

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cri. Revision No. 36 of 2019

Kameshwar Hembrom, aged about 48 years, Son of Late Ankura Hembrom, Resident of Village Ghorabandha, P.O. & P.S. Manjhgaon, District Singhbhum West (Jharkhand) **Petitioner**

Versus

The State of Jharkhand **Opposite Party**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOURDHARY

For the Petitioner : Ms. Shruti Shrestha, Advocate
For the Opp. Party : Mr. Pankaj Kumar, Advocate

08/21st March 2024

1. Heard the learned counsel for the parties.
2. This revision application has been filed challenging the judgment dated 10.10.2018 passed by the Court of learned Sessions Judge, West Singhbhum at Chaibasa in Criminal Appeal No. 49 of 2018, whereby the appeal filed by the petitioner has been dismissed. The appellate court has upheld the judgment of conviction and order of sentence dated 09.08.2018 passed by the learned Additional Chief Judicial Magistrate, West Singhbhum at Chaibasa in G.R. Case No. 52/2018, T.R. No. 493 of 2018. The petitioner has been convicted for offence under Section 25(1-B)a of the Arms Act. The petitioner has been sentenced to undergo rigorous imprisonment for three years with fine of Rs. 3,000/- for the aforesaid offence with default clause.

Arguments of the petitioner

3. The learned counsel for the petitioner while assailing the impugned judgements passed by the learned trial court as well as the appellate court has submitted that the impugned judgments are perverse and call for interference.
4. The learned counsel has submitted that the seizure of the arms was not proved as per law. She has submitted that admittedly a copy of the seizure list was not provided to the petitioner and the informant of the case, a police officer - PW-3, who claims to have seized the arms, has stated in his cross-examination that there is no requirement in law to take signature of the accused on the seizure list and thus even a copy of the seizure list has not been provided

to the petitioner. She submits that the alleged seizure of arms from the possession of the petitioner has not been proved.

5. The learned counsel further submits that otherwise also there was no sealing of the arms on the spot and there was no mark in connection with the so called seized arms and therefore the production of arms before the learned court could not establish a link between the arms which was produced and the arms which was alleged to have been seized from the possession of the petitioner.

6. The learned counsel submits that in a case under Section 25(1-B)a of the Arms Act, the seizure is required to be proved in accordance with law failing which the judgment of conviction cannot be sustained.

7. To further buttress her arguments, the learned counsel has submitted that two seizure list witnesses were examined and they had stated that in their presence there was no seizure from the possession of the petitioner and with regard to their signature on the seizure list, they had simply stated that the signature was taken stating to be on the memo of arrest. She submits that these two witnesses were not declared hostile and therefore this part of the evidence of these witnesses cannot be discarded. She submits that considering the totality of the evidence on record, the seizure has not been proved at all.

8. The learned counsel has relied upon the judgment passed by this Court in ***Criminal Revision No. 295 of 2012 (Afroj Ansari vs. The State of Jharkhand)*** decided on 30.04.2021 and has referred to paragraph Nos. 29, 30, 31 and 34 of the judgement. The learned counsel submits that in the aforesaid judgment, various judgments of the Hon'ble Supreme Court have also been considered.

9. The learned counsel has also submitted that a plea of being unsound mind was taken by the defence before the learned trial Court and some documents regarding his treatment in Mental Hospital, RINPAS were also exhibited but no specific petition was filed in connection with his plea for unsound mind.

10. The learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***Prakash Nayi @ Sen vs. State of Goa*** in ***Criminal Appeal No. 2010 of 2010*** decided on 12.01.2023 and has referred to paragraph Nos. 8, 15 and 16 of the said judgment to submit that there is no need to file an application under section 329 of Cr.P.C. in finding out whether an accused would be sound enough to stand a trial, rather it is the mandatory

duty of the court. However, she submits that if the petitioner succeeds on the first point, the second point regarding unsound mind of the petitioner need not be gone into by this Court.

Arguments of the State

11. The learned counsel appearing on behalf of the State though has opposed the prayer of the petitioner by submitting that there are concurrent findings recorded by the learned courts and therefore no interference is called for in revisional jurisdiction, but the submissions on facts made by the learned counsel for the petitioner based on materials on record are not disputed.

12. With regard to the point of unsound mind, the learned counsel submits that the petitioner had failed to discharge the initial burden to show that the petitioner was a person of unsound mind and the conduct of the petitioner that upon seeing the police party he tried to run away indicates enough that the petitioner was in a position to understand the nature and consequences of his act and therefore the judgment passed by the Hon'ble Supreme Court in ***Criminal Appeal No. 2010 of 2010 (supra)*** does not apply to the facts of this case.

Findings of this Court

13. The factual matrix of the case is not in dispute.

14. The foundational facts are that on 24.01.2018 at about 14:15 hours, during the course of day patrolling, the informant A.S.I. Manoj Kumar (PW-3) along with the armed forces reached near Ghorabandha High School at about 14:15 hours and got a secret information that a person was moving with arms in village Ghorabandha and threatening the local people. To verify this information, PW-3 along with armed forces proceeded towards the village Ghorabandha and when they reached near the house of Sano Hembrom, a person tried to flee away, but was apprehended. On query, the apprehended person disclosed his name as Kameshwar Hembrom (petitioner) and on body search in presence of two villagers Dhaneshwar Hembrom (P.W.4) and Sudarshan Hembrom (PW-5) one six round loaded pistol was recovered from his left side waist with two cartridges. On demand, the apprehended accused neither produced any document of the recovered six round loaded pistol and cartridges nor gave any satisfactory reply. Thereafter recovered six round

loaded pistol and two cartridges were seized and seizure list was prepared in presence of the witnesses and the petitioner was arrested.

15. The First Information Report was registered under Section 25(1-B)a/26 of the Arms Act and the case was investigated by the PW-8 who submitted the charge-sheet on the aforesaid sections. Cognizance was taken on 03.04.2018 and the charge was also framed on the aforesaid sections. The petitioner pleaded not guilty and the trial was proceeded.

16. Before the learned trial Court, altogether nine witnesses were examined amongst them three witness are important, so far as seizure is concerned. The informant of the case was examined as PW-3 and the two seizure witnesses were examined as PW 4 and PW 5 respectively.

17. This Court has gone through the evidence of the informant of the case and upon perusal of the evidence, it appears that though he has supported the prosecution case but neither gave any mark on the seized arms nor sealed the same and during the course of cross-examination, he has stated that he did not take the signature of the petitioner on the seizure list as according to him there is no such requirement. Upon perusal of the seizure list also, it is apparent that the same does not contain the signature of the petitioner nor does it indicate that any copy of the seizure list was given to the petitioner.

18. So far as the two seizure list witnesses are concerned, they have specifically stated in their evidence that nothing was recovered from the possession of the petitioner. However, they have admitted their signature on the seizure list. PW 5 has stated that they were called in the police station on the next date and they were made to sign by saying that it was only an arrest memo. These two witnesses have clearly stated that there was no recovery of arms from the possession of the petitioner in their presence and these witnesses were not declared hostile from the side of the prosecution.

19. Considering the evidences of PWs 3, 4 and 5, this Court finds that the seizure cannot be said to have been proved, inasmuch as, admittedly the signature of the petitioner was not taken on the seizure list and it is not the case of the prosecution that the petitioner had refused to put his signature rather PW 3 in his cross-examination has stated that there is no such requirement. The materials on record further indicates that neither the arms were sealed on the spot nor any identification mark was put on the spot and therefore the arms

which was produced before the learned court could not have been linked to the so-called seized arms.

20. The learned trial court has failed to consider the aforesaid aspects of the matter that admittedly a copy of the seizure list was not given to the petitioner; PW 3 was of the view that there is no need to have signature of the accused on the seizure list; the arms were neither sealed on the spot nor marked on the spot. Paragraph 13 of the learned trial's court judgment is quoted as under: -

"13. In this case the prosecution has alleged against the accused Kameshar Hembrom that secret information received by the informant who is PW3 has proceeded towards place of occurrence and found that one person holding arms want to flee away after seeing the police party but anyhow he was apprehended. On search one country made revolver having two cartridges in which one was live and another was Khokha. The Sargent Major who is PW7 has opined that the seized arms and cartridges was dangerous for human life. The version of the defence has already discussed in detail and his ali-bi is not sustainable in this case. The District Magistrate West Singhbhum has sanctioned for launching prosecution under the Arms Act against the accused Kameshwar Hembrom after going through the report of Sergeant Major and the Arms produced before him. All Pws have deposed that accused Kameshwar Hembrom was moving with arms. PW4 & PW5 who are seizure list witnesses are relative and co-villager of the accused they interested witnesses. They are literate person but they have not informed the matter before any higher authority of the police administration regarding illegal work done by the Majhgaon P.S as they alleged. No one has prevented them to disclose the matter regarding unsoundness of the accused before any higher authority or before the court during the trial. When the defence has put the question then they disclosed that the accused is insane person. So the version of this two witnesses is not believable. The defence has taken only plea for ali-bi which was discarded earlier. The defence has not produced any document to show that accused holding the arms with a valid documents.

Thus I find and hold that the prosecution is able to establish its charge for the offence u/s 25(1-B)a Arms Act against the accused Kameshwar Hembrom. Hence, Kameshwar Hembro is held guilty for the offence u/s 25(1 - B) a Arms Act."

21. This Court finds that the learned appellate court has also scrutinized the materials and recorded its following as follows :

"In this connection there is clear cut evidence of PW-3 A.S.I. Manoj Kumar(informant) of Majhgaon P.S. that prior to conducting search, he gave his own search. Thereafter, conducted body search of accused Kameshwar Hembrom in presence of two independent witnesses. He seized one country made six round revolver from the waist of the accused and after opening the revolver he found two cartridges out of which one has tampered and another was live. From perusal of seizure list (Ext-2), it is crystal clear that the loaded cartridges in the country made revolver was of 7.65 on the bottom of which KF was inscribed. The seizure list(Ext-2) was prepared on 24.01.18 at about 15:00 hours in front of the house of Sano Hembrom on the road at Village Ghorabanda, which has also not been challenged by the accused.

It is clear from the evidence of independent witnesses of search and seizure PW-4 Dhaneshwar Hembrom and PW-5 Sudarshan Hembrom

have admitted their signatures on the seizure list but in their cross-examination denied any recovery of revolver and cartridges in their presence. Other witnesses of fact are also members of patrolling are police personnel and have corroborated the factum of recovery, search and seizure of illegal country made revolver and cartridges from the possession of accused in their presence, which stands un-rebutted.

In this view of the matter, I don't find any legal force in the aforesaid contention of learned counsel for appellant."

22. This Court is of the considered view that not marking and not sealing the so-called seized arms on the spot by the informant, a police officer, in the aforesaid facts of this case is fatal to the prosecution case as it cannot be said that the seizure of arms from the possession of the petitioner was proved beyond reasonable doubts.

23. In this regard, it would be appropriate to refer the judgment passed by the Hon'ble Supreme Court in the case of ***Sahib Singh –Vs- State of Punjab (1997 Cr.L.J. 2978)*** wherein the Hon'ble Supreme Court in Para-7 observed as under:

“7.

*We next find from the record that the arms and ammunitions allegedly recovered from the appellant and seized were not packeted and sealed. In **Amarjit Singh Vs. State of Punjab 1995 Supp. (3) SCC 217** this Court has observed that non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. From the record we further find that there is no evidence to indicate with whom the revolver was after its seizure by P.W.3 till it was sent to the Arms Expert for testing through constable Baita Singh. This missing link also weakens the prosecution case. For all these infirmities, we are of the view that the appellant is entitled to the benefit of reasonable doubt.”*

24. A similar view has been taken by the Hon'ble Supreme Court in the Judgment decided on 19.02.1998 in Criminal Appeal No. 1086 of 1997 in case of ***Jasbir Singh Vs. State of Punjab (1998) 8 SCC 525.***

25. This Court is of the considered view that non-sealing of the fire-arms i.e. pistol and cartridges at the place of occurrence is a serious infirmity on the part of the prosecution when seen with the circumstance that the seized articles did not even have any identification mark. The identity of the weapon and cartridges produced before the learned court could not be established by the prosecution as they did not even have any identification mark on them and after seizing the same, the police had not thought it fit to immediately wrap them and apply a seal over them. In the aforesaid background, the identity of the incriminating articles was not

established by the prosecution beyond reasonable doubt and the prosecution cannot be said to have proved the charges against the petitioner beyond all reasonable doubts. These aspects of the matter have been overlooked by both the learned courts and accordingly, the impugned judgements call for interference in revisional jurisdiction to prevent miscarriage of justice to the petitioner. Consequently, the petitioner is acquitted from the charges giving the benefit of doubt to him. The petitioner is discharged from the liability of his bail bond.

26. Accordingly, the impugned Judgment dated 10.10.2018 passed by the learned Sessions Judge, West Singhbhum at Chaibasa in Criminal Appeal No. 49/2018 as well as the impugned Judgment of conviction and the order of sentence dated 09.08.2018 passed by the learned Additional Chief Judicial Magistrate, West Singhbhum, Chaibasa in G.R. No. 52/2018, T.R. No. 493 of 2018 are hereby set aside.

27. Accordingly, this criminal revision petition is hereby **allowed**.

28. Pending I.A., if any, is closed.

29. Let a copy of this order be communicated to the court concerned through ‘e-mail/FAX’.

(Anubha Rawat Choudhary, J.)

Mukul