

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.90 of 2019

Arising Out of PS. Case No.-58 Year-2016 Thana- CHHATAPUR District- Supaul

Md. Sikander, Son of Md. Hadim @ Md. Hadish Resident of village-
Gokhlapur, Ward No. 1, Police Station-Narpatganj, District-Araria

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner	:	Mr. Arun, Advocate Md. Anwar, Advocate
For the State	:	Mr. Shailendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 03-03-2025

The present Revision Petition has been preferred against the impugned judgment dated 05.11.2018 passed by learned Additional Sessions Judge, Supaul in Criminal Appeal No. 16 of 2017 whereby learned Sessions Court has partly upheld the judgment of conviction and order of sentence passed by learned Additional Chief Judicial Magistrate-II, Supaul whereby the petitioner herein was found guilty under Section 394 IPC and Section 25(1-b)a, 26 and 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years under Section 394 IPC and R.I. for two years under Section 25(1-b)a of the Arms Act and R.I. for one year under Section 26 of the Arms Act and R.I. for three years, under Section 27 of the Arms Act and to pay fine of Rs. 2,000/- each under Section



25(1-b)a, 26 and 27 of the Arms Act. All the sentences were directed to run concurrently and in case of default to pay the fine, to undergo additional S.I. for six months.

2. However, by the impugned judgment of the Appellate Court, learned Appellate Court had acquitted the petitioner under Section 27 of the Arms Act but upheld his conviction and sentence under Section 394 IPC, 25(1-b)a and Section 26 of the Arms Act and sentenced thereunder.

3. I heard learned counsel for the petitioner and learned APP for the State.

4. Learned counsel for the petitioner submits that the petitioner has already undergone about three years judicial custody, because he was in custody since 28.02.2016 in the present case. He further submits that as per the FIR and the evidence on record, the best case of the prosecution is that his attempt to commit robbery with arms has failed because he was apprehended by the villagers and the informant on the spot. As such offence under Section 394 was not completed. At most, he has committed attempt to commit robbery. Even Section 26 of the Arms Act does not apply because he was holding the illegal arms in public view. He has not concealed the same, because as per allegation he was using it. In regard to section 25(1-b)a of



the Arms Act, it is submitted that the search and seizure has not been done as per the procedure prescribed in the Criminal Procedure Code.

5. Finally he also submits that in view of serving almost the whole sentence except the fine, lenient view may be taken by this Court to sentence the petitioner to imprisonment for the period already undergone in custody and the fine part of the sentence may be set aside.

6. Learned APP for the State, however, submits that in view of the facts and circumstances of the case, there is no illegality or infirmity in the impugned judgment and the present petition is liable to be dismissed.

7. However, I find that the petitioner has committed, at most, the attempt to commit robbery. Moreover, even search and seizure has not been done strictly as per law. Section 26 of the Arms Act is not applicable in view of the fact that arms was in possession of the petitioner in public view.

8. Accordingly, the impugned judgment of the Appellate Court is upheld but sentencing part is modified to the extent that the petitioner is sentenced to imprisonment for the period undergone by him in custody and the fine imposed upon him is set aside.



9. The present petition is part allowed, accordingly.

10. L.C.R. be sent to the Court below without any delay.

(Jitendra Kumar, J.)

Chandan/-

AFR/NAFR	NAFR
CAV DATE	NA
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