

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.961 of 2024

Arising Out of PS. Case No.-50 Year-2009 Thana- SHYAMPUR BHATHAN District-
Sheohar

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Krishana Kumar Singh @ Krishna Kumar Singh, S/o- Gopal Singh Village-
Bokhta PS-Suppi Dist-Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

. ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kr. Singh, Sr. Advocate Mr. Sumit Kumar, Advocate
For the Respondent/s	:	Ms. Rita Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 05-02-2025 An order of conviction for the offence punishable under Section 25(1)(B)(a)/26/35 of the Arms Act passed by the learned Additional Chief Judicial Magistrate IInd, Sheohar, in GR Case No. 336/2009 and affirmed by the learned Principal Sessions Judge, Sheohar, in Cr. Appeal No. 17/23 vide judgment dated 17th October 2024 is under challenge in the instant revision.

2. Before delving upon the facts of the case, this Court likes to record the scope and ambit of the power of the revisional court while hearing a finding with regard to a sentence passed by a criminal case and appeal against the



petitioner. It is needless to say that the power of the revisional court is not similar or akin to the power of the court of appeal. The revisional court cannot reassess and re-appreciate the evidence on behalf of the prosecution led during the trial of the case. The power of the revisional court is only confined to see as to whether there is any illegality or material irregularity in arriving at the finding by the court of appeal and whether the impugned judgment and the order of sentence are perverse for non-consideration of the material evidence and/or consideration of certain extraneous facts which are not part of the evidence.

3. It is the case of the prosecution that on 15th July 2009 at about 2:45 AM, the SHO of Shyampur Bhataha P.S. in the District of Sheohar received source information that one Nitesh Kumar Singh, an accused of Belsand P.S. Case No. 84 of 2009, took shelter in the house of Madho Singh of village Lalgarrh, Jogiya. The SHO, along with other police personnel, conducted a raid in the house of Madho Singh and saw that three persons were sleeping on the southern corner of the roof of the said house. Seeing the raiding team, they tried to escape, but police apprehended them. They disclosed their names as Nitesh Kumar Singh, Krishna Kumar Singh, and



Madho Singh. On search, police recovered 19 numbers of live cartridges of .315 bore and five live cartridges of .12 bore from the possession of Madho Singh, and two pistols loaded with one cartridge each were recovered from the possession of accused Nitesh Kumar Singh and Krishna Kumar Singh. The said firearms were seized. Thereafter, *a suo moto* FIR was lodged, a sanction for prosecution was obtained, and a charge sheet was filed against the above-named three accused persons.

4. Accused Madho Singh pleaded in the Lok Adalat, and he was sentenced to suffer imprisonment for 8 months. After serving his sentence, he has already been released. We are not concerned with Nitesh Kumar Singh because he has not filed any revision before this Court.

5. The instant revision has been filed by accused Krishna Kumar Singh.

6. It is contended on behalf of the petitioner that the seizure of the firearm from the possession of Krishna Kumar Singh, the petitioner herein, has not been proved because of the failure on the part of the prosecution to examine independent witnesses to the seizure. Moreover, the learned



senior counsel appearing on behalf of the petitioner submits that the prosecution failed to prove compliance of Section 100/104 of the CrPC before conducting a seizure in the house of the said Madho Singh. Non-compliance of Section 100 of the CrPC is a serious lapse, and the court of appeal wrongly held that the prosecution has been able to prove the seizure of the firearm.

7. Thirdly, it is submitted by the learned senior counsel appearing on behalf of the petitioner that as per the prosecution case, 19 live cartridges of .315 bore and 5 numbers of cartridges of .12 bore were allegedly recovered from the possession of Madho Singh. However, 21 numbers of live cartridges were sent to the arms expert for examination. Therefore, there is no report with regard to 5 numbers of .12 bore of live cartridges. There is also no explanation as to how 19 numbers of .315 bore live cartridges became 21 numbers while it was sent to the arms expert for examination.

8. Learned senior counsel appearing on behalf of the petitioner also submit that the sanction order issued for prosecution is bad in law because of the fact that the



sanctioning authority did not apply his mind. On the aforesaid grounds, the impugned judgment is required to be set aside, and the accused should be acquitted of the charge.

9. The learned Advocate appearing on behalf of the opposite party, i.e., the State of Bihar, on the other hand, submits that the prosecution has been able to prove the case beyond any shadow of doubt. Out of three accused persons, accused Madho Singh confessed his guilt before the Lok Adalat, and he was sentenced to suffer imprisonment for a period of 8 months by the Lok Adalat. He already suffered a sentence and was released. One firearm loaded with a cartridge was recovered under the pillow of the present petitioner; therefore, the trial court as well as the court of appeal rightly held that the seized firearm was recovered from the conscious possession of the petitioner. When possession of a firearm constitutes an offence under Section 25 of the Arms Act, the petitioner was rightly convicted and sentenced to suffer imprisonment for a period of 1 year and 6 months.

10. Having heard the learned counsels for the parties and on careful perusal of the impugned judgment as well as other materials on record, this Court finds that the submission



made by the learned senior counsel for the petitioner with regard to non-compliance of Section 100 of the CrPC does not hold good for the reason that Section 100 of the CrPC deals with the search of a closed premise on the basis of a search warrant. In the instant case, police conducted a search not on the basis of a search warrant but being informed of a cognizable offence for which the police can conduct a search and seize incriminating materials even without a search warrant. It is also found from the seizure list that during the search, two independent witnesses were present, but during the trial of the case, they were not examined. Non-examination of independent witnesses was considered to be not fatal for the prosecution as held by the court of appeal on the basis of the judgment of the Honorable Supreme Court in ***Sukhpal v. State of Haryana***, reported in ***(1995) 1 SCC 10*** and ***Kashmira Singh v. State of Punjab***, reported in ***(1999) 1 SCC 130***. Before lodging prosecution, the investigating officer obtained the expert report as per the nature of the weapon. The report said that the firearm, which was recovered beneath the pillow of the present petitioner, is in working condition, and it was loaded with a live cartridge. The sanction order was issued by the District Magistrate on consideration of all



materials collected by the IO.

11. In view of such circumstances, I do not find any reason to interfere with the impugned order passed in Cr. Appeal no. 17 of 2023.

12. Accordingly, the order passed in Cr. Appeal no. 17 of 2023 is affirmed, and the instant criminal revision is dismissed on contest; however, there shall be no order as to cost.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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