

DISTRICT – VAISHALI AT HAJIPUR

IN THE COURT OF ADDITIONAL SESSIONS JUDGE VII, VAISHALI AT  
HAJIPUR

CRIMINAL APPEAL NO.25 OF 2019

REGISTRATION NO. - 25/2019

IN THE MATTER OF

Mukesh Rai .....APPELLANT

VS

STATE OF BIHAR .....RESPONDENT

(APPEAL AGAINST THE ORDER AND JUDGMENT PASSED BY A.C.J.M.-  
XIV, VAISHALI AT HAJIPUR ON 15.12.2018 IN RAGHOPUR PS CASE  
NO.60/2012 ARISING OUT OF TRIAL NO.316 OF 2018)

Lawyer for the appellant – Mr. Shyambabu Rai, Learned Advocate

Lawyer for the respondent – Mrs. Bibi Malika, Learned APP

DISTRICT – VAISHALI AT HAJIPUR

Date of Judgment – 31.05.2023

Present :- Jyoti Kumari

Additional Sessions Judge VII, Vaishali at Hajipur.

**JUDGMENT**

1. This criminal appeal has been preferred against THE ORDER AND JUDGMENT PASSED BY A.C.J.M.-XIV, VAISHALI AT HAJIPUR ON 15.12.2018 IN RAGHOPUR PS CASE NO.60/2012 ARISING OUT OF TRIAL NO.316 OF 2018), whereby convicted the applicant u/s-25(1-B)a/35 of Arms Act and 26(1)/35 of Arms Act and sentenced him to go rigorous imprisonment for three years in both sections and to pay a fine of Rs.1000/- in both the aforesaid sections and in default of non-payment of fine amount, he will undergo simple imprisonment for three months and both sentences shall run concurrently.

## 2. PROSECUTION STORY –

The prosecution case in the nutshell is that on 21-05-2012 the informant- Vijay Mahto- SHO and other police personnel were on duty where they received secret information that in village-Raghopur, one Baijnath Gope and his associates were assembled for committing occurrence. On this information, the police party reached there and apprehended the appellant with arms. Thereafter, seizure list was prepared in the presence of two witnesses. On demand, no paper was produced, thereafter, the police apprehended another person Mukesh Rai and on search, a country made rifle and cartridges were recovered from his premises for which another seizure list was prepared in the presence of local witnesses.

## 3. APPELLANT CONTENTIONS-

Learned counsel for Appellant has submitted that the judgment and order of conviction and sentence passed by the learned Magistrate are not maintainable either on the point of law as well as on facts and is based on surmises and conjectures. The learned Magistrate ought to have considered that there is no independent witnesses in this case and the learned Magistrate ought to have considered the fact that the alleged seizure list witnesses have not come before the Court to support the factum of recovery of the alleged arms and cartridges from the possession of the petitioner appellant. The learned Magistrate ought to have considered that no witness of the locality has been examined by the prosecution. The learned Magistrate has not considered that no sanction has been obtained from the District Magistrate which is mandatory under this Act and under such circumstances; the entire prosecution against the petitioner fails. There are other grounds also which will be pointed out at the time of the final hearing of the appeal.

**Defence Argument:-**The defence has submitted in the argument that the impugned judgment and order of sentence is bad in fact and in law and is based on conjectures and surmises. The learned trial Court has not weighed it properly and carefully, no independent witnesses were examined, the seizure list have turned hostile, no witness of locality has been examined. All the witnesses examined are police personnel and interested witness, the story of recovery of alleged firearm from the possession of appellant petitioner is doubtful, the evidences of the prosecution witnesses are not consistent and suffers from vital contradiction. PW1- Vijay Mahto has not been cross-examined on behalf of

accused and therefore, his evidence is not considerable as per the provisions of Evidence Act. For the evidence of PW2 who is the Sergeant Major, the defence has raised doubt over the proper testing method adopted by the Sergeant Major to check the effectiveness of the firearm. Regarding the evidence of PW3 who is the Investigating Officer of the case, the defence has said that he was one of the members of the raiding party and as per the provision of law, member of raiding party cannot be the Investigating Officer. He has also drawn the attention of the Court to para 24 and 26 whereby it is submitted that during the investigation, the Investigating Officer had not taken the statement of any of the witnesses at place of occurrence and it was not written on the said rifles that which rifle was seized from whose possession. Therefore, the recovery of the alleged rifle from the petitioner appellant's possession is doubtful and in para 47 of the evidence of Investigating Officer, this witness has not stated that the alleged rifle was recovered from the possession of appellant accused. PW4 has stated that police has taken the signature of the witnesses over a plain paper and that no fire arms were recovered in his presence and therefore, he has prayed for setting aside the judgment and the order of sentence.

**4. EVIDENCES ON RECORD - Oral evidences on behalf of prosecution:-**

PW1- Vijay Mahto (Informant)

PW2- Jagatpati Prasad Karn (Sergent Major)

PW3- Chandrama Singh (I.O.)

PW4- Pankaj Kumar (Seizure list witness)

**Documentary Exhibits on behalf of prosecution:-**

Ext.1- Seizure list-I

Ext.2- Seizure list-II

Ext.2/1- Signature of witness Pankaj Kumar on seizure list-II

Ext.3- Written statement

Ext.3/1- On the written statement of SHO, ordered to register FIR

Ext.4- FIR

Ext.5 – test report of Seargent Major on effectiveness of arms

Ext.6- original copy of inquiry of seized rifle and cartridge

Ext.7- Application given by the I.O. regarding inquiry of seized rifle and cartridge

Ext.8- Acceptance report given by the District Magistrate regarding arms.

**Material Exhibits:-**

Ext.I- Black rifle (I) seized in Raghapur PS Case No.62/2012 dated 21-05-2012.

Ext.I/I- Black rifle (II) seized in Raghapur PS Case No.62/2012 dated 21-05- 2012.

Ext.II- Seized cartridge in Raghapur PS Case No.62/2012 dated 21-05-2012

Ext.II/I- Seized cartridge in Raghapur PS Case No.62/2012 dated 21-05-2012

Ext.II/II- Seized cartridge in Raghapur PS Case No.62/2012 dated 21-05-2012

Ext.II/III- Seized cartridge in Raghapur PS Case No.62/2012 dated 21-05-2012

**ISSUES** for consideration in this appeal-

- i) Whether the impugned Judgment and order dated 15-12-2018 for conviction and sentence was rightly passed for alleged offence u/s 25(1-B)a/35 and 26(1)/35 of Arms Act or not ?
- ii) Whether the impugned Judgment and order dated 15-12-2018 suffers from some illegality or not ?

**5. Discussion** – on issue no. 01 -upon the analysis of the evidences- According to the prosecution story, the house of one of the co-accused- Baijnath Gope was raided who tried to escape towards forest but was caught with black colour country made rifle loaded with 0.314 bore live cartridge, on the bottom of which BMMKF was inscribed and one live cartridge was found/recovered from his cloth. On the basis of secret information, the appellant accused Mukesh Rai's house was also raided who also tried to escape and from his escape route, one black colour country made rifle was seized loaded with one 0.314 bore live cartridge along with one more live cartridge. The learned trial Court in its judgment which is under challenge had divided the core issues in five points which were as follows.:-

- (I) Whether the seized material exhibit was effective or operational?
- (II) Whether sanction was taken from the competent authority for the trial of this case?
- (III) Whether the seizure list was exhibited by the prosecution witnesses?

(IV) Whether illegal firearms were seized from the accused persons?

(V) Whether the prosecution has been successful in proving the case beyond reasonable doubts?

On the discussion regarding the effectiveness or working capacity of the seized material exhibit, the Court has in detail discussed that the Sergeant Major who appeared as PW2 submitted his report upon due verification which is marked as Exhibit-5 and he in his expert opinion has submitted that the seized firearms were duly effective and in complete working condition. The seized material exhibits were properly brought to the Court in sealed bag, which contained two rifles and four cartridges and the Sergeant Major has reported that in test fire, both the rifles were found in working condition and out of four cartridges, three cartridges were live and one cartridge was in misfire condition and accordingly, the Sergeant Major submitted his test verification report in two pages and upon his due identification it was marked as Exhibit-5. In para 11, the Sergeant Major has specifically said that after test fire he even turned back the empty cartridges and according to his test, he had mentioned in his report that the rifles were in working condition. In para 60, he has said that in the rifle seized, at one time, only one cartridge can be used. Therefore, the trial court found that from the due perusal of the evidence of PW2, the Sergeant Major, three cartridges along with rifle was found operational and in cross-examination, the defence has not brought any relevant or contradictory fact on record to shatter the veracity of this expert witness, according to whom the firearms and the cartridges were found effective. All the seized material exhibits were duly marked as Material Exhibit- I, I/1, II, II/1, II/2, II/3. Thus, it is proved that the seized articles were duly produced in the Court which upon proper identification were marked as exhibits and the same finds corroboration with the evidence of PW3 who is the I.O. of the case and in para 21 of his evidence, he has said that two rifles and four cartridges were marked with Raghapur PS Case No.62/2012 dated 21-05-2012 and it bore the signature of CJM and the initials of Sergeant Major- this evidence of PW3 proves that the seized articles were duly sealed in the presence of CJM and the same was produced before the Sergeant Major for its verification on the point of effectiveness and the initials of the Sergeant Major on the seized articles proves that the same articles were tested and found to be operational.

The second issue of receiving the sanction, the trial court has mentioned that it is the established law that without the sanction report, any trial

for the case u/s-25(1-B)a/26/35 of Arms Act cannot be put for trial and due sanction report is available on record which has been marked as Exhibit-8.

On the point of seizure list, the trial court has drawn the attention towards PW1 who is the informant and he has deposed in Para 6,7 that upon seizure, the accused persons neither gave any satisfactory report nor any document was produced and therefore, in the presence of two independent witnesses, the seizure list according to the provisions of law was made and upon due verification it was marked as Exhibit-1 which bears the signature of Nabalak Bhagat and Pankaj Kumar as independent witnesses who put their signature on the seizure list on their free will. PW4 has identified his signature over the seizure list which was marked as Exhibit-2/1, although, in cross, he has said that the police took his signature on blank paper but the Investigating Officer in his evidence in Court in para 3 to 5 has duly supported the contention that the seizure list was prepared on the place of occurrence. The said seizure list under consideration was duly proved by PW1 who is the informant and also by PW3 who is the Investigating Officer who has in para 21 submitted that the seized articles were produced before the learned CJM and it bears the initials of learned CJM and the Sergeant Major both. Thus, it is proved that the seizure list was duly prepared on the place of occurrence and the same was produced before the learned CJM and further, was sent for due testing on the point of effectiveness to the Sergeant Major. So, there is no contradiction on the point of identity and veracity of the seized articles which are mentioned on the seizure list for both the appellants separately.

The appellant in the trial court also had taken the plea of conviction only on the basis of the examination of public officials who are interested witnesses and therefore, it appears that conspiracy by the police against the appellant accused and to support this, they have taken the plea to support the case law:-

I.Baleshwar Yadav @ Shyamji Vs. State of Jharkhand CRLJ- 1552 JHA

But from the perusal of the record it is clear that besides that the official witnesses are police officials but they are direct evidence and eye witnesses who are completely relevant. One of the point dismissed by the learned lower court was whether the illegal firearms were seized from the accused or not. On this issue, on the perusal of the documentary evidences which are marked as Exhibit-1 to 8 and the oral evidences of PW1 to PW3 along with material exhibit I to II/3, it is clear that the seized articles were recovered

from the appellant accused-Baijnath Gope and Mukesh Rai and none other and the same has been duly proved by prosecution beyond reasonable doubt. Thus, it is proved that the illegal rifle and live cartridges were intentionally sealed by the public officials without valid sanction or papers for the same by the competent authorities and therefore, they were liable to be prosecuted for the sections as alleged. The trial court has taken the support of two case laws in this regard:-

I.Ramdev Prajapat Vs. State of Bihar 2004 CRLJ NOC-85 (PAT)

II.Yogendra Singh Vs. State of Jharkhand 2006 CRLJ, 1884 (JHA)

Therefore, finally this Appellate Court also finds that the allegations were duly proved by the prosecution and the conviction by the trial court was rightly done against the appellant accused. Therefore, the Trial Court judgment and order of sentence does not need any interference. Accordingly, the appeal is dismissed and the lower court judgment and order is upheld.

6. The allegations are well substantiated and there are no inherent contradictions in the testimonies of the PWs. The lower court judgment is affirmed.

7. On issue no. 02 - It is not the function of the appellate court to restate the evidence or reiterate the findings arrived at by the court below. The impugned judgment is just and proper. It is not devoid of any merit as their testimonies do not suffer any serious infirmities and there is no reason brought on record to disbelieve them. Therefore, appellant was rightly convicted.

8. In the result, the instant criminal appeal is dismissed. The judgment of conviction and order of sentence passed by the court below is hereby affirmed.

9. Let the record be sent to the Lower Court.

Dictated and corrected by me

Additional Sessions Judge VII,  
Vaishali at Hajipur  
31.05.2023

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