

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.365 of 2022**

Arising Out of PS. Case No.-51 Year-2015 Thana- PIRI BAZAR District- Lakhisarai

Kanhaiya Kumar Son Of Binod Paswan @ Bindeshwari Paswan @
Vindeshwari Paswan, Resident Of - Purani Bazar Surajgarha, P.S.-
Surajgarha, Dist- Lakhisarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Parmanand Pd. Nr. Sahi, Advocate
For the State : Mr. Upendra Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT**

Date : 24-07-2025

The present revision petition has been preferred by the petitioner against the impugned judgment of conviction and order of sentence dated 08.04.2022 passed by learned Sessions Judge, Lakhisarai in Criminal Appeal No. 4 of 2019, whereby learned Appellate Court below has upheld the judgment of conviction and order of sentence passed by learned Sub-Divisional Judicial Magistrate, Lakhisarai in G.R. Case No. 1306 of 2015 arising out of Piri Bazar P.S. Case No. 51 of 2015, whereby learned Trial Court found the petitioner guilty under Section 25(1-B)a and 26(1) of the Arms Act, 1959 and sentenced the petitioner to rigorous imprisonment for 3 years and fine of Rs.2,000/- under Sections 25(1-B)a and 26(1) each of the Arms Act, 1959 and it is stipulated that in case of default



to pay the fine, the petitioner was directed to undergo further simple imprisonment for three months under Section 25(1-B) of the Arms Act and simple imprisonment for two months under Section 26(1) of Arms Act. All the sentences were directed to run concurrently.

2. The whole case is based on seizure of arms from a *thela* which the petitioner was pulling with sapplings of mangoes. The said rifle was not in assembled conditions but in three parts. The first part was barrel which was of length of about one feet, whereas second part was body part of the rifle bearing length of about 1.75 feet, whereas third part was about one feet long butt of the rifle.

3. In course of the trial altogether four prosecution witnesses were examined: (i) **P.W.1-** Ashutosh Kumar, Informant himself, (ii) **P.W.2-** Shyamsundar Kashyap(Sergeant Major), **P.W.3-** Ghanshyam Tiwari and **P.W.4-** Ravikant Kumar, I.O. of this case.

4. The following documents were also brought on record by the prosecution: (i) **Ext.1-** Self statement of S.H.O. of Piri Bazar Police Station, Ashutosh Kumar, (ii) **Ext.1/1-** Endorsement made by Ashutosh Kumar on self statement, (iii) **Ext.2-** Formal F.I.R., (iv) **Ext.3-** Search cum Seizure List, (v)



Ext.4- Ballistic report of Sergeant Major, (vi) **Ext.5-** Prosecution Sanction Report of D.M., Lakhisarai, (vii) **Ext.6-** Arrest Memo, (viii) **Ext.7-** Signature of S.D.M. on seal bag in which the seized material was produced.

5. The following material exhibits were also brought on record by prosecution: (i) **Material Ext.I-** Butt of seized arms, (ii) **Material Ext.II-** Body of seized arms and (iii) **Material Ext.III-** Barrel of the seized arms.

6. I heard learned for the petitioner and learned APP for the State.

7. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. He was a poor man working as a *thela* puller for his livelihood and he is no way aware of any arms on his *thela* nor was there any arms recovered from his *thela*. Learned Trial Court and learned Appellate Court erroneously convicted the petitioner and sentenced him. The whole case of the prosecution is based on seizure of arms, but no seizure of the arms has been proved by the prosecution during the trial. No seizure witnesses has been examined, nor is there any evidence to show that the seizure list was prepared on the spot and the same was sealed in presence of the petitioner on the place of seizure. There is no



evidence to show that seizure list was prepared in the presence of the petitioner because the seizure list does not bear the signature of the petitioner. There is no evidence that a copy of the seizure list was supplied to the petitioner. There is also no evidence at all regarding sealing of the arms and depositing the same in a safe *malkhana* with identification mark on the alleged seized arms. As such, on account of perverse appreciation of evidence on record by learned Trial Court as well as learned Appellate Court below, this poor petitioner has been convicted and sentenced, who has already spent 11 months and 22 days in custody. He further submits that petitioner was the sole earner in the family with two old parents. The old father even died. This is persecution rather than prosecution. The petitioner is the sole bread earner of the family and his mother, who is dependent upon him, is a handicapped lady who is suffering at home.

8. Learned APP for the State defends the impugned judgment of conviction and order of sentence.

9. I considered the rival submissions of the both the parties and perused the material on record.

10. I find that the prosecution case is based on seizure of alleged rifle, but as per the prosecution case itself, there was no rifle recovered. In fact, only after assembling of three parts



which were recovered from the *thela*, has been termed as rifle. The articles cannot be termed as rifle in the condition they were recovered. Only after assembling the three parts, it could be termed as rifle.

11. Above all, no seizure witnesses have been examined, nor is there any evidence to show that the seizure list was prepared on the place of seizure in the presence of the petitioner and copy of the seizure list was supplied after taking his signature on the same. Hence, seizure itself is highly doubtful.

12. Moreover, there is also no evidence to prove that the seized arms were sealed on the place of seizure in the presence of the petitioner. Even, there is no evidence that this seized and sealed arms were deposited in a police *malkhana*.

13. As such, the whole substance of prosecution case goes for want of such evidence on record and prosecution case becomes highly doubtful. Convicting the petitioner on such evidence would amount to the travesty of justice. Accordingly, the impugned judgment is not sustainable in the eye of law and the same is set aside.

14. Bail bonds of the petitioner stands discharged.

15. L.C.R. be sent back to the Court concerned



forthwith along with a copy of this judgment.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.07.2025
Transmission Date	25.07.2025

