

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.877 of 2022**

Arising Out of PS. Case No.-18 Year-2016 Thana- PIRI BAZAR District- Lakhisarai

Sunil Mandal @ Sunil Kumar, Son Of Late Devendra Mandal, R/O Vill.-
Bariarpur, P.S.- Piri Bazar, Distt.- Lakhisarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Bijay Kumar Pandey, Advocate
For the Respondent/s : Mr.Mithlesh Kumar Khare, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT**

Date : 08-12-2023

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

2. This revision application has been preferred for setting aside the judgment dated 08.09.2022 passed by learned Sessions Judge, Lakhisarai in Cr. Appeal No.41 of 2018 whereby and whereunder the learned court has been pleased to affirm the judgment dated 14.08.2018 passed by learned S.D.J.M., Lakhisarai in Piri Bazar P.S. Case No.18 of 2016, G.R. No.299 of 2016 and Tr. No.429 of 2018. A further prayer has been made to set aside the order dated 14.08.2018 passed by learned S.D.J.M., Lakhisarai, by which the learned court has imposed a sentence of three years rigorous imprisonment and a fine of Rs.2,000/- upon the petitioner for the offence committed



under Section 25(1-B)a of the Arms Act, 1959 and on failure to pay the fine he shall undergo simple imprisonment for a further period of three months. The petitioner has been further sentenced to rigorous imprisonment for a period of three years and also a fine of Rs.2000/- under Section 26(1) of the Arms Act, 1959 and on failure to pay the fine he shall undergo simple imprisonment for a further period of nine months. All the sentences shall run concurrently.

3. The prosecution case is based on the self-statement of the informant S.I. Binod Ram, SHO, Piri Bazar police station, Lakhisarai who has recorded that on 03.03.2016 at about 10.30 PM during night hours he along with other police officials such as ASP (Abhiyan), SHO of Kajra police station Ranjeet Kumar and other armed forces proceeded to carry out the investigation of Piri Bazar P.S. Case No.17 of 2016 which was lodged under Section 302/34 of the Indian Penal Code, Section 27 of the Arms Act and Sections 16, 18, 19, 20 and 23 of the UP Act. It is stated that the raiding party made a raid on several places, on 04.03.2016 in the morning at 3.00 AM, when they were passing through a street in Bariyapur village then they saw that a person came swiftly from his house and started fleeing away, then armed forces chased him and caught hold of him. During search



of his person, from his left pocket of the pant a country made pistol was recovered and from his left pocket small bag of saffron colour was also recovered in which four live cartridges were kept wrapped in the cloth. During enquiry, the apprehended person disclosed his name as Sunil Mandal and on demand of paper of those fire arms and ammunition, he could not produce any valid paper. A search and seizure was prepared by the officer in-charge/SHO of Piri Bazar police station and a copy of the same was handed over to the accused Sunil Mandal. He was also arrested.

4. On the basis of the self-statement of the informant, Piri Bazar P.S. Case No.18 of 2016 dated 04.03.2016 under Sections 25(1-b)a, 26(1)/35 of the Arms Act was instituted against the named accused Sunil Mandal and after investigation a charge-sheet was also submitted against him. After submission of charge-sheet, cognizance was taken against the accused under Section 25(1-b)A and 26 of the Arms Act.

5. In course of trial, the prosecution examined four witnesses, namely, PW-1 Binod Ram, PW-2 Shyam Sundar Prasad Kashyap, PW-3 Ranjit Kumar and PW-4 Ravikant Kumar.

6. Prosecution further proved some documentary



evidences such as Ext.-1-self statement of SHO of Piri Bazar police station, Ext.1/I- endorsement made by Binod Ram on self-statement, Ext.2-search-cum-seizure list, Ext.3-Formal FIR, Ext.4-the signature of Sergeant Major on Ballistic report, Ext.5-, the letter of I.O. regarding function of Ballistic to the Sergeant Major, Ext.6- the sanction order of District Magistrate, Lakhisarai for prosecution, Ext.7- Final form of the case, Ext.7/1- signature of SHO Binod Ram over the final form of the case.

Apart from that, the arm and cartridges which were searched and seized were produced before the learned trial court as material exhibits. The country made pistol was marked as Ext.M/I, the cartridge which was tested has been marked as Ext.M/II and the three live cartridges were marked as Ext.M/III to M/V.

7. The defence examined two witnesses namely, CW-1 Ashutosh Kumar (SHO of Kajara) and CW-2 Rajeev Kumar (SHO of Piri Bazar) who were called by the court as court witness. They produced station diaries of Kajra and Piri Bazar police station respectively. These two witnesses were found formal in nature. The station diaries of the police stations of Kajra and Piri Bazar dated 03.03.2016 to 04.04.2016 were



marked and got exhibited as Ext.-A and Ext.-B respectively.

8. The defence produced a certified copy of the FIR of Piri Bazar P.S. Case No.298 of 2016, G.R. Case No.298 of 2016 which has been marked as Ext.-C.

9. The learned trial court examined the evidences. The SHO of Piri Bazar who was posted from 15th December to 16th April deposed as PW-1. He is the informant of the case and he has supported the prosecution case. PW-1 identified the accused Sunil Mandal and he has further identified his writing and signature on the self-statement which is Ext.-1. This witness has identified his endorsement on self-statement in English which is Ext.-1/1. He has further stated that search-cum-seizure list has been written by ASI Ravikant Kumar on which the signature of Acche Lal Paswan and Hawaldar Upendra Mishra has been taken and upon the same he himself has also marked signature and the signature of Sunil Mandal has also been taken on the search-cum-seizure list which is Ext.-2. PW-1 has also identified the writing and signature over the formal FIR which is Ext.-3.

10. The learned trial court found that in course of cross-examination nothing could be extracted from him so as to impeach his credit in this case as a witness.

11. PW-2 is the Sergeant Major Shyam Sundar Kashyap



who has identified the ballistic report which also bears his signature and the same has been marked as Ext.-4. This witness has given the full details of the country made pistol inspected by him on the requisition of the I.O. which also bears the signature of PW-4. He has also identified all the materials exhibits which were brought in the court in course of evidence. Accordingly, the country made pistol has been marked Ext.-M/I, one used and three live cartridges of .315 bore were marked as Ext.-M/II to Ext.-M/V. The trial court again found that the defence could not extract anything inconsistent in his version.

12. PW-3 Ranjit Kumar is the SHO of Kajra police station who was member of the police force as well as raiding party. He has also supported the incident and has narrated the whole occurrence and identified the accused Sunil Mandal present in the court dock.

13. PW-4 Ravikant Kumar is a member of the police party as well as the investigating officer of the case who was present on the date and place of occurrence. He has fully supported the incident in his examination-in-chief and narrated the whole occurrence.

14. On behalf of the defence, these witnesses were cross-examined. The accused was examined under Section 313



Cr.P.C. and he was informed of the evidences which were brought against him in course of evidence. The stand of the defence was that no evidence to substantiate the allegation that the accused was having illegal fire-arm or ammunition has come. The defence further contended that there is a contradiction between the statements of PW-1, PW-3 and PW-4 on the point of the act done by the police during search-cum-seizure. The defence took a plea that there was a contradiction on the point of time mentioned on the seizure list which shows that no seizure had taken place and nothing illegal was recovered from the accused person. The defence pleaded that it is a case of false implication.

15. The learned trial court having examined the evidences held that the search-cum-seizure was duly prepared on 04.02.2016 at 3.05 hours near the house of Sunil Mandal at Bariarpur village. Signatures of two witnesses were also taken on the search-cum-seizure list which were identified by the PW-1, the informant of the case. In this regard, PW-1 has explained in his evidence that he had mentioned the time of preparation of seizure list at 5.00 am morning while on the seizure list 03.05 am has been mentioned. The learned trial court has taken a view that the accused was arrested at 3.15 am morning and during



that time it was darkness so no independent witness could be found as such, in absence of the independent witness it cannot be presumed that the seizure list is doubtful. The court held that proper procedure was followed by the police party during seizure.

16. The learned trial court was fully satisfied that the pistol and cartridges were produced to find out whether those were effective or not. In this regard, the report of the examination done by the Sergeant Major (PW-2) has been duly proved. He found that the country made pistol and the cartridges seized by the police are effective and naturally those are lethal for human being.

17. The court also found that a proper sanction for prosecution was granted by the District Magistrate, Lakhisarai which has been marked as Ext.-6. The court being fully satisfied that all the conditions/ingredients of Section 25(1-b)a of the Arms Act are available and there is no contradiction in the evidences on the point discussed by the learned trial court held the accused-petitioner guilty of the offences under Section 25(1-b)a and 26(1) of the Arms Act, 1959.

18. The appellate court has also examined the evidences available on the record and ultimately found that the prosecution



evidences on the record have been well judged by the learned trial court. No contradiction has been found in the evidences of the witnesses. The learned appellate court has, therefore, dismissed the appeal.

19. While assailing the impugned judgments, learned counsel for the petitioner submits that the fardbeyan of the PW-1 is dubious as it is not believable that the raiding party who went to raid at 10.30 PM could see the petitioner at 3.00 am when he came out of his house and was fleeing away. It is submitted that the petitioner has been made accused in other cases and only for that reason the police has lodged this false case against him.

20. Learned counsel for the petitioner submits that there is no independent witness to support the prosecution case and the seizure list has been prepared contrary to the procedure provided under Section 100 Cr.P.C.

21. On the other hand, Mr. Mithilesh Kumar Khare, learned APP for the State has opposed this application. It is submitted that there is no inconsistency in the prosecution case. The prosecution witnesses are reliable and the learned trial court has rightly appreciated the evidences brought on the record.

22. This Court has heard learned counsel for the



petitioner and learned APP for the State as also perused the impugned judgment. From the materials available on the record, it is evident that PW-1 Binod Ram was the SHO of Piri Bazar police station and on the date of occurrence i.e. 04.03.2016 at about 3.00 am (morning) when he was returning through a street in the village Bariarpur, he found a person fleeing away. This witness has deposed that he had apprehended the petitioner on the spot and from his possession one country made pistol and four live cartridges were recovered. The PW-1 has given the full details of the place of occurrence during his examination, he has also proved search-cum-seizure list and has identified the writing and signature over the formal FIR. He has also identified his writing and signature on the self-statement. Thus, he has proved Ext.-1, 1/1, Ext.-2 and Ext.-3. The PW-4 Ravikant Kumar who is the I.O. of the case has deposed that he was a member of the police party and he was present on the date and place of occurrence along with other police officials. He has also supported the prosecution case. PW-4 had sent the seized weapons and articles to the Sergeant Major for inspection of the same by way of self written application which has been proved as Ext.-5. The PW-4 had got the report after inspection and also obtained the sanction order for prosecution.



23. This Court has gone through the evidences available on the record. The prosecution witnesses have been examined at length by the defence but no contradictions could be taken out from them.

24. This Court, sitting in its revisional jurisdiction, finds no reason to interfere with the impugned judgments. This revision application is dismissed.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
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