



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.2074 of 2010 (O&M)

Reserved on:08.01.2026

Pronounced on :31.01.2026

Randhir Singh @ Dheera

.....Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present : Mr.Mohit Giri, Advocate for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

SURYA PARTAP SINGH, J. (Oral):

A trial held against the petitioner for the commission of offence punishable under Section 25 of Arms Act culminated into conviction of petitioner and the appeal preferred by the petitioner against the above mentioned judgment of conviction did not find favour in the Court of Sessions. Hence, the present revision petition.

2. By virtue of present revision petition the judgment of conviction and order of sentence passed by the learned trial Court dated 20.08.2008 and the judgment passed by the learned Appellate Court dated 10.07.2010 have been challenged on the ground that the evidence adduced by the prosecution is thoroughly inconsistent and unreliable and contradictory on material points. According to learned counsel for the petitioner one of the major deficiency in the prosecution evidence is that the independent witness, who was joined during the course of investigation was not examined, and therefore, there was



no independent support to the case. While claiming that the judgment of conviction and order of sentence have been passed merely on the basis of assumptions and presumptions, intervention and indulgence of this Court while exercising the revisional jurisdiction has been sought.

3. In nut-shell the facts emerging from record are that the abovementioned FIR for the commission of aforesaid offence, was lodged on the report of Sub Inspector 'Gurdip Singh', who had reported that on 25.06.2005 when he was heading a police party comprising of various police officials a reliable source gave him a tip-off that 'Randhir Singh @ Dheera' (petitioner herein) was having relations with the terrorists group known as 'Babbar Khalsa', and that he was in contact with its activists namely 'Jagtar Singh @ Hawara' and 'Gurdeep Singh'. According to above named police officer, it was also reported that petitioner was having illegal ammunition in his possession, and that he was going from village Pathreri Jattan to village Bheora on the unmetalled path situated on the bank of Bhakhra Dam.

4. It is the case of the prosecution that in view of above mentioned information, an information-memo was sent to the police Station, and thereafter, the police party headed towards the place where the petitioner was stated to be present. According to prosecution, the petitioner was intercepted and his statement was record, pursuant to which, one A.K. 47 magazine and 36 live cartridges were recovered. As per prosecution, pursuant to above mentioned recovery the FIR was lodged. Further formalities with regard to seizure of ammunition recovered from the possession of accused and, his formal arrest were undertaken, and on completion of investigation the final report under Section 173 Cr.P.C. was filed before the Court which led to trial.



5. Heard.

6. It has been contended on behalf of petitioner that the petitioner is innocent having no nexus, whatsoever, with the commission of crime, and that he has been falsely implicated in the present case on the basis of unreliable & inconsistent evidence, which is otherwise inadmissible in evidence. According to learned counsel for the petitioner, the learned trial Court as well as the learned Appellate Court have failed to consider that instant case is not a case of chance recovery but a case wherein information to the police party was given in advance and then the petitioner was apprehended. As per learned counsel for the petitioner, in addition to above, even at the time of apprehension the petitioner was not found in possession of any illegal ammunition, and that the above mentioned recovery had taken place subsequent thereto, pursuant to disclosure statement of the petitioner. With regard to above, the learned counsel for the petitioner has contended that the above mentioned chronology of events in itself makes it abundantly clear that the Investigating Officer was having ample time and opportunity to join independent witness at the time when the disclosure statement of the petitioner was being recorded and also at the time when the recovery of ammunition of offence, pursuant to his disclosure statement, was effected.

7. While assailing the impugned judgments, it has also been contended by learned counsel for the petitioner that in the present case one of the relevant point to be considered is that at the time of investigation one independent witness namely 'Gurmit Singh' was joined by the Investigating Officer but the above named witness was not examined and there is no convincing ground behind the non-examination of above mentioned witness of



recovery. It has also been argued by learned counsel for the petitioner that the ammunition, so recovered from the possession of the petitioner was never test fired, and therefore, the same could not have been treated to be an ammunition. According to learned counsel for the petitioner, in the present case the entire prosecution case is based upon the plea that the petitioner had suffered a disclosure statement which led to recovery of ammunition in question, and that the abovesaid disclosure statement was recorded prior to slapping of FIR, and therefore, the above mentioned disclosure statement could not have been used for beneficial purpose by the prosecution being the statement prior to recording of FIR.

8. While referring to the principles of law laid down by this Court in the case of ‘Gurcharan Singh @ Charna Vs. State of Punjab’, CRR-533-2007’, ‘Bhuptej Pal Singh Vs. State of Punjab’, CRA-S-1633-SB-2002 and ‘Narender Singh @ Kala Vs. State of Punjab’, CRA-S-1274-SB-2003, the learned counsel for the petitioner has contended that the learned trial Court as well as learned Appellate Court have committed an error of judgment while convicting the petitioner, who and that the petitioner has already suffered incarceration for a period of more than 4 months. In view of above, the learned counsel for the petitioner has urged that both the impugned judgments deserve to be set aside.

9. The learned State counsel has controverted the above mentioned arguments. While defending the impugned judgments passed by the learned trial Court vis-a-vis learned Appellate Court, it has been contended by learned State counsel that present revision petition has been filed without any valid ground, and that the learned trial Court as well as the learned Appellate Court have properly appreciated the facts as well as the evidence available on record,



and that by proper analysis of all the mitigating factors a right conclusion has been drawn by the learned trial Court. As per learned State counsel that is why the above mentioned verdict has been affirmed by the learned Appellate Court. According to learned State counsel there is no scope for indulgence and interference in the above mentioned two verdicts and the present revision petition being devoid of merits, deserves dismissal.

10. The record has been perused carefully.

11. As far as the instant case is concerned, the bare perusal of the circumstances, which unfolded in the present case shows that there are two aspects which are required to be taken into consideration:-

- i) whether in the absence of independent witness the evidence adduced by the prosecution was sufficient and good enough to inspire confidence;
- ii) whether in the absence of test-fire of the cartridges recovered from the possession of petitioner the recovered articles could have been treated to be an ammunition, as defined under Arms Act.

12. As far as the first aspect is concerned, at the threshold, it is relevant to note that instant case is not a case where the recovery of ammunition from the possession of petitioner had taken place by chance. In fact, the instant case is a case, wherein as per prosecution story a reliable source gave an information to the police officer that petitioner was in possession of illegal ammunition. The case of the prosecution is that on receipt of above mentioned tip-off, the information memo was sent by the police office to the police station. The above mentioned facts makes it



abundantly clear that on receipt of information the police officer was having ample opportunity to join independent witness(s). He did so by joining 'Gurmit Singh' as independent witness. But this is very strange on the part of prosecution that the above mentioned independent witness was not examined during the course of cross-examination. The failure of prosecution to examine the abovesaid independent witness impacts the prosecution case very badly and the mere explanation that he had been won-over by the opposite party in itself was not a sufficient reason to justify the above mentioned lapse of the prosecution. There is nothing on record to show on what basis this opinion had been drawn that the sole independent witness joined in this case at the time of disclosure statement, as well as recovery, had been won over by the accused.

13. In my opinion, the above mentioned lapse on the part of prosecution is fatal. In the absence of any independent witness the entire prosecution case was resting upon the deposition of official witnesses. In that regard the prosecution had examined two witnesses but the testimony of above mentioned two witnesses show that on certain points it was inconsistent and contradictory. Due to such contradictions, there was a big question mark qua the probative value of the testimonies of above named two official witnesses, with regard to recovery of above mentioned ammunition.

14. A perusal of testimony of PW-2 shows that according to him the District Magistrate was informed about the recovery of weapon but as per PW-3 it was not. *Secondly*, the testimonies of both PW-2 and PW-3 are silent qua the manner how they were able to identify the petitioner, who was not previously known to them. The another lapse on the part of prosecution in the



present case is that as per PW-2 and PW-3 independent witnesses were available on record as the place of recovery was a thoroughfare, but no witness, except 'Gurmit', was joined, and the witness 'Gurmit' had not supported the prosecution case.

15. With regard to probative value of testimony of official witness, the Hon'ble Supreme Court of India in the case of 'Union of India Vs. Leen Martin and another' AIR 2018 (SCW) 991, has observed that statement of official witness cannot be sole basis of conviction, when statement of official witness is impaired due to infirmities. The Hon'ble Supreme Court has also observed that when independent panch witnesses contradicts statement of official witness it is not safe to place reliance upon the testimony of official witnesses.

16. Similarly in the case of 'Gorakh Nath Prasad Vs. State of Bihar' 2018 AIR Supreme Court 704, the Hon'ble Supreme Court of India has observed that it is not safe to rely upon the testimony of official witness alone, which in any event cannot be sufficient evidence by itself, with regard to recovery of contraband.

17. In this regard the relevant law has been laid down by this Court in the case of 'Leen Martin and another' (supra) and 'Gorakh Nath Prasad' (supra) wherein it has been held that unless the testimony of official witnesses is corroborated by some independent evidence, the same has to be analysed with utmost care. Similar view has been taken in the case of 'Narender Singh @ Kala (supra)', wherein this Court observed that if the independent witness has been given up and the prosecution case is resting upon the testimony of official witnesses, it is doubtful.



18. In the present case, since inconsistent and contradictions have surfaced in the testimonies of official witnesses namely 'SI Gurdeep Singh' (PW-2) and 'ASI Balwinder Kumar' (PW-3), it is hereby held that for want of corroboration by independent witnesses the above mentioned testimonies were rendered doubtful, and the benefit of the same would go to the petitioner.

19. In the present case, the most important elements supposed to be established by the prosecution was that the recovered articles from the possession of petitioner was the ammunition defined under Section 2(b) of the Arms Act 1959. The above said inference could have been drawn only when the ammunition would have been test fired but in the case in hand there was no report of expert showing that the recovered articles from the possession of petitioner were capable of firing. Thus, merely on the basis of observations made by police officers this conclusion should not have been drawn that the magazine containing cartridges was an ammunition.

20. In that regard this High Court in the case of 'Gurcharan Singh alias Charna (supra)', has observed that if the prosecution fails to provide evidence that the weapon was test-fired and proven to be in working condition the charge under Section 25 of Arms Act cannot be proved. Similar view has been taken by this Court in the case of 'Bhuptej Pal Singh (supra)', wherein it has been held that if the prosecution failed to prove that the bullet was test-fired by the Armourer, prosecution case is not good.

21. Taking into consideration the fact that the principles of law laid down by this Court in the above mentioned case, are applicable, and that instant case is a case wherein no test-firing of cartridges allegedly recovered from the possession of petitioner, had taken taken place, it is hereby held that



the prosecution has also failed to prove beyond the shadow of doubts that the recovered items from the possession of petitioner was an ammunition, as defined under Section 2(b) of Arms Act.

22. As a sequel to above mentioned observations, it is hereby held that the learned trial Court vis-a-vis learned Appellate have committed an error of judgments when they failed to appreciate the fact that the evidence led by the prosecution with regard to proof of charge was inadequate and deficient, to prove the charge. In fact, it was inadequate and deficient to bring home guilt of the accused, and thus, it is hereby held that the finding of conviction recorded by the learned trial Court, duly affirmed by the learned Appellate Court, need interference and indulgence of revisional jurisdiction of this Court. Hence it is hereby held that by accepting the present revision petition the impugned judgment of conviction dated 20.08.2008 passed by the learned trial Court, duly affirmed by the learned Appellate Court, deserves to be set-aside. Hence, by accepting the revision petition both the above mentioned judgments are set aside. Since it has been observed that charge against the petitioner had not been proved, the petitioner is hereby acquitted of the charges framed against him and his bail bonds stands discharged.

(SURYA PARTAP SINGH)
JUDGE

31.01.2026

Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No