

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.737 of 2016**

Arising Out of PS. Case No.-106 Year-2005 Thana- PHULWARIYA District- Gopalganj

Rinku Ahmed Son of Baharan Mian, Resident of Village- Sangrampur Gope,  
P.S- Phulwaria, District- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                      |   |                                                          |
|----------------------|---|----------------------------------------------------------|
| For the Petitioner/s | : | Mr. Soni Shrivastava, Adv.,<br>Ms. Sarandha Suman, Adv., |
| For the State        | : | Mr. Sunil Kumar Pandey, APP                              |

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

**ORAL JUDGMENT**

**Date : 16-02-2024**

The petitioner has challenged the Judgment and order of conviction and sentence passed by the learned Judicial Magistrate, 1<sup>st</sup> Class, Gopalganj in G.R. No. 2169 of 2005, Tr. No. 2696 of 2006 on 29<sup>th</sup> April, 2006 and affirmed by the learned Additional Sessions Judge-VIII, Gopalganj on 23<sup>rd</sup> April, 2016 in Cr. Appeal No. 32 of 2006 (CIS No. 497 of 2013).

2. I have heard the learned Advocate on behalf of the convict/petitioner and the learned APP.

3. I have also perused the impugned Judgment passed by the trial court as well as the court of appeal.



4. The petitioner faced trial under the charge of Sections 25(1-b)a and Section 26(1) of the Arms Act.

5. The prosecution case in brief is that in the night on 6/7<sup>th</sup> November, 2005, a team of Police personnel under the leadership of S.I., Ram Naresh Singh (informant), went to the house of one Baharan Mian at village Sangrampur Gope, in order to work out a source information and also to apprehend Barahan Mian. When Police party entered into the room of Baharan Mian, they found Barahan Mian and his son Rinku Ahmed were sleeping on a cot in the said room. Seeing the Police party, Baharan Mian managed to flee away from the said room. Rinku Ahmed was apprehended by the informant and other Police personnel. From the bed one 8 mm country made pistol was recovered along with two live cartridges. The Police Officer (Informant) seized the said firearm at the spot in presence of two independent witnesses as well as the Police personnel. Thereafter, he submitted fardbeyan before the jurisdictional P.S., on the basis of which, Phulwariya (Hathua) P.S. Case No. 106 of 2005, dated 7<sup>th</sup> November, 2005, under Sections 25(1-b) a/26/35 of the Arms Act was registered against the said Rinku Ahmed.



6. Police submitted charge-sheet against the petitioner on completion of investigation and the accused was placed for trial.

7. During trial, in order to bring home the charges under Sections 25(1-b)a and 26 of the Arms Act, the prosecution examined six witnesses. Amongst them P.W.-3 is Ram Naresh Singh, who was the informant and leader of the raiding party, which allegedly conducted raid in the night on 6/7<sup>th</sup> May, 2005. PW.-5, Shiv Prassana Singh, A.S.I., is the Investigating Officer of the case. PW.-6, Sri Krishna Ram, is a Sergeant Major attached to Bihar Police Service. He examined the seized firearm and submitted a report to the effect that the seized firearm was a country made 8 mm Pistol with two number of live cartridges. Other two witnesses are the Police personnel.

8. It is submitted by the learned Advocate for the petitioner that both the courts below failed to consider that Police conducted raid on the date and time of occurrence to apprehend one Baharan Mian. There was no contemplation to apprehend Rinku Ahmed and implicate him in a false case under the Arms Act. According to learned Advocate for the petitioner, Rinku Ahmed was apprehended and he was prosecuted in order to wreck vengeance against his father Baharan Mian. Secondly, it is pointed



out by her that the firearm was not recovered from the physical possession of Rinku Ahmed. It was kept concealed under the cot. There is no evidence as to who had kept the firearm concealed. Therefore, conscious and physical possession of firearm has not been proved against the petitioner. Thirdly, learned Advocate for the petitioner submits that the informant was the leader of the raiding party. The Investigating Officer (PW.-5) and other Police personnel witnesses except P.W.-6 were the members of the raiding party. Therefore, when a member of the raiding party becomes Investigating Officer, prosecution case ought to have taken into consideration with a pinch of salt. The informant and Investigating Officer are obviously interested in the out come or result of the case against the petitioner. Therefore, their evidence ought not to have been considered by the courts below.

9. It is also pointed out by the learned Advocate for the petitioner that in the seizure list two independent witnesses were cited as seizure witnesses. However, the said witnesses have not been examined during trial of the case.

10. Last but not the least, the seized firearm was not sealed and levelled at the spot as evident from the evidence of PW.-6, who examined the firearm as an ex part.



11. On these counts, learned Advocate for the petitioner prays for reversal of the Judgment of conviction and sentence.

12. Learned APP, on the other hand, submits that during trial first information is exhibited, so is the seizure list and a sanction order, the trial court on careful consideration of entire evidence on record held the petitioner guilty for committing offence under sections 25(1-b)/A/26 of the Arms Act and the revisional court can not alter the said findings of both the courts below on factual aspect.

13. Having heard the learned Advocate for the petitioner and the learned APP and on careful perusal of the materials on record, let me first consider as to whether the evidence on record is suspect in view of the fact that all the witnesses belonged to Police Department and no independent witness was examined by the trial court.

14. In a very recent decision in ***Sathyan Versus State of Kerala, reported in 2023 SCC online SC 986***, it is held by the Hon'ble Supreme Court relying on the decision of the ***Mukesh Singh Vrs. State (Narcotic Bench of Delhi)***, reported in ***2020 (10) SCC 120*** as hereunder:-

*“10.1. Under Section 173 CrPC, 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. Officer in charge of a police station has been defined under Section 2(o) CrPC and it includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present.*

**10.2.** *As observed and held by this Court in Lalita Kumari v. State of U.P. [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524 : AIR 2014 SC 187] , the word “shall” used in Section 154 leaves no discretion in police officer to hold preliminary enquiry before recording FIR. Use of expression “information” without any qualification also denotes that police has to record information despite it being unsatisfied by its reasonableness or credibility. Therefore, the officer in charge of a police station has to reduce such information alleging commission of a cognizable offence in writing which may be termed as FIR and thereafter he is required to further investigate the information, which is reduced in writing.*

**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. The matter has to be decided on a case-to-case basis. A contrary decision of this Court in Mohan Lal v. State of Punjab [Mohan Lal v. State of Punjab, (2018) 17 SCC 627 : (2019) 4 SCC (Cri) 215] and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.”*

15. The Hon’ble Supreme Court finally held that it can no longer be said to be res integra that the person receiving the information of the crime or detecting the occurrence thereof can investigate the same. Questioning such investigation on the basis of bias or such live factor, would depend on the facts and circumstances of the each case. It is not amenable to a general unqualified Rule that lends itself to uniform application.

16. In the instant case, the evidence of witnesses specially the informant, who was the leader of the raiding party, could not have been doubted, had there been compliance of the statutory rule of search and seizure of contraband article. In the instant case, prosecution states that a firearm was recovered with two live cartridges. Surprisingly enough the seized firearm was not



sealed and levelled at the spot before seizure. In the seizure list the specimen seal has not been put. PW.-6, who examined the seized firearm stated on oath that the said firearm and live cartridges were not sealed. No level of the seized contraband article has been exhibited. Signature of the accused/petitioner has not been obtained on the level of the seized article. No specimen level was prepared and kept in the case diary. No Malkhana register was exhibited to prove that the firearm involved in the instant case was actually recovered and seized from the petitioner.

17. In view of such lacuna, the prosecution case cannot stand. Both the courts below failed to appreciate the above mentioned lacuna in the prosecution case. The prosecution has failed to prove beyond reasonable doubt that the firearm, which was examined by P.W.6 and produced before the court, as a material exhibit, was actually seized from the petitioner. This lacuna touches the root of the prosecution case.

18. For the reasons stated above, this Court has no other alternative but to hold that the impugned Judgment and order of conviction and sentence cannot be sustained. Accordingly, they are quashed and set aside.

19. The instant revision is allowed.



20. The petitioner is directed to be discharged from the bail bond.

21. Let, a copy of this order be sent to the court below for information and compliance along with the lower court records.

**(Bibek Chaudhuri, J)**

pravinkumar/-

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