

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.451 of 2019

Arising Out of PS. Case No.-1 Year-2018 Thana- RAMGARHWA District- East Champaran

Raju Singh Rathod @ Surendra Narayan Singh Son of Chetnarayan Singh
Resident of Village - Dhanhar Dehuli, P.S.- Ramgharwa, Distt.- East
Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Umesh Chandra Verma, Advocate Mr. Hemant Ray, Advocate Mr. Abhishek Kumar, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Pandey, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

7 23-02-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The instant revision is directed against the order dated 08.03.2019 passed by the learned Additional Sessions Judge-15th, East Champaran, Motihari in Criminal Appeal No.69 of 2018 confirming the judgment and order of conviction and sentence dated 19.09.2018 passed by the learned Judicial Magistrate, 1st Court, Raxaul in Trial No.1888 of 2018 corresponding to G.R. No.5 of 2018 sentencing the accused to undergo rigorous imprisonment for three years and also to pay fine of Rs.5,000/- for committing offence under Section 25(1-b)a of the Arms Act.

3. The petitioner was further convicted and sentence



to suffer rigorous imprisonment for three years for the offence punishable under Section 26(i) of the Arms Act along with fine of Rs.5,000/- in default to undergo for the simple imprisonment for another one month.

4. The prosecution case in brief is that on 01.01.2018 at about 04:50 P.M. the informant received a secret information to the effect that some criminals had assembled at the house of one Raju Singh Rathod to make certain plans for committing some offence. In order to work out the said information, ASI Rambabu Chaudhary (PW-3), Hawaldar Rais Khan (PW-4), constables Hari Mohan Rai (PW-2) and constable Sanjay Kumar Singh (PW-1) left the police station and at about 5:20 p.m. they reached village Danhar Dehuli in front of the residence of the accused/petitioner, seeing the police party the petitioner started to flee away. The police party managed to apprehend him and on search recovered a country made pistol loaded with .315 bore live cartridge. They also recovered three numbers of live cartridges from the pocket of the Shirt of the said Raju Singh Rathod. The seized articles were sealed a level at the spot. The accused was arrested and brought to the local police station. ASI Rambabu Chaudhary lodged a written complaint before the SHO of the said police station and on the basis of the said



written information police registered Ramgarhwa P.S. Case No.01 of 2018 dated 01.01.2018 and took up the case for investigation.

5. On completion of investigation, police submitted charge sheet against the present accused under Section 25(1-b)a, 27 of the Arms Act, the learned Magistrate took cognizance of the offence, trial of the case concluded in convicting the petitioner and sentencing him for committing offence under Section 25(1-b)a/26 of the Arms Act.

6. The judgment of the Trial Court was assailed in First Appellate Court at the instance of the petitioners. The first appellate court affirms the judgment and order of conviction and sentence. So is the instant revision.

7. It is submitted by the learned advocate for the petitioner that the finding of both the Courts below suffers from serious irregularity because of the fact that prosecution failed to produce the independent witnesses to the seizure list and only the police personnel are the witnesses to search and seizure. Non-examination of the independent witnesses is fatal for the prosecution.

8. Secondly, it is submitted by the learned advocate for the petitioner that before search and seizure which was



conducted after apprehending accused Raju Singh Rathod, the police officer did not offered themselves for search. Therefore, mandatory provision of search and seizure was not considered and this will go to the root of the case.

9. Thirdly, it is submitted by the learned advocate for the petitioner that both the Trial Court and the Court of Appeal failed to consider that there are material contradictions and discrepancies in respect of the typography of the place of occurrence and the situation of the house of the accused.

10. On such counts, the impugned order of conviction and sentence should be quashed and set aside and the accused is required to be released.

11. The issue as to whether an accused can be convicted on the basis of the witnesses of police department who are said to be interested in the final result of the case which they raided, investigated and finally filed charge sheet. The Hon'ble Supreme Court in a decision in the case of *Sathyan Vs. State of Kerala* reported in (2023) SCC online SC 986 was pleased to give reply to such question. In the said judgment the Hon'ble Court relied on a decision of the Constitution Bench of the Apex Court in *Mukesh Singh Vs. State (NCT of Delhi)* wherein it was observed :-



"10.1. Under Section 173 Cr.P.C., the officer in charge of a police station after completing the investigation is required to file the final report/charge-sheet before the Magistrate. Thus, under the scheme of CrPC, it cannot be said that there is a bar to a police officer receiving information for commission of a cognizable offence, recording the same and then investigating it. On the contrary, Sections 154, 156 and 157 permit the officer in charge of a police station to reduce the information of commission of a cognizable offence in writing and thereafter to investigate the same.

12. Therefore, as such, there is no reason to doubt the credibility of the informant and doubt the entire case of the prosecution solely on the ground that the informant has investigated the case. Solely on the basis of some apprehension or the doubts, the entire prosecution version cannot be discarded and the accused is not to be straightaway acquitted unless and until the accused is able to establish and prove the bias and the prejudice.

As held by this Court in Ram Chandra [State of Rajasthan v. Ram Chandra, (2005) 5 SCC 151 : 2005 SCC (Cri) 1010] the question of prejudice or bias has to be established and not inferred. The question of bias will have to be decided on the facts of each case [see Vipin Kumar Jain [Union of India v. Vipin Kumar Jain, (2005) 9 SCC 579]].

12.2. Similarly, even with respect to offences



under the IPC, as observed hereinabove, there is no specific bar against the informant/complainant investigating the case. Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record.

13.2. (II) In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal.”

12. The Hon'ble Supreme Court, thus, finally held that when the accused failed to come forward with a specific case that the relation between him and the police party was inimical from before or that the police party purposefully implicated him in a false case, the testimonies of the official witnesses cannot



be discarded simply because independent witnesses were not examined. The correctness or authenticity is only to be doubted on 'any good reason' which, quite apparently is missing from the present case. In the instant case also on perusal of the impugned judgment, this Court finds that testimonies of police witnesses was not challenged on the ground of animosity or that the accused persons also did not challenge the manner of search and seizure and failure on the part of the police officers to offered themselves for their personal search. All the witnesses on behalf of the prosecution said in the same tune that a country made fire arm loaded with .315 bore cartridge and three live cartridges were recovered from the possession of the accused. The said seized fire arm and the live cartridges were examined by the sergeant measure who deposed in the Trial Court as PW-8. The sanction for prosecution was issued by the District Magistrate. Therefore, charge sheet was submitted complying all ingredients and preconditions under the Arms Act. Both the trial court and the court of appeal found the accused convicted under Section 25(1-b)a and 26 of the Arms Act. On perusal of the impugned judgments, I do not find any illegality or material irregularity in the impugned judgment. Therefore, the instant revision being devoid of any merit is dismissed. The judgment and order of



conviction and sentence passed by the Trial Court and affirmed
by the Court of Appeal is affirmed.

13. Accordingly, the instant revision is dismissed.

(Bibek Chaudhuri, J)

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