

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1134 of 2019

Arising Out of PS. Case No.-88 Year-2018 Thana- AGIAON District- Bhojpur

=====

Jabbar Singh, Son of Late Baijnath Singh Resident of Village- Poswan, P.S.-
Agiaon (Garhani), District- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : None

For the Respondent/s : Ms. Rina Sinha

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 5 02-02-2024
1. None appears on behalf of the petitioner.
 2. Learned Advocate for the State is present.
 3. The instant revision is taken up for hearing.
 4. I have heard the learned Advocate appearing on behalf of the State.
 5. The instant revision is directed against the judgement and order, dated 6th of April, 2019, passed by the learned Additional Sessions Judge Xth, Bhojpur at Ara in Criminal Appeal No. 13 of 2019, affirming the judgement and



order of conviction and sentence, dated 17th of February, 2019, passed by the learned Additional Chief Judicial Magistrate, VIIth, Bhojpur at Ara in G. R. No. 4005 of 2018 (Trial No. 3316 of 2018).

6. The learned Magistrate convicted the accused / petitioner for the offence under Section 25(1-B)(a) of the Arms Act, 1959 and sentenced to rigorous imprisonment for three years with fine of Rs. 5,000/-, in default of payment of fine further imprisonment for one month. The petitioner was also convicted under Section 26(1) of the Arms Act and sentenced to imprisonment for one year with fine of Rs. 2,000/- and in default of payment of fine, simple imprisonment for further one month. It was directed that both the sentences of imprisonment shall run concurrently, but the sentence of imprisonment for non-payment of fine was run separately.

7. Prosecution case in brief is that on 4th of September, 2018, the Officer Incharge of Garhani Police Station went to conduct a raid at village Poswan to apprehend a wanted criminal, namely, Jabbar Singh, the petitioner herein in connection with Narayanpur P. S. Case No. 63 of 2018. When police reached the village Poswan, Jabbar Singh tried to flee away. He was apprehended by police. On due observance of



legal formalities, the Police Officer conducted search of the person of the petitioner and recovered a country-made revolver and two cartridges from his possession. As the petitioner was possessing the said country-made revolver without any license, he was arrested by police and brought to the Police Station. The Officer Incharge of Garhani Police Station filed a suo motu complaint against the accused, on the basis of which, Garhani P. S. Case No. 88 of 2018 was registered under Section 25(1-B) and 26(1) of the Arms Act. An investigation was conducted by police and he submitted charge-sheet against the petitioner under the above-mentioned penal provisions. The petitioner, duly, was produced before the Trial Court to face trial whether he denied the charge framed against him under Section 25(1-b) (a) and Section 26(1) of the Arms Act. In order to bring home the charge against the accused, the prosecution examined five witnesses. Amongst them, first two witnesses are Police Constables, who were members of the raiding party. P.W. 3 is the informant. P.W. 4, Manoj Kumar Ram is an arms expert, who examined the firearm, which was seized from the possession of the accused. P.W. 5 is the Investigating Officer who submitted charge-sheet. Some documents were marked exhibit which I proposed to refer in the body of this judgement



subsequently, if required.

8. In the instant revision, it is stated on behalf of the petitioner that the learned Trial Judge as well as the Court of Appeal failed to consider that all witnesses are the members of police force except P.W. 4 and P.W. 5. They were in the raiding parties. Therefore, they are interested in the outcome of the case and their evidence cannot be considered.

9. It is also stated that the entire incidence is false and prosecution failed to produce any independent witness in support of its case.

10. It is further stated on behalf of the petitioner that according to the prosecution case, one firearm and two live cartridges were recovered from the possession of the petitioner. It is also stated that the live cartridges do not fit with the firearm which was allegedly seized by the police from the possession of the petitioner.

11. It is needless to say that this Court in revisional jurisdiction cannot re-appreciate the evidence on record and to find out as to whether the learned Courts below committed gross error in appreciating evidence except in the extreme cases where evidence on record is not at all appreciated or where the Court mis-appreciated the evidence and wrongly placed onus upon the



defence to prove its case.

12. In the instant revision, no such allegation has been made by the petitioner.

13. It is the first grievance of the petitioner that all the witnesses are police personnel and the petitioner has failed to examine any independent witness. There are catena of decisions that only because the witnesses belong to the Police Department, they cannot be held to be interested witnesses until and unless a specific defence on the point of animosity between the witnesses and the petitioner is established.

14. In the instant case, there is no ground mentioned that the police personnel were inimical towards the accused / petitioner.

15. The petitioner contended that the prosecution failed to examine any witness. However, it appears from the evidence of SHO (P.W. 3), who was the leader of the raiding party that he called two independent witnesses to remain with the Police Officer during search and then to be the witnesses of search and seizure, but nobody came forward. In the absence of any independent witnesses, the Police Officer was compelled to seize the firearm.

16. The question as to whether conviction being



passed solely on the evidence of Police officials should be maintained or not, is not longer an issue for much deliberation. In other words, the law is well settled that if the evidence of a Police Officer is found to be reliable, trustworthy, then passing conviction thereupon, cannot be questioned and the same shall stand on firm ground. The Hon'ble Supreme Court in ***Pramod Kumar vs. State (Govt. of NCT of Delhi)***, reported in (2013) 6 SCC 588, in paragraph 13, held as hereunder:-

“13. This Court, after referring to State of U.P. v. Anil Singh [1988 Supp SCC 686 : 1989 SCC (Cri) 48] , State (Govt. of NCT of Delhi) v. Sunil [(2001) 1 SCC 652 : 2001 SCC (Cri) 248] and Ramjee Rai v. State of Bihar [(2006) 13 SCC 229 : (2007) 2 SCC (Cri) 626] has laid down recently in Kashmiri Lal v. State of Haryana [(2013) 6 SCC 595 : 2013 AIR SCW 3102] that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust. This is also based on the principle



that quality of the evidence weighs over the quantity of evidence.”.

17. In *State (Govt. of NCT of Delhi) vs. Sunil*, reported in *(2001) 1 SCC 652* and *Kulwinder Singh v. State of Punjab* reported in *(2015) 6 SCC 674*, the Hon’ble Supreme Court took the same view that prosecution case cannot be rejected on the ground that the independent witnesses have not been examined, when on the perusal of the evidence on record, the Court finds that the case put-forth by the prosecution is trustworthy. The same view is taken by the Hon’ble Supreme Court in *Sathyan vs. State of Kerala*, reported in *2023 SCC OnLine SC 986*.

18. It is true that witnesses made contradictory statement in respect of date on which the seized firearm was sent to the expert for examination. Wrong mentioning of date in this regard is not a material discrepancy, for which the revisional jurisdiction can be invoked.

19. I have perused the judgement passed by the Trial Court as well as the Appellate Court.

20. I do not find any reason to interfere against the impugned judgement of the Trial Court as well as the Court of Appeal.

21. The instant revision is thus dismissed.

22. It is made clear that if the petitioner completes the



period of incarceration as directed by the Trial Court and
admitted by the Court of Appeal, he will be released forthwith,
if not wanted in any other case.

(Bibek Chaudhuri, J)

skm/-

U			
---	--	--	--

