

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.920 of 2019

Arising Out of PS. Case No.-119 Year-2005 Thana- BANKA District- Banka

Arvind Yadav Son Of Gulabi Yadav, Resident Of Village- Singho, P.S.-
Banka, Distt. - Banka.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vibhakar Kumar, Advocate
For the State	:	Mr. Upendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 27-03-2025

The present revision petition has been preferred by the petitioner against the impugned judgment and order dated 25.06.2019 passed by learned Additional District & Sessions Judge-IV, Banka in Criminal Appeal No. 05 of 2015, whereby learned Appellate Court has upheld the judgment of conviction and order of sentence passed by learned Trial Court against the petitioner whereby co-accused Shital Yadav and Udho Yadav were acquitted of all the charges. However, the petitioner Arvind Yadav was found guilty under Sections 25(1-B)a and 26(1) of the Arms Act and he was sentenced accordingly.

2. The factual background of the case is that on the basis of self statement of the Police Officer-Ghuran Mandal, S.I. and Officer-in-charge of Banka Police Station, Banka P.S. Case



No. 119 of 2005 was registered on 24.04.2005 against three accused persons including the petitioner for offences punishable under Sections 25(1-B)a, 26 and 35 of the Arms Act.

3. After investigation, first charge-sheet was submitted against the petitioner and subsequently supplementary charge-sheet was submitted against the rest two co-accused and ultimately all three accused were tried in the same trial bearing Trial No. 177 of 2015, arising out of G.R. Case No. 405 of 2005 in the Court of Chief Judicial Magistrate, Banka.

4. After cognizance and framing of charge, trial commenced and during trial, altogether eight prosecution witnesses were examined who are as follows:

- (i) P.W. 1-** Santosh Kumar Bhagat
- (ii) P.W. 2-** Kamal Nayan
- (iii) P.W. 3-** Niranjana Kumar
- (iv) P.W. 4-** Govind Choudhary
- (v) P.W. 5-** Ghuran Mandal, informant
- (vi) P.W. 6-** Sanjay Kumar Singh
- (vii) P.W. 7-** Dineshwar Mishra
- (viii) P.W. 8-** Bhola Prasad Mandal

5. P.W. 1, P.W. 2 and P.W. 3 are constables and were member of the patrolling party. P.W. 6, Sanjay Kumar Singh is the driver of Government Jeep.

6. During trial, following documents were also



exhibited by the prosecution:-

- (i) **Ext.-1** is seizure list
- (ii) **Ext.-1/a** is signature of P.W. 4, Govind Choudhary on the seizure list
- (iii) **Ext.-2** is self statement given by the informant
- (iv) **Ext.-3** is report of Sergeant Major
- (v) **Ext.-4** is sanction order
- (vi) **Ext.-5** is signature of Ghuran Mandal on formal F.I.R.

7. The recovered country made **pistol and cartridge** have also been produced by the prosecution and exhibited as **material Ext. I and Ext. II** respectively.

8. However, no defence evidence was adduced during trial.

9. On the basis of the evidence on record and submissions of the parties, learned Trial Court convicted the present petitioner under Sections 25(1-B)a and 26(1) of the Arms Act, however acquitted the rest two co-accused.

10. Being aggrieved by the Trial Court judgment, the petitioner preferred Criminal Appeal bearing No. 5 of 2015. However, same was dismissed and the judgment of conviction and order of sentence passed by learned Trial Court was upheld and hence, the present petition.

11. Heard learned counsel for the petitioner and



learned APP for the State.

12. Learned counsel for the petitioner submits that petitioner is innocent and has falsely been implicated in this case. He further submits that out of two independent witnesses to the seizure, only one of them was examined and the rest has not been examined during trial. Moreover the seizure witness, who has been examined, has become hostile and has not supported the prosecution case deposing that his signature was taken on the blank paper.

13. He further submits that there is nothing on record to show that after seizure, the seized material were sealed on the spot and thereafter same were deposited in the safe custody of Police Malkhana. He further submits that even Sergeant Major, who has tested the efficacy of the seized arms, has not been examined and for want of such examination, the efficacy test could not be proved. He further submits that seizure was not made in the presence of the petitioner because seizure list does not bear any signature of the petitioner.

14. However, learned APP for the State defends the impugned judgment submitting that same has been passed after proper appreciation of law and evidence on record and there is no illegality or infirmity in the impugned judgment and order



and hence, the present petition is liable to be dismissed.

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

16. I find that seizure list does not bear the signature of the petitioner, which shows that seizure was not made in his presence, making the case doubtful against the petitioner. I further find that out of two independent witnesses, only one of them was examined and even he has not supported the prosecution case saying that his signature was taken on a blank paper. I also find that there is nothing on record to show that after seizure of the arms, the same was sealed on the spot and it was deposited in the safe custody with proper marks of identification. I also find that even efficacy of the seized arms could not be proved, because Sergeant Major, who has tested the arms, has not been examined.

17. Hence, in the aforesaid facts and circumstances, I find that prosecution has badly failed to prove its case against the petitioner.

18. Hence, the impugned judgment and order dated 25.06.2019 passed by learned Additional District and Sessions Judge-IV, Banka in Criminal Appeal No. 05 of 2015 and judgment and order dated 18.03.2015 passed by learned Chief



Judicial Magistrate, Banka in Trial No. 177 of 2015, arising out of G.R. Case No. 405 of 2005 are not sustainable in the eye of law. Accordingly, the same are set aside and present revision petition stands allowed, acquitting the petitioner of all charges.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	NAFR
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