

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.392 of 2019

Arising Out of PS. Case No.-366 Year-2017 Thana- SHIVSAGAR District- Rohtas

Sunil Yadav @ Bhopu Yadav, S/o Shankar Yadav @ Shankar Singh Yadav
Resident of Village- Alampur, P.S.- Baddi, District- Rohtas

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bhaskar Shankar, Advocate
For the Respondent/s : Md. Matloob Rab, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 30-01-2024

1. An Order of conviction and Sentence, passed by the learned Additional Chief Judicial Magistrate-VII, Sasaram, in G.R. No. 4473 of 2017, convicting the accused/petitioner for committing offence under Section 25 (1-B)A and 26 of the Arms Act and sentencing him for rigorous imprisonment of three years and also to pay fine of Rs. 10,000 in default, simple imprisonment for three months, was challenged in Criminal Appeal No. 78 of 2018 before the learned Additional Sessions Judge, 3rd Court, Rohtas, at Sasaram. The Appellate Court affirmed the judgement and order of conviction and sentence passed by the learned Additional Chief Judicial Magistrate-VII, Sasaram.

2. Challenging the judgement and order of sentence, the accused/convict has filed the Instant Revision.



3. Prosecution case in brief is that, on 3rd of December 2017, at about 5.30 pm, one Umakant Dwivedi (informant) along with Police Force, comprising of Hawaldar Nathu Mahto, Constables Santosh Kumar and Dewan Resad Khan were on special patrolling duty and search operation. When the Police party was returning through Mahua Pokhar village and reached near an orchard, they noticed that seeing the Police vehicle, one person started fleeing away. They stopped the Police vehicle and chased and apprehended the said person. On search, the Police party recovered a country made pistol and five numbers of live cartridges from the right pocket of the said apprehended person. They also recovered five live cartridges of 12 bore from the left side pocket of the said person. The apprehended person stated his name as Sunil Yadav. The Police Officer, namely, Umakant Dwivedi seized the said firearm and live cartridges in presence of Nathu Mahato and Santosh Kumar, both Police Personnel. After completion of search and seizure, the Police Officer arrested the accused and came to the Police Station. Sub-Inspector Umakant Dwivedi submitted a complaint against the accused. On the basis of the said complaint, Police registered a case against him and on completion of investigation submitted charge-sheet against the accused.



4. The learned Additional Chief Judicial Magistrate took cognizance of offence under Sections 25 (1-B)A, 26 and 35 of the Arms Act.

5. During trial, the prosecution examined six witnesses. All the witnesses are Police Personnel. The prosecution also proved certain documents which were marked as exhibits.

6. It is ascertained on perusal of the record that the seized firearm was examined by the arms expert and he submitted a report that the seized arm is a country made pistol but the live cartridges could not be loaded in the said pistol.

7. The search and seizure witnesses stated on oath that accused was apprehended in the orchard of one Shankar Singh. It was an orchard consisting of mango and Berry trees. The witnesses also stated that after seizure, the firearm and ammunition were sealed and labeled properly at the spot and it was brought to the Police Station and kept in Police godown. During trial, the sanction order for prosecution against the accused was marked as exhibit 2.

8. It is submitted by the learned Advocate for the petitioner that all the witnesses are Police Personnel and they are obviously interested in the outcome of the prosecution case. Examination of seized pistol by P.W. 1 was also doubtful because



P.W. 1 is not a trained firearm expert. It is also pointed out by the learned Advocate for the petitioner that the prosecution has failed to establish the place of occurrence because one witness stated that the accused was apprehended in the orchard of Mango and Berry trees and another witness stated that he was apprehended inside the orchard of Mango and Guava trees. This discrepancy ought not to have been treated lightly by the Trial Court. Learned Advocate for the petitioner also submits that the prosecution failed to examine any independent witness in support of the prosecution case.

9. Learned counsel for the prosecution, on the other hand, submitted that the accused was apprehended at about 09.30 P.M. inside an orchard away from the village. The learned Judge in the Appellate Court rightly held that the place where the accused was apprehended was an isolated place and it was not possible to have independent witness at the time and place of occurrence.

10. Having heard the learned Advocate for the petitioner and the State of Bihar, this Court records that at the outset the High Court can admit revision against conviction limited to the point of sentence only as the revisional jurisdiction is discretionary as that of the Supreme Court's power under Article 136 of the Constitution of India. The decision of the Division Bench of this Court in *Rabindra Nath Chaubey and Ors vs. Charai Chamar*



and Anr. reported in **1984 Cri Lj 1590** may be relied on in this regard. It is no longer *res integra* that a Court exercising revisional jurisdiction cannot examine and scan the evidence on record as that of a Court of Appeal . A Revisional Court may have the power to correct any error in the order passed by the learned Magistrate or the Court inferior to it, but it will be beyond its power and jurisdiction to reassess the evidence and on such reassessment to arrive at a finding which is at variance with the finding recorded by the learned Magistrate as well as the 1st Court of Appeal. An appraisal of evidence is not permissible in revision. The High Court while hearing revision does not work as an Appellate Court and will not re-appreciate the evidence, unless some glaring feature is pointed out which may show that injustice has been done by improper appreciation of evidence. The decision of the Hon'ble Supreme Court in the case of ***State of Kerala vs. Puttumana Illath Jathavedan Namboodiri*** reported in ***AIR 1999 SC 981***, has laid down the scope of jurisdiction of Revisional Court against an order of conviction and sentence.

11. The learned Advocate for the petitioner submits that all the witnesses are Police Personnel and they are interested in the outcome of the case. Indeed all the five prosecution witnesses who have been examined in support of search and seizures of a firearm



and live cartridges were members of the raiding party. They are all Police officials.

12. It is held in *Anil @ Andya Sadashiv Nandoskar vs. State of Maharashtra* reported in (1996) 2 SCC 589 that there is, however, no rule of law that the evidence of Police officials has to be discarded or that it suffers from some inherent infirmity. Prudence, however, requires that the evidence of Police officials, who are interested in the outcome of the case needs to be carefully scrutinized and independently appreciated. The Police officials do not suffer from any disability to give evidence and the mere fact that they are Police officials does not by itself give rise to any doubt about their creditworthiness.

13. In the instant case, on perusal of the impugned judgements, it is found that there is nothing on record to show that Police personnel were hostile to the appellant and despite lengthy cross-examination, their evidence remained unshaken throughout. These witnesses have deposed in clear terms the details as to how the accused was apprehended. Their evidence regarding search and seizure of the weapon and ammunition from the petitioner is straightforward, consistent and specific. Therefore, there is no reason to disbelieve the evidence of witnesses on behalf of the prosecution. The Investigating Officer obtained sanction required



under Section 35 of the Arms Act and the Witness No. 1 proved the said sanction order. Therefore, I do not find any ground for interference over the impugned order.

14. On the question of sentence, it is submitted by the learned Advocate for the petitioner that he has in custody for 2 years.

15. Considering the nature of offence, long pendency of the case as well as incarceration for 2 years, the period of sentence passed by the Courts below requires to be revisited.

16. I have considered the submission made by the learned Advocate for the petitioner, It has not been proved that the petitioner is a seasoned offender. As per record, this is his first offence. Therefore, I am inclined to take lenient approach with regard to sentence.

17. The order of sentence for the offence committed under Section 25(1)(B) A and 26 of the Arms Act against the petitioner be reduced from 3 years to the period which has already been undergone by him.

18. The fine amount directed to be paid by the petitioner and period of simple imprisonment for non-payment of fine shall remain unchanged.



19. With the above order, the instant Revision is disposed of.

(Bibek Chaudhuri, J)

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Uploading Date	
Transmission Date	

