

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.756 of 2009**

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DHAMALU PANDEY @ AJAY KUMAR PANDEY S/O- Dinanath Pandey
R/O Vill- Lohathi, P.S- Kateya, Distt- Gopalganj

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Muskan Singh, Amicus Curiae

For the Respondent/s : Mr. Ramchandra Singh, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT**

Date : 22-01-2026

Heard learned Amicus Curiae for the appellant
and learned Additional Public Prosecutor for the State.

2. The present appeal is directed against the judgment of conviction and order of sentence dated 12.08.2009 passed by learned 3rd Additional District and Sessions Judge, Gopalganj in Sessions Trial No. 259 of 08 / 18 of 2009, arising out of Kateya P.S. Case No. 74 of 2006 whereby and whereunder the appellant has been convicted for the offences punishable under Sections 25(1-b)(a), 26(1) and 26(2) of the Arms Act and Section 414 of IPC. The appellant has been sentenced to undergo rigorous imprisonment for three years under Section 25(1-b)(a) of the Arms Act, rigorous imprisonment for seven years under Section 26(1) of the Arms Act and rigorous imprisonment for seven years under Section 26(2) of the Arms Act. The appellant has further been sentenced



to undergo rigorous imprisonment for three years under Section 414 of IPC. All the sentences have been directed to run concurrently.

3. According to self statement recorded by informant, namely, Sardendu Sarat, Officer-in-charge, Kateya Police Station, on 02.05.2006 at 18 hrs. at village Belitola, it was asserted that he received secret information that dreaded criminal, namely, Dhamalu Pandey (appellant) is at the house of Pankhi Mishra with his associates and if raid is not conducted at the earliest, they would commit a major crime. On the said information, he registered Sanha No. 26 and he along with raiding team, after informing the senior officer, proceeded and after reaching Phulwaria P.S., he held a discussion with S.D.P.O., Hathua and after preparing the action plan and reached at the house of Pankhi Mishra along with raiding party at about 04:30 P.M. and saw that after seeing the police, a man made an attempt to escape with the carbine hanging in his neck and the said man was apprehended between the house of Pankhi Mishra and the Garage and he disclosed his name as Sanjay Pandey, but by then the villagers arrived and the said person disclosed his name as Dhamalu Pandey. In presence of villagers namely, Baijnath Mishra and Jagarnath Mishra search was conducted



and from his possession 9 mm carbine was recovered and in the magazine of said carbine 10 rounds of live cartridge of 9mm were loaded, one country made loaded pistol of 0.315 was recovered and on unloading the same one live cartridge of 0.315 was recovered and a Nepali Khukhari were also recovered. Besides, Nokia mobile and golden color Bajaj CT100 Motorcycle (without number) bearing Chassis No. DUFCMH29090, Engine No. DUMCMH68260 was also recovered. When query was made to the apprehended accused, he failed to produce valid document regarding the seized article and seizure list was prepared.

4. On the basis of self statement recorded by informant, namely, Sardendu Sarat, Officer-in-charge, Kateya Police Station, Kateya P.S. Case No. 74 of 2006 was registered under Section 414 of the IPC and Sections 25(1-b)a and 26 of the Arms Act. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellant and others under Section 414 of the IPC and Sections 25(1-b)a and 26 of the Arms Act. Thereafter, the learned trial court took cognizance. The case was committed to the court of sessions after following due procedure. The learned trial court



framed charges against the appellant under Section 414 of the IPC and Sections 25(1-b)(a) and 26 of the Arms Act. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of accused persons, prosecution has examined altogether three witnesses. PW-1 Rajeshwar Prasad, PW-2 Sri Krishna Ram, PW-3 Sharatendu Sharat (informant of the case).

6. Prosecution has relied upon following documentary evidence on record:-

Ext. 1- Investigation Report
Ext. 2- Seizure list
Ext. 3- Self written
statement (informant)
Ext. 4- Signature of
informant on the formal FIR

7. Defence of the appellant as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial. However, they did not enter into defence.

8. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the opening paragraph of the judgment.

9. Following submissions have been made on



behalf of learned Amicus Curiae for the appellant:-

Learned Amicus Curiae for the appellant has submitted that judgment of conviction and order of sentence passed by the concerned court is without discussing the material available on record. It has been submitted that the whole case of prosecution is based on recoveries. It has been further submitted that there are two seizure list witnesses Baidyanath Mishra and Jagarnath Mishra and they have not been examined in the present case. It has further been submitted that the very crux of the prosecution case has become doubtful as the person before whom the seizure list was prepared, has not been examined at all. In this way, the core aspect of the offence has not been proved in absence of any seizure list witnesses as the case is based on seizure list of recovered arms. It has further been submitted that the examination of investigating officer is very much essential to establish the place of occurrence but in the present case the investigating officer has not been examined and the truthfulness of the present case can only be established if boundary of place of occurrence is necessarily to be established and in absence of investigating officer, the same can not be proved as he is the competent witnesses and if investigating officer is not examined, the defence has been prejudiced from



the several aspects of the cross-examinations with regard to pertaining questions which might have been put before the investigating officer and same cannot be put up as he is not examined. It has further been submitted that the arms and ammunition were sent to ballistic expert but the manner in which the arms were tested is full of infirmities. It has further been submitted that fire arms were not tested by the ballistic expert but by virtue of physical features he has justified that arms which were recovered, were found in effective condition. It has further been submitted that ballistic expert has admitted during the course of cross-examination that he has not been taken specialized training of examining arms. In this way, prosecution has not proved its case beyond reasonable doubt. The learned trial court has passed the impugned judgment of conviction and order of sentence without applying judicial mind. In the light of aforesaid facts and circumstances of the case, impugned judgment of conviction and order of sentence is liable to be set aside.

10. The learned Amicus Curiae for the appellant has highlighted that the concerned District Magistrate has granted the sanction report in a routine manner.

11. The learned Amicus Curiae for the appellant



has placed reliance on the decision of *Jagtar Singh Vs State of Punjab* in which the court has observed that in absence of checking for a firing pin it cannot be ascertained that a shot could be fired and therefore, the weapon cannot be stated to be a firearm in working condition.

12. In the present case, there is no description of arms which are recovered and have been tested and it has been admitted by the ballistic expert that he has not tested the firearms through firing and has reached to the conclusion that firearms were in working condition and there is no explanation regarding firing. Thus, the finding of the Sergeant Major that the weapons were in working condition, was without having any substance of actual testing and his opinion was solely based on physical verification of the arms.

13. Learned Amicus Curiae for the appellant has highlighted that PW-1 who is also a member of raiding party and in para 5 he has admitted that he cannot point out the boundary of place of occurrence. It has further been submitted that PW-2 is a sergeant major and he has nothing to do with the place of occurrence. In this way, the place of occurrence is already in question and the competent witness who can give the boundary of the place of occurrence is the investigating officer



and he has not been examined. It is the cardinal principle of criminal law that prosecution has to prove the case beyond the reasonable doubt and the statement of PW1 as well as PW3 are quite divergent on the point of apprehension of appellant. On the point of apprehension of appellant, PW3 has stated that the appellant was apprehended with the help of PW1 between Dalan and street. On the same point, PW1 has stated that appellant was apprehended between shop and garage. The statement of PW1 and PW3 are quite divergent on the place where the appellant was apprehended. In this way, the prosecution has not proved its case beyond the reasonable doubt.

14. Learned Additional Public Prosecutor appearing for the State has submitted that PW1 who is the member of raiding party and he has supported and corroborated the story of prosecution and he is one of the person who has apprehended the appellant along with PW3. PW3 who is the informant and he has also supported initial version of prosecution story in toto. PW2 who is sergeant major has also reiterated that the arms which were recovered from the place of occurrence were found effective. In this way, all the three witnesses (PW1, PW2 and PW3) have supported and corroborated the story of prosecution and while passing



judgment of conviction and order of sentence, the concerned court has discussed the material available on record and the sanction report given by the District Magistrate, Gopalganj is justified and legal and there is no reason to disbelieve the sanction report as the same is given by the said District Magistrate after perusing the material available on record. In this way, the judgment of conviction and order of sentence passed by the concerned court is justified and legal and there is no reason to interfere with the order passed by the concerned court.

15. The question which arises for consideration is:-

"Whether offence under Sections 25(1-b)a, 26 (1), 26(2) of the Arms Act and Section 414 of the IPC is made out in the light of given facts and circumstances of the case or not ?"

16. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

17. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.



18. PW-1 (Rajeshwar Prasad):- He has stated that on 02.05.2006 he was posted at Mirganj Police Station on the post of ASI. He got information that the SI Suresh Singh became injured on account of accident and he was hospitalized in Phulwaria Hospital. On the said information, he went to the Phulwaria hospital and raiding team was with him and SDPO, Hathua and SHO, Kateya (PW-3) also arrived there. Thereafter, SDPO, Hathua and SHO, Kateya made plan for conducting raid and PW1 was also asked to accompany them and thereafter all of them went to village Beli. He further stated that a man started fleeing from the *dalan* side of house of Pankhi Mishra hanging carbine around his neck. On being chased, he was apprehended between house and garage of Pankhi Mishra. He further stated that on query, the apprehended person disclosed his name as Sanjay Pandey and after that villagers reached there and in second time he disclosed his name Dhamalu Pandey (appellant). He further stated that search was conducted in the presence of two independent witnesses namely Baijnath Mishra and Jagnath Mishra and during course of search one loaded Carbine of 9 mm and one loaded country made Katta of .315 bore were recovered and from the left pocket of *pant* one Nokia mobile bearing mobile no.9934839953, one Nepali *Khukhri* and one CD 100



motorcycle (without number) were also recovered. He claims to identify the appellant who was present in the court. During course of cross-examination, PW1 has stated that at 3:00 PM he along with police officials proceeded to village Beli at the permission of Dy. SP. He proceeded with all the police officials on a jeep for conducting raid at 3:30 PM. In para 5, PW1 has stated that he cannot point out the boundary of place of occurrence and he has not conducted search of the appellant. He further stated that he had not put his signature on the seizure list as he was not asked to do so. He has denied the suggestion that as he was not a member of the raiding party, he had not put his signature. In para 6, he stated that he cannot point out the boundary of the Beli village. He further stated that seizure list was prepared by the SHO Sardendu Sarat (PW-3). In para-7, he stated that he cannot point out the distance between Phulwari Hospital and Beli village. He further stated that there was no well built road going towards Beli village and only there was *Kharanja* and *Kacha* road. He has denied that suggestion that nothing was recovered from the possession of the appellant. He has stated that he did not identify the appellant prior to the occurrence and he has denied the suggestion that he has given false evidence.



18.1. From the perusal of evidence of PW1, it is clear that though PW-1 is a member of raiding party but in para 5 he has stated that he can not point out the boundary of place of occurrence. Further, PW1 has stated that the appellant was apprehended between house and garage of Pankhi Mishra whereas PW3 has stated that the appellant was apprehended between *dalan* and house of Pankhi Mishra. In this way, on the point of place of apprehension of appellant, the statement of PW1 and PW3 are quite divergent and keeping in view the statement of PW-1 as deposed before the Court, it is neither convincing nor trustworthy.

19. PW-2 (Shri Krishna Ram) :- He is a Sergeant Major who examined the recovered items. On 06.05.2006, he was posted as Sergeant Major in the head quarter. On that day, one country made Carbine of 9 mm bore along with one piece magazine containing ten cartridges of 9mm bore, one country made pistol of 0.315 bore along with one cartridge of 0.315 bore were received by him in connection with Kateya PS Case No. 74/06 for examination. On examination of the same, he has opined that one piece country made Carbine of 9mm bore was found effective and ten pieces of cartridges of 9mm were also found effective and live. He



further opined that one country made pistol of 0.315 bore was also found effective and one cartridge of 0.315 bore was also found effective and he has prepared the verification report which is marked at Exhibit-1. In para 2, he has admitted that he has not taken any special training for examination of arms and ammunition as he has pointed out difference in efficiency of firing range between country made carbine and foreign carbine. He has also pointed out that he has not tested country made carbine on the basis of firing. There was no mark of firing on the cartridge so he made the opinion that same was effective and he has not pointed out any reference of firing sign on the report which has been prepared by him. There is difference between country made carbine and foreign carbine on the basis of structure. There is no mark of any company on country made Carbine. There is difference between country made carbine and foreign carbine on the basis of measurement. There is no lackness in bore. The seized country made carbine was not automatic. The country made carbine continues to fire till availability of the cartridge and for unloading the cartridge, trigger has to be pressed every time. For every shot, trigger has to be pulled. In para 5, he has stated that the seized carbine is not automatic.



19.1. From the perusal of evidence adduced by the Sergeant Major (PW2), it is clear that he has physically verified the arms as he has already admitted in para 2 of his cross-examination that he has not tested country made carbine on the basis of firing. He had physically verified the arms which were recovered and he had given theoretical description by having seen the arms as he has already admitted that he has not taken specialized training for examination of arms. So, he has not conducted test upon the recovered arms and ammunition. Then, in absence of testing of arms, the very finding of Sergeant Major (PW2) that arms were found effective, is without having any substance and the contention of the learned Amicus Curiae for the appellant is quite tenable and sustainable in view of the judgment passed in the case of *Jagtar Singh Vs. State of Punjab (supra)*, wherein it was observed that in absence of checking for a firing pin it cannot be ascertained that a shot could be fired and therefore, the weapon cannot be stated to be a firearm in working condition. Generally, arms and ammunition when they are recovered, they are sent to expert just to confirm whether they are effective or not on the basis test applicable to them but in present case, he has only physically verified the arms and ammunition which were given to him and keeping in



view the statement of PW-2 as deposed before the Court, it is neither convincing nor trustworthy.

20. PW-3 (Sardendu Sarad) :- He is the informant of the case. He has stated that he was posted as SHO, Kateya on 02.05.06. He has stated that he got secret information that absconded accused Ghamalu Pandey (appellant) had gathered along with other associates at village Beli Tola in the house of Pankhi Mishra. On the said information, he registered Sanha No. 26 and he along with raiding team, after informing the senior officer, proceeded and after reaching Phulwaria P.S., he held a discussion with S.D.P.O., Hathua and after preparing the action plan and reached at the gate of Pankhi Mishra along with raiding party at about 04:30 P.M. saw that a man started fleeing away with the carbine hanging around his neck. He further stated that on suspicion, the said person was apprehended with the help of PW-1, Rajeshwar Prasad in between *dalan* and house. Firstly, the apprehended person disclosed his name as Sanjay Pandey. Meanwhile, nearby people gathered and one of the person, namely, Baijnath Mishra and his brother disclosed that the apprehended person was Dhamalu Pandey (appellant). Search and seizure was conducted as per procedure and during course of search, one Carbine was



recovered and in the magazine of the said carbine 10 round live cartridges were loaded and one .315 loaded Katta (country made pistol) was also recovered along with one Nokia 1100 mobile as well as Nepali Khukhari and one CD 100 motorcycle (without number) were also recovered. When the document of seized items was being demanded, accused/appellant has not provided valid documents and thereafter seizure list was prepared for all the seized items in the presence of said witnesses. PW3 further stated that seizure list was prepared in his writing and his signature and witnesses namely Baijnath Mishra and Jagnath Mishra put their signature and seizure list stand exhibited as Exhibit-2. In para 2, PW3 has stated that he recorded his self statement regarding the occurrence at the place of occurrence. He has further stated that self written statement was in his writing and signature and the same stands marked as Exhibit-3. On the basis of his self written statement, formal FIR has been registered and he put signature and his signature stands mark as Exhibit-4. He further stated that he handed over the charge of investigation to SI, K.P. Singh. He stated that the appellant appeared in the court and he identified him. In para-6, he has stated that he cannot point out as to who has been ordered to encircle the house of Pankhi Mishra. In para 7, PW3 has given



following description of the boundary of the place of occurrence :-

East :- Pucca House of Pankhi Mishra

West :- Garage of Pankhi Mishra

North :- Road

South:- there is a house but he cannot point out the owner of the said house.

PW3 further stated that within three minutes after the vehicle was stopped accused/appellant was apprehended in the street which is situated in the boundary of Pankhi Mishra. He further stated that he has not pointed out any street in the seizure list and he has not pointed out the name of Dhamalu Pandey in the seizure list. It is wrong to suggest that nothing was recovered from the possession of Dhamalu Pandey (appellant).

20.1. From the perusal of evidence adduced by PW-3, it is clear that though he has supported the story of prosecution but during the course of cross-examination, he is unable to point out the southern boundary of the place of occurrence as he did not point out the name of person whose house is situated in south direction and he has also not pointed out the name of Dhamalu Pandey (appellant) in seizure list. On the point of place of apprehension of appellant the statement of PW 1 is quite divergent. PW1 who is also member of raiding



party and he can be categorized as a factual witness but on the point of place of apprehension of appellant, PW1 has stated appellant was apprehended between house and garage which was totally inconsistent with the evidence adduced by PW3 and keeping in view the statement of PW-3 as deposed before the Court, it is neither convincing nor trustworthy.

21. Apart from that, the Investigating Officer of this case has not been examined who is the material witness on the point of identifying the place of occurrence.

22. In ***Behari Prasad Vs. State of Bihar*** reported in ***(1996) 2 SCC 317***, the Hon'ble Supreme Court held that though non-examination of the Investigating Officer may not always be fatal where it causes prejudiced to the accused, it becomes a significant infirmity, as observed in the judgment which reads as under:-

"We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket



formula should be laid down that non examination of investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence."

23. Applying this principle to the present matter, this Court finds that the omission to examine the Investigating Officer has, in fact, caused serious prejudice to the defence. The prosecution version suffers from contradictions and omissions in the statements of the witnesses and the only person who could have clarified or explained such contradictions was the Investigating Officer.

24. The failure to examine the Investigating Officer also means that the place of occurrence has not been duly established. At this point, it would be relevant to take note of the decision passed by the Hon'ble Supreme Court in the case of ***Syed Ibrahim versus State of Andhra Pradesh***, reported in ***(2008) 10 SCC 601***, wherein it has been held that "when place of occurrence itself has not been established, it would not be proper to accept the prosecution side.

25. In the present case, the Investigating Officer has not been examined. No seizure-list witness has been



examined. The place from where the accused/appellant was apprehended has not been specifically proved, and the person at whose house accused/appellant was apprehended, has also not been examined. The Sergeant Major has not received any special training regarding the examination of recovered arms. He has not specified the method or methodology adopted by him while examining the allegedly illegal recovery of the arms; rather, he examined it only by observing the external features of the material and his report merely reflects that he examined the arm and ammunition by visual verification.

26. Further, the whole prosecution story is based on recovery of arms and ammunition and two witnesses who are the witnesses of seizure-list, have not been examined. The very crux of the prosecution story is based on the examination of seizure-list witnesses and in the absence of seizure-list witnesses as to how the seized items were recovered from a particular place or from a particular person, the same is lacking in the evidence of other prosecution witnesses. PW1 who is member of raiding team and he is unable to point out the place of occurrence, then, the question arose whether he was present at the place of occurrence at the relevant time or whether he was present at a particular place from where recovery was



made and on the aforesaid aspects, the investigating officer has not been examined in the present case to prove that the recoveries were made at a particular place. The person who is the resident of that very place as mentioned in FIR, has also not been examined and the very truthfulness of the fact does not come upon surface. Even, informant is unable to point out the specific boundary of place of occurrence. Even the boundary as pointed out by PW3 is expected as true, then, the question arose whether the said boundary is corroborated by any prosecution witnesses ? The answer is “no.” On the point of place of apprehension of appellant, the statements of PW1 and PW3 are quite shaky and defence has been prejudiced in the absence of investigating officer. It is relevant for defence to put question during the course of cross-examination of Investigating Officer for contradictions in the evidence of prosecution witnesses (PW1 and PW3) but in the present case, the absence of investigating officer prejudiced the defence. Apart from that, the District Magistrate, Gopalganj who has given the sanction report, is full of infirmities. While granting sanction report, the District Magistrate, Gopalganj has not mentioned the place of occurrence. The sanction order does not speak any word regarding the place where offence was committed, the manner



of apprehension of appellant, the manner of making search and seizure and recovery of arms and ammunition. Sanctioning the prosecution of a person could not be an act to issue license for sell of arms or either of any commodity as is done by officer of executive. This is an act which forms part of the judicial function of an officer of Executive which is defined by Section 3(4) of the Cr.P.C. It might be an administrative executive action but the function ultimately being of putting a person on trial for a particular offence, it could really be a quasi judicial in nature, which could have an administrative tinge. It was required that the District Magistrate, Gopalganj ought to have indicated facts of the case and other details of it sufficiently in his sanction order, so as to indicate that the order has been passed on due application of mind and the sanction order suffers from infirmities and lacuna and it cannot be upheld.

27. In the present case, keeping in view that none of the seizure-list witnesses have been examined and the investigating officer has not been examined in order to prove the place of occurrence where the place of occurrence is already in question as PW1 has not pointed the place of occurrence and PW3 though he has pointed out the place of occurrence but he has not pointed out the owner of the house of southern boundary



of the place of occurrence and in this way, PW3 has not clarified the owner of the house of the southern boundary and even he has pointed out the boundaries, the same is not corroborated by any of the prosecution witnesses. The evidences of PW1 and PW3 are divergent regarding the place where the appellant was apprehended and the report of sergeant major suffers from infirmities as without testing the arms by prescribed methodology, merely on physically verification, he has opined that arms were found in effective condition. It has already been submitted by the learned Amicus Curiae for the appellant that during the course of trial, carbine and 9 mm cartridge were prohibited arms and ammunition which requires trial under Section 26(2) of the Arms Act by the court of Sessions and as such case was committed to the Court of sessions vide order dated 04.08.2008 and while giving the sanction, the District Magistrate, Gopalganj has given the sanction in a routine manner, without explaining that 9 mm carbine and cartridges were prohibited arms requiring trial under Section 26(2) of the Arms Act.

28. In the light of the aforesaid circumstances, I find that the contention of the learned Amicus curiae is quite convincing that prosecution for such an offence requires



sanction of the District Magistrate in view of Section 39 of the Act. The act of grant of sanction for launching the prosecution is not an empty formality which can be mechanically performed. The giving of sanction confers jurisdiction on the court to try the case. This case has been quoted with approval by the Supreme Court in *Madan Mohan v. State of U.P.*, (A.I.R. 1954 S.C. 637) and *Som Nath Vs Union of India*, (A.I.R. 1971 S.C. 1910] and the dictum of the Privy Council that in order to constitute a valid Sanction it must be established that the same was granted with reference to the facts constituting the offence was reiterated.

29. In *Sukhlal Banshi Lodhi vs. State of M.P.*, reported in *1998 Cri LJ 1366*, it has been observed that sanction is not a mere formality. It has to be proved that it was granted by the authority after applying his mind. It must be shown that the firearm or weapon with respect to which sanction was prayed was actually taken to the authority concerned and after looking to it the relevant papers, understanding and after applying his mind sanction was granted.

30. In *Mohammad Israr Vs. State of UP*, 2017: AHC-LKO:22163-DB, it has been observed that in the sanction order the details of recovered arms are not mentioned. It is



expected that the District Magistrate should have mentioned the details of the recovered arms to show that the sanction was not granted mechanically. Rather, it was granted after application of mind, which is a mandatory provision. In the absence of legal sanction, conviction of accused under Section 3/25 Arms Act could not be sustained.

31. From perusal of sanction order, the District Magistrate, Gopalganj was simply noting that on the basis of recommendation made by Superintendent of Police as well as proposed and forwarded by the concerned authorities, he was agreeing and granting the sanction. The sanction report is handwritten and there was no space left even for putting down the bare facts of the case or even a shamle of it so as to indicating as to how the appellant was found in possession of it so that he could be said to violate conditions are punishable under Sections 25, 26 or 35 of the Arms Act. The sanction order was in fact not an order which could be said to be passed after due application of mind by the District Magistrate and as such it stood vitiated which could never be utilized by any court of law to justify the proof of charges under the Arms Act under which the appellant was convicted and sentenced and on the said point it has been pointed out by the learned Amicus Curiae for the



appellant that in the present case sanction order passed by the District Magistrate, Gopalganj has not been exhibited. Learned Amicus Curiae for the appellant has also highlighted that the sanction order is so important factor that no case can be proceeded without obtaining sanction. But in the present case, while granting sanction, the District Magistrate, Gopalganj has not applied his mind on the facts which is a mandatory requirement to examine while giving sanction. In this way, the sanction order given by the District Magistrate, Gopalganj suffers from infirmities and the said sanction order is merely a formality. Thus, what I find is that the conviction of the appellant under Sections 25(1-b)a, 26(1) and 26(2) of the Arms Act was completely vitiated on account of the lack of proper sanction and no conviction can be sustained in the light of the aforesaid facts and circumstances of the case.

32. It is cardinal principle of criminal jurisprudence that that the prosecution has to prove its case beyond reasonable doubt. The evidence of all the factual witnesses, namely PW-1 to PW-3, are neither trustworthy nor convincing and the place of occurrence has also not been proved, as discussed in foregoing paragraphs. Hence, the contention of learned *Amicus Curiae* is quite tenable and



sustainable in the light of aforesaid facts and circumstances of the case. In this way, the prosecution has failed to prove the case beyond reasonable doubt and keeping in view all the infirmities and discrepancies, I find the judgment of conviction and order of sentence passed by the concerned court is not justified and legal and same is fit to be set aside.

33. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence are hereby set aside and this appeal stands allowed. The appellant is on bail, he is discharged from the liability of his bail bond.

34. The interlocutory application, if any, also stands disposed of.

35. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

36. The records of this case be also returned to the concerned trial court forthwith.



37. Before parting with the judgment, I appreciate the legal assistance rendered by Ms. Muskan Singh, learned Amicus Curiae. Patna High Court Legal Services Committee is directed to pay a sum of Rs. 5,000/- (five thousand) to Ms. Muskan Singh, learned Amicus Curiae, as consolidated fee for the legal assistance rendered by her, within a period of four weeks from the date of receipt of this judgment.

(Alok Kumar Pandey, J)

alok/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	03.02.2026.
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