from which the only reasonable inference which may be deduce that the concealment was from the public servant. Ingredients of the penal provisions of Section 26 of the Arms Act are not made out by the evidence produced by the prosecution on record and hence the charge for the offence punishable under Section 26 of the Arms Act must also fail.

17. There is no evidence on record to convict the accused for contravention of provisions of Section 26 of the Arms Act. There is no evidence regarding intention of the accused that his act should not come within knowledge of a public servant. Mere possessing or holding the firearm is not sufficient for inviting penal consequence of this section. As such, it is not possible to endorse the Judgment and order of the learned trial court convicting and sentencing the accused for the offence punishable under Section 26 (2) of the Arms Act, 1959.

18. The net result of forgoing discussion requires to hold that the appeal deserves to be allowed partly and the same is accordingly allowed with the following orders:-

a. The conviction as well as resultant sentence imposed on the accused for the offences punishable under Sections 25(1)(a) and 26(2) of the Arms Act, 1959, is quashed



and set aside.

b. Conviction and resultant sentence imposed on him for the offence punishable under Section 25(1-B) is upheld and maintained. The accused be set at liberty forthwith if he has already undergone sentence imposed upon him and if he is not required in any other case.

(A. M. Badar, J)

Bhardwaj/-

AFR/NAFR	NAFR
CAV DATE	NA
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