

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.1138 of 2016**

Arising Out of PS. Case No.-76 Year-2000 Thana- RAJPUR District- Buxar

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Lallu Tiwari and Ors

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

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**Appearance :**

|                      |   |                                                                                                    |
|----------------------|---|----------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. K.M. Choubey, Sr. Advocate<br>Mr. Ashok Kumar Gard, Advocate<br>Mr. Dineshwar Pandey, Advocate |
| For the Respondent/s | : | Mr. Sunil Kumar Pandey, APP                                                                        |

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL JUDGMENT**

**Date : 25-04-2024**

The instant revision is directed against an order dated 06<sup>th</sup> September 2016 passed in Criminal Appeal No. 20/2016 by the learned Sessions Judge, Buxar, affirming the judgment and order of conviction and sentence passed against the petitioners for the offence punishable under Sections 25(1-B)(a) and 26/35 of the Arms Act as well as under Sections 471 and 475 of the IPC and sentencing them to suffer rigorous imprisonment of one year with fine on different heads of punishments with default Clause by the learned Additional Chief Judicial Magistrate, Buxar.

2. In order to ascertain whether the impugned judgment suffers from illegality, impropriety or material irregularity, it is necessary to state at the outset, the facts of the case in brief.



3. On 17<sup>th</sup> October 2000, the Station House Officer (SHO) of Police Station Rajpur in the District of Buxar, received a secret information that some persons were travelling in a jeep towards Rajpur, carrying some heavy materials with them. The Police Officer along with the members of the force left the police station immediately to work out the said information. At about 7:30 am, they stopped a Jeep near the Block Development Office at Rajpur. The Police officer conducted search in presence of two independent witnesses, namely, Ashok Singh and Bhagwan Singh and recovered a riffle of 0.315 caliber with four loaded cartridge from the front seat. In the back side of the said Jeep, the police found a bedding and when the bedding was unfolded, one double barrel gun, 07 nos. of single barrel guns, 33 nos. of live cartridges .12 Bore and 02 live cartridges of .315 bore were recovered. The police conducting search asked the passengers of the said Jeep to produce valid license in respect of the said firearms and ammunition. Petitioner No. 01, namely, Lallu Tiwari produced a license which was found to be genuine in respect of his riffle. No other person could submit any license in support of the firearms and ammunition recovered from the said Jeep. Accordingly, in presence of independent witnesses, the firearms and ammunition were recovered. The firearms and ammunition were seized. The



passengers of the said Jeep were arrested by police and the S.H.O., Rajpur, namely, Manoranjan Bharti filed a *suo motto* complaint against the present petitioners. On the basis of the said complaint, police registered Rajpur P.S. Case No. 76 of 2000 dated 17<sup>th</sup> October 2000 under Sections 467/471/474/464/120B of the IPC and Sections 25(1-B)(a)/26/29/30/35 of the Arms Act. On completion of investigation, charge-sheet was submitted against the petitioners. They faced trial before the learned Sub-Divisional Judicial Magistrate at Buxar and by judgment dated 10<sup>th</sup> May 2016, passed in G.R. Case No. 1331 of 2000, the accused persons/petitioners were convicted along with one Harishankar Tiwari, who died during the pendency of the instant revision. The petitioners filed an appeal before the learned Sessions Judge, Buxar which was registered as Criminal Appeal No. 23 of 2016. The learned Sessions Judge by his judgment dated 6<sup>th</sup> September 2016, affirmed the order of conviction and sentence. The said order is assailed in revision in the instant case.

4. It is found from the lower court record that during trial prosecution examined as many as 9 witnesses, amongst them PW-1 is the Arms Act expert, he examined the seized firearms and submitted a report that the seized firearms were in working condition. PW-2 Shiv Bihari Singh, PW-3 Shankar Ram, PW-4



Md. Tahir, PW-5 Prabhu Sahay Ekka and PW-7 Rajesh Kumar Rai are the police personnel who accompanied PW-8 Manoranjan Bharti (SHO of Rajpur P.S.) during raid and they co-ordinated the prosecution's case in its entirety. PW-8 Manoranjan Bharti was In-charge of the raid. He recovered and seized the firearms from the petitioners and submitted complaint in the police station. PW-9 is the Investigating Officer of this Case. During trial, the prosecution produced the requisition for inspection of the seized arms, expert's report regarding arms and ammunition, seizure list, signature of the witnesses on the seizure list, signature of the accused persons on the seizure list, written information endorsement made by the police on the written information, sanction order, formal FIR etc. which were marked as Exhibit 1 to 6 respectively. The DBBL guns were marked as Material Exhibit M, 07 SBBL as Ext. M/1 to M/VII, and the packet of cartridge produced before the trial court as Exhibit M/VIII. Learned trial Judge duly considered the evidence on record and held the accused persons guilty for committing offences under the charge.

5. Learned counsel for the petitioners, in the course of his submission, has urged that one Ashok Singh and one Bhagwan Singh were shown as independent witnesses to the search and seizure. However, the said independent witnesses were not



examined by the prosecution during the trial of the case. Non-examination of independent witnesses is fatal for the prosecution case of the fact that all other witnesses are police personnel and they are obviously interested in the outcome of the case. Moreover, it is submitted by the learned Advocate for the petitioners that the independent witnesses were able to state the circumstances under which search and seizure was made. It is also submitted by the learned Advocate for the petitioners that one riffle and some ammunition were recovered from petitioner no. 01 Lallu Tiwari. He produced a license in support of his possession of the firearms and ammunition. The said license was found to be genuine during the investigation of the case, therefore, Lallu Tiwari cannot be held guilty on the basis of principle of vicarious liability. In support of his contention, the learned Advocate for the petitioners referred to the relevant portions of the Judgment passed by the trial court at Page 10. The trial court has recorded that the defence has pleaded that accused Lallu Tiwari was in possession of license firearms (riffle with cartridges) and hence, he has committed no offence. The learned trial Judge, however, held that on perusal of the record as well as evidence, it is ascertained that a genuine license was recovered from accused Lallu Tiwari. However, in presence of Lallu Tiwari, 07 numbers of firearms and



ammunition were recovered from the possession of the other accused persons/petitioners. Amongst the accused persons, Dharendra Tiwari was the son of Lallu Tiwari. The arrested persons admitted that the forged license had been supplied to them by Lallu Tiwari, therefore, the involvement of Lallu Tiwari cannot be said to be not proved in the examination of the offence. Thus, petitioner no. 1, Lallu Tiwari was convicted for the offence under Sections 25(1-B)(a) on the ground of his joint liability under Section 35 of the Arms Act. The learned Advocate for the petitioners, in course of his argument, did not say any word against the evidence of other witnesses. Therefore, it is presumed and held that the petitioners had no grievance with regard to the evidence adduced by the witnesses in support of the prosecution case.

6. It is not in dispute that all the witnesses to the apprehension of the accused persons from a Jeep, search of a bedding contained firearms kept in the Jeep and recovery of a riffle loaded with 4 rounds of cartridges in the possession of Lallu Tiwari and other DBBL and SBBL guns and ammunition, preparation of seizure list etc. or the witnesses belonging to a Police Department. The learned Advocate for the petitioners did not urge that the witnesses, who conducted raid and in whose presence search and seizure was made falsely implicated, the



accused persons out of any previous enmity or grudge. It is needless to say that the defence did not even suggest that the witnesses, on behalf of the prosecution, regarding search and seizure were inimical against the accused persons and, therefore, they were implicated falsely by the said witnesses. There is no law or precedent that the witnesses on behalf of the Police Department should be disbelieved. The learned trial Judge as well as the learned Sessions Judge in appeal elaborately discussed the evidence adduced at different stages on record and came to a finding that the prosecution was able to bring home the charge against the accused persons to the effect that they were in possession of firearms and ammunition without license on the date of their search and seizure. In this connection, this Court is under obligation to discuss as to whether non-examination of independent witnesses to the seizure was fatal for the prosecution or not. This Court finds on perusal of the judgment of the trial court as well as the appellate court that there is consistent evidence on record regarding seizure of arms from the possession of the petitioners and preparation of seizure list in their presence. The accused persons put their signatures on the seizure list. The copy of the seizure list was handed over to the petitioners. In such circumstances, the evidence of the witnesses who were members



of the raiding party cannot be disbelieved only because of non-examination of independent witnesses. Admittedly, summonses were issued to all the witnesses including independent seizure list witnesses. However, their presence could not be procured during trial of the case. The case was initiated in the year 2000. The trial court passed the judgment on 10<sup>th</sup> May 2016, i.e., after 16 years. During this period, the independent witnesses to the seizure were not produced by the prosecution. The trial court took all necessary steps for production of the witnesses but failed. It is pertinent to mention that on perusal of the evidence of the witnesses recorded by the learned Magistrate as well as the Court of appeal, there is no material, no suggestion and no evidence recorded to indicate any ill will or enmity between the petitioners and any of the witnesses, so as to falsely implicate the petitioners in any manner whatsoever. There being consistent findings of facts on the point of seizure against the petitioners after considering the evidence on record, there is no scope for interference by this Court in the instant revisional application. The decision of the High Court of Jharkhand in *Sajjan Ansari v. State of Jharkhand*, reported in *2020 SCC OnLine Jhar 867* and the decision of this Court in *Arvind Yadav v. State of Bihar*, reported in *2013 SCC OnLine Pat 419*, may be relied on in support of my observation.



7. This Court finds that petitioner no. 01 Lallu Tiwari was convicted on the principle of joint liability as well as the principle of *res ipsa loquitur* with the aid of Section 35 of the Arms Act. Section 35 runs as follow:-

*“35. Criminal responsibility of persons in occupation of premises in certain cases.—Where any arms or ammunition in respect of which any offence under this Act has been or is being committed are or is found in any premises, vehicle or other place in the joint occupation or under the joint control of several persons, each of such persons in respect of whom there is reason to believe that he was aware of the existence of the arms or ammunition in the premises, vehicle or other place shall, unless the contrary is proved, be liable for that offence in the same manner as if it has been or is being committed by him alone.”*

8. A plain reading of Section 35 states that if any firearms or any ammunition found in a premise, vehicle or other place, with the help of which, any offence under the Act has been committed or is being committed and the said place or vehicle was in joint occupation or under joint control of several persons, each of such persons in respect of whom there is a reason to believe that he was aware of the existence of arms and ammunition in the premises, vehicle or any other place shall, unless the contrary is proved, be liable for that offence in the same manner as if it has



been or is being committed by him alone. Thus, it means that if an arm or ammunition is recovered from a premise, vehicle or any other place under joint possession of more than one person, all the persons are held to be vicariously liable.

9. In case of Lallu Tiwari though, he had a genuine license in support of his possession of a riffle and live cartridges. He was proceeding in a vehicle with other accused persons, who were in possession of unlicensed firearms and ammunition. Accordingly, the petitioners other than Lallu Tiwari were convicted under Sections 25(1-B)(a)/26 of the Arms Act. The petitioner no. 01 was convicted under the same offence with the aid of Section 35 of the Arms Act. The petitioner no. 01 did not come forward with any evidence to the contrary to prove that he had no knowledge about transportation of firearms by other petitioners or that he cannot be held to be vicariously liable in connection with the offence.

10. For the reasons stated above, I do not find any illegal or immaterial irregularity in the impugned judgment passed in Criminal Appeal No. 23 of 2016 on 06<sup>th</sup> September 2016 affirming the order of conviction and sentence passed by the learned Additional Chief Judicial Magistrate-V, Buxar in G.R. No. 1331 of 2010 on 10<sup>th</sup> May 2000.



11. For the reasons stated, the instant revision is dismissed on contest. The petitioners are directed to surrender in the trial court to suffer sentence.

**(Bibek Chaudhuri, J)**

Suraj Dubey/-

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