

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No 39 of 2024

Arising Out of PS. Case No.-69 Year-2020 Thana- PARSABAZAR District- Patna

Golu Kumar Son of Vijay Kumar Yadav R/o Nathupur (Gosai Tola) West of
Nathupur Railway Line, P.S. - Parsa Bazar, Distt. - Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Gajanan Mishra

For the Respondent/s : Mr.Murli Dhar

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 09-08-2024

This revision petition has been preferred by the petitioner being aggrieved with the judgment dated 06.10.2023 passed by the learned Additional Session Judge VIII, Patna in Criminal appeal No 25 of 2023 whereby the learned appellate Court affirmed the conviction of the petitioner for the offence punishable under Sections 25 (1-B)a/26 of the Arms Act imposed on him by the learned ACJM VIII, Patna in connection with Parsa Bazar PS Case No 69 of 2020, GR Case No 1205 of 2020.

2 According to the case of the prosecution, on the date of incident, i e, 08.02.2020, the informant (PW 1) Sanjay Kumar, on the basis of information received, caught hold the petitioner and



on being searched, one country made pistol has been seized from his possession.

3 During the course of investigation, the seized article has been examined by PW 2 Ashish Kumar Singh. His report has been marked as Exhibit 3. Statements of witnesses were recorded under Section 161 of the Cr P C and after completion of investigation, charge sheet has been filed. The learned trial Court framed the charges and after conclusion of trial, convicted the petitioner for the offence punishable under Section 25 (1-B)a/26 of the Arms Act and sentenced him to undergo rigorous imprisonment for three years and fine of Rs 2,000/- and imprisonment for another one month respectively.

4 Being aggrieved with the judgment of conviction and sentence, the petitioner preferred an appeal before the learned appellate Court which has also been affirmed by the learned appellate Court vide its impugned order dated 06.10.2023. Hence, this revision petition.

5 Learned counsel for the petitioner submits that the learned trial Court, without any sufficient and clinching evidence available on record, convicted the petitioner in this case. Witnesses of the seizure, who are the police officials, have not been examined. The informant (PW 1), who seized the article, in



his entire statement, has not stated what article he has seized from the possession of the petitioner. Without considering the above, the learned trial Court, in a mechanical manner, convicted the appellant and the learned appellate Court also wrongly confirmed the said conviction.

6 Learned State Counsel opposes the argument raised by the learned counsel for the petitioner.

7 I have heard both the counsel. Perused the records of trial Court, evidence adduced by the prosecution and other materials available on record.

8 Perusal of the record shows that total three witnesses have been examined by the prosecution. Out of them, PW 2 Ashish Kumar Singh is the person who examined the alleged seized country made pistol and PW 3 Kamta Ram is the Investigating Officer.

9 According to the case of the prosecution, the country made pistol was seized by PW 1 Sanjay Kumar and as per the prosecution itself, witnesses of the said seizure were one Randhir Kumar and Prem Shankar Pal, both of them were the reserve guards of the Parsa Bazar PS. However, for the reasons best known to the prosecution, both the above witnesses were not examined by the prosecution before the trial Court.



10 Though PW 1 Sanjay Kumar, who seized the alleged country made pistol, in his Court statement, has stated that on the date of incident, he caught hold the petitioner and, in presence of the witnesses, one article was seized from the petitioner vide seizure memo (Exhibit – P/2). What article he seized vide Exhibit – P/2, it is not stated by him. The deposition of this witness further shows that at the time of recording his statement, the seized article was produced before the trial Court and this witness identified the said article and in the deposition of this witness itself, the said article has also been marked with exhibit but there is no mention in the deposition that what article was produced before the Court and on what article, the exhibit was marked by the trial Court. PW 1 has also not made any description of the seized article in his Court statement. Therefore, perusal of statement of PW 1 clearly shows that he has not stated anything regarding seizure of any country made pistol nor this witness has made any description of the article which was produced before the Court at the time of recording his statement. Therefore, there is no evidence available on record which establish that any country made pistol has been seized from the possession of the petitioner. Only on the basis of the report made by PW 2, the conviction for the offence under Sections 25 (1-B)a/26 of the Arms Act is not



sustainable. The learned trial Court as well as the learned appellate Court have not considered the above aspect and wrongly convicted/affirmed the judgment of conviction.

11 Resultantly, I find that this revision petition deserves to be allowed.

12 Accordingly, this revision petition is allowed.

13 Both the judgments passed by the trial Court as well as the appellate Court are set aside.

14 The appellant is acquitted of the charges under Sections 25 (1-B)a/26 of the Arms Act giving him the benefit of doubt.

15 The fine amount, if deposited by the petitioner, will be returned back to the petiioner.

16 This judgment is sent back to the learned trial Court along with the records to do further needful.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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