

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.673 of 2017

Arising Out of PS. Case No.-73 Year-2004 Thana- NAUGACHIA District- Bhagalpur

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Ajit Kumar Singh @ Ajeet Kumar Singh @ Ajeet Kumar S/o Satya Narain
Singh R/o Village Madhatpur, P.S. Naugachhiya, District Bhagalpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rewti Kant Raman, Adv.

For the Respondent/s : Mr. Sri Ganesh Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 27-03-2023

Heard learned counsel for the petitioner and

learned counsel for the State.

The petitioner has filed the present Cr. Revision for setting aside the judgment and order dated 17.05.2017 passed by Addl. Sessions Judge 2nd Nawgachhia in Cr. Appeal No. 92/2012 as well as the judgment in order dated 23.07.2012 passed by S.D.J.M. Naugachhia P.S. Case No. 73/2004 in G.R. Case No. 152/2004, Tr. No. 174/2012 by which petitioner has been convicted under Section 25(1-B)A Arms Act and sentenced to undergo R.I. for three years and a fine amounting to Rs.3,000/-.

Counsel for the petitioner submits that Court of learned S.D.J.M. as well as Appellate Court has committed a

gross illegality in this case and due to this reason, both the orders are fit to be set aside.

Counsel categorically submits that the PW 11 has categorically stated in examination-in-chief as well as cross-examination that he has called the witness after recovery of the arms whereas Section 100(4) of the Cr.P.C. is categorical that before making a search under this chapter, the officer or the other persons shall make a call for 2 or more independent witness. Here in the present case, according to petitioner, there is gross violation of Section 100(4) of Cr.P.C. as such the genesis of the case and Seizure itself are bad in law.

Counsel for the State submits that the punishment has been made confirming that Seizure has been made by the Police officials on which signature of 2 independent witnesses are there.

From the record, it transpires that the statement made by PW 11 (I.O.) is categorical on this point i.e. at the time of seizure, there were 3 Police Officials are there upon recovery, the 2 independent witnesses has been called later on. This is gross violation of the procedure established by law under Section 100(4) of the Cr.P.C. as well the seizure witnesses have also not supported the prosecution story.

In this view of the matter, both the judgment and order dated 17.05.2017 passed by Addl. Sessions Judge 2nd Nawgachhia in Cr. Appeal No. 92/2012 as well as the judgment/ order dated 23.07.2012 passed by S.D.J.M. Naugachhia P.S. Case No. 73/2004 in G.R. Case No. 152/2004, Tr. No. 174/2012 are hereby **set aside**.

(Dr. Anshuman, J.)

prakashmani/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	