IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.71 of 2010

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1. MD. MAUSAM
2. Md. Naushad (Died)

Both sons of Md. Jamal. Resident of Village, Mirazapur, Bardah, P.S. Muffasil, District, Munger

... ... Appellant/s

Versus

STATE OF BIHAR

... ... Respondent/s

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Appearance :
For the Appellant/s : Ms. Aditi Sharma, Amicus Curiae
For the Respondent/s : Mr. Satya Narayan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
CAV JUDGMENT

Date : 28-04-2026

During the pendency of this appeal, the appellant no.2 had died and as such the present appeal stood abated as against him and therefore, now, this appeal is restricted only with respect to appellant no.1.

2. Heard Ms. Aditi Sharma, learned *Amicus Curiae* and Mr. Satya Narayan Prasad, learned APP for the State.

3. The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure challenging the judgment of conviction dated 19.12.2009 and order of sentence dated 21.12.2009 passed by the Additional District and Sessions Judge, Fast Track-III, Munger in S.T. No.174 of 2006 arising out of Munger Muffasil P.S. Case No. 137 of 2006 whereby and whereunder the appellant no.1 has been convicted for the

offence punishable under Section 25(1-AA), 26(2) of the Arms Act and has been sentenced to undergo Simple Imprisonment for seven years along with a fine of Rs.500/- and in default of payment of fine to further undergo simple imprisonment for 15 days for the offence under Section 25(1-AA) of the Arms Act. The appellant has been sentenced to undergo simple Imprisonment for five years along with a fine of Rs.500/- and in default of payment of fine to further undergo simple imprisonment for 15 days for the offence under Section 26(2) of the Arms Act. Both the sentences were directed to run concurrently.

BRIEF FACTS OF THE CASE

4. Prosecution case in brief, is that according to the written report of the Officer-Incharge, Muffasil Police Station, Munger is that on 21.6.2004 at 15.40 P.M. he received confidential information that a Mini Gun Factory is being run in the house of Md. Naushad, Md. Mausam and Md. Afroz at village Bardah, whereupon the informant along with police personnel proceeded for raid, and the raid was conducted at 4:30 P.M. at the said house after reaching village Bardah whereupon 7-8 persons fled from the house after seeing the police and though the police chased them it was of no avail, and thereafter

the villagers were called upon to join the search but they did not appear, and upon search of the house of accused Naushad, equipments for running Mini Gun Factory, two unasembled pistols and blank cartridges were recovered. The seizure list was prepared on the spot. In absence of any independent witnesses, the members of the raiding party namely S.I. B.P. Mahton and A.S.I. Gopal Prasad were made witnesses to the seizure list.

5. On the basis of the statement of the written report of the informant, the F.I.R being Munger Muffasil P.S. Case No. 137 of 2006 was registered for the offences under sections 25(1-A), 25(1-AA), 25(1-b), 26(I), 26(2) and 35 of the Arms Act. After institution of the FIR, the police proceeded with the investigation and after completion of investigation, charge-sheet was submitted. Thereafter, the trial court took cognizance of the offence against the appellants. Upon committal of the case to the Court of Sessions for trial, and after completion of the trial, the appellants were convicted.

ARGUMENT ON BEHALF OF THE *Amicus Curiae*

6. Learned *amicus curiae*, submitted that the impugned judgment of conviction and sentence is unsustainable both in law and on facts. The prosecution case originates from a written report on the basis of which, a formal FIR was lodged at

Muffasil Police Station, followed by submission of charge-sheets and committal of the case to the Court of Sessions. Charges were framed under various provisions of the Arms Act, alleging recovery of illegal arms and manufacturing equipment from a house said to be belonging to the accused persons. However, the prosecution case suffers from serious infirmities, as the alleged informant was not examined during the trial despite being available, and no independent witnesses were produced to support the alleged search and seizure. The entire case rests upon official witnesses whose testimonies are inconsistent and unreliable. It is further submitted that the prosecution has failed to establish the place of occurrence and the manner of recovery in a cogent and credible manner. The witnesses have admitted in cross-examination that they were unaware of the boundaries of the house and could not specify from which exact location the alleged recoveries were made. The evidence also indicates that the police personnel were stationed outside the premises and did not directly witness the alleged seizure. Furthermore, no seal or identification mark was affixed on the seized articles, and the seizure list itself appears doubtful. Crucially, no material has been brought on record to show that the alleged arms or articles were recovered from the

conscious possession of the petitioners, particularly when the premises is said to be a joint house and several persons allegedly fled from the spot.

7. Learned counsel further submits that even the expert evidence don't support the prosecution case, as the sergent officer did not give any conclusive opinion regarding the effectiveness of the alleged firearm and no live cartridges were produced for examination. The learned Trial Court itself found several charges not proved and acquitted the petitioners of those offences, yet erroneously convicted them under Sections 25(1-AA) and 26(2) of the Arms Act without sufficient legal evidence. The appellant remained on bail throughout the trial and never misused the liberty granted to him. In view of these facts, it is submitted that the prosecution has failed to prove its case beyond reasonable doubt, and the petitioner is entitled to be acquitted, as the trial court has miserably failed to appreciate the evidence, leading to failure of justice and therefore, the conviction of the appellant under Section 25(1-AA), 26(2) of the Arms Act is liable to be set aside.

ARGUMENT ON BEHALF OF THE STATE

8. *Per Contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District

court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has rightly convicted the appellant for said offences, as the offences alleged against the appellant appears to be serious in nature and also constitutes cognizable offence.

ANALYSIS AND CONCLUSION

9. Heard the parties.

10. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

11. The learned trial court, on the basis of materials as collected during the course of investigation, passed the Judgment of conviction dated 19.12.2009 and order of sentence dated 21.12.2009 for the offences under Section 25(1-AA), 26(2) of the Arms Act.

12. During the trial, the prosecution has examined altogether seven witnesses, namely:

(i) (P.W.-1),- Bimal Singh, SI of Police

(ii)(P.W.-2),- Chandradeep Rajak, the S.I. and Member of Raiding party

(iii) (P.W.-3),- Gopal Prasad

(iv) (P.W.-4) ,- Ashok Kumar Sinha

(v) (P.W.-5),- Bindeshwar Prasad Mahto

(vi) (P.W.-6),- Suresh Prasad Singh, I.O

vii) (P.W.-7).- Ram Pratap Singh

13. The prosecution has also relied upon following document exhibited during the course of trial:-

(i) Seizure List (Exhibit-1),

(ii) Signature of Gopal Prasad on Seizure List (Exhibit 1/1)

(iii) Report of sergent Major (Exhibit-2)

(iv)Writing and signature of Seizure List (Exhibit - 3 to 3/2)

(iv) Fardbeyan (Exhibit 4)

(v) Signature of District Magistrate on sanction report (Exhibit ½)

(vi) Writing and signature on Formal First Informant Report (Exhibit 5)

14. It would be apposite to discuss the oral/documentary evidences. The evidence of the prosecution witnesses (PWs) can be summarized as follows:

(i) PW1- The witness has deposed that on 21.06.2004, while posted at Muffasil Police Station, he received secret information regarding that an illegal mini gun factory operating

at the house of Md. Jamal. Acting upon such information, he, along with other police officials, conducted a raid at about 4:30 PM. Upon arrival, 7–8 persons fled from the premises and could not be apprehended due to rain and muddy conditions. He has further stated that villagers present there disclosed the names of the fleeing persons. During the course of search and seizure, materials used for manufacturing illegal arms, including half-made pistols and blank cartridges, were recovered and seized, and a seizure list was prepared accordingly.

In his cross-examination, the witness stated that the accused persons were residing in the same house with separate families, and there was only one entry to the said house, and that he could not disclose the names of the villagers who had provided the information.

(ii) PW-2- The witness has deposed that on 21.06.2004 while posted at Muffasil Police Station, the Officer-in-Charge received secret information that illegal arms were being manufactured at the house of Md. Naushad and others at village Bardah, following which a police team conducted a raid around 4:30 PM upon reaching, 7–8 persons fled from the house and could not be apprehended due to rain and slush, and during the search and seizure, materials and equipment of a mini gun

factory were recovered and seized.

In cross-examination he admitted that he could not disclose who had provided the information, had not seen or identified any accused, and was present outside the house during the raid while the seized articles were recovered from a room.

(iii) PW 3- This witness has deposed deposed that on 21.06.2004, upon receipt of secret information by the Officer-in-Charge of Muffasil Police Station at about 3:40 PM regarding illegal manufacture of arms in the house of the accused persons at village Bardah, he accompanied the police party to the spot and conducted a raid around 4:30 PM, during which 7–8 persons fled away. He stated that villagers disclosed the names of the fleeing persons and that materials relating to a mini gun factory were recovered during the search, for which a seizure list was prepared in his presence and signed by him, and he identified the seized articles before the Court.

In cross-examination, he admitted that no independent witness was present as all witnesses were members of the raiding party and he could not clearly specify the exact place of recovery.

PW-4- This witness has deposed that on 7.7.2004, seized articles of Muffasil P.S. Case No. 157/2004 were brought

for examination by A.S.I. Surendra Singh. He described the articles, identified the report (Ext. 2) as written by Constable Bipin Singh and himself, and stated that the I.O. had asked regarding the effectiveness of the seized pistol, which was found non-effective, and therefore he did not give his opinion.

(v) PW-5- This witness has deposed that on 21.6.2004 at 4:30 P.M. a raid was conducted at the house of Md. Naushad on the basis of information, during which the criminals fled upon seeing the police. Two illegal half-made pistols and Mini Gun Factory equipment were recovered. He identified the seizure list (Ext. 3) written by A.S.I. Bimal Singh, the signature of Officer-Incharge Navin Kumar (Ext. 3/1), and his own signature (Ext. 3/2).

In cross-examination, he stated that he was the sole raiding party member witness to the seizure list, could not tell the boundary of the house, and that no woman or child was found therein.

(vi) PW-6- This witness has deposed that he was also a member of the raiding party and had gone to village Bardah with police force. Members A.S.I. Gopal Prasad and S.I. B.P. Mahton were made witnesses and two country-made pistols, blank cartridges, and Mini Gun Factory equipment were

recovered. The seizure list was prepared by A.S.I. Bimal Singh at the instance of Officer-Incharge Navin Kumar. He described the house as a joint house of Md. Naushad, Md. Mausam, Md. Afroz, and Md. Jummal, with equipment recovered from multiple rooms. He identified the District Magistrate's signature on the sanction report (Ext. 1/2).

In cross-examination, he stated that the Jeep could not reach the place of occurrence and they went on foot, no villager was asked about the accused's house, and at 25 feet from the place of occurence they saw persons fleeing whom they could not identify.

(vii) PW-7- This witness has deposed that the fleeing persons names were not known. No independent village witnesses from village Bardah told the names of Md. Naushad involved in the incident. He identified the signature of Officer-Incharge, Muffasil P.S., and the writing of Navin Kumar. He is a formal witness who identified the formal F.I.R. of Officer-Incharge, C.O., Muffasil P.S., which is marked as Ext. 5.

15. On the basis of materials surfaced during the trial, the appellant/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete

innocence.

16. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal.

17. It would be appropriate to reproduce the provision of Section 25(1-AA) and 26(2) of Arms Act for the sake of convenience and better understanding of the facts, which is as under:-

> *"25(1-AA) Whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than 9[ten years] but which may extend to imprisonment for life and shall also be liable to fine.*
>
> *26(2) Whoever does any act in contravention of any of the provisions of section 5, 6, 7 or 11 in such manner as to indicate an intention that such act may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and also with fine."*

18. It is a settled position that the prosecution must adduce cogent evidence to establish that the accused had indulged in the manufacture, sale, or transfer of prohibited arms or ammunition in contravention of Section 7 of the Act to convict the accused under Sections 25(1-AA) and 26(2) of Arms

Act. Reference can be drawn in this regard from the judgment passed by the Apex Court in case of ***Samir Ahmed Rafiqahmed Ansari vs. State of Gujarat, (Criminal Appeal Nos. 992–993 of 2016),*** wherein it has been held as under-

> *"7.Section 25(1AA) of the Arms Act deals with manufacture, sale, transfer etc. of the prohibited arms. In this case, the prosecution has not adduced any evidence to show that the appellant-accused had indulged in manufacturing of arms or prohibited ammunition in contravention of section 7. Since the prosecution has not adduced any evidence to substantiate the allegation of manufacture, in our view, the conviction of the appellant-accused under Section 25(1AA) cannot be sustained."*

I. <u>ON THE POINT OF SANCTION UPON SATISFACTION OF AUTHORITY</u>

19. In the present case, Ext. 1/2, which bears the signature of the District Magistrate, has been brought on record through the testimony of P.W.-6, indicating that sanction was accorded by the competent authority. In the absence of any material to suggest that the sanction was granted mechanically or without application of mind, and there being no effective challenge to its authenticity in cross-examination, Ext. 1/2 can be treated as sufficient *prima facie* proof of a valid sanction for prosecution as required under Section 39 of the Arms Act, 1959. It is also to be presumed that, while granting such sanction, the competent authority had applied its mind to the materials placed before it and formed the requisite "reason to believe" for

according approval. A principle which finds support in the law laid down by the Hon'ble Supreme Court in case of ***A.S. Krishnan v. State of Kerala*****,** reported in **(2004) 11 SCC 576** wherein of "reason to believe" has been construed which is as under**:**

> *"9. Under IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 IPC explains the meaning of the words "reason to believe" thus:*
>
> > *"**26. 'Reason to believe**'.—A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."*
> >
> > ***10.** In substance, what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such as creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case."*

II. <u>WHETHER MERE IRREGULARITY IN NON-</u>

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COMPLYING WITH THE PROVISION OF SECTION 100 CR.P.C. CAN ASSUME SIGNIFICANCE IN AFFECTING THE SEIZURE AND THE CREDIBILITY OF THE PROSECUTION CASE?

20. It is well settled that the provisions of Section 100 Cr.P.C. are applicable to the search and seizure conducted in the present case, by virtue of Section 4(2) of the Code of Criminal Procedure, 1973, offences under special statutes are to be investigated in accordance with the procedure prescribed under the Cr.P.C., unless a contrary provision is made. Since the Arms Act does not lay down any exhaustive procedure governing search and seizure, in such circumstances, the safeguards embodied under Section 100 Cr.P.C., particularly the requirement of associating independent and respectable inhabitants of the locality during search, would squarely apply. In the present case, although the prosecution has asserted that villagers were called to witness the search but refused to participate, no effort appears to have been made to record their names or such refusal in writing, nor is there any convincing evidence to establish that sincere attempts were made to secure independent witnesses. The entire search and seizure is thus sought to be proved only through the testimony of police

officials, which, in light of the admitted absence of independent corroboration and the inconsistencies emerging in their cross-examination, renders the recovery doubtful. However there is no principle of law which mandates that the testimony of police officials must be discarded or treated as inherently unreliable. Their evidence is not vitiated merely by virtue of their official status. However, as a matter of prudence, such evidence particularly when the witnesses are connected with the investigation ought to be subjected to careful scrutiny and independent evaluation. The Apex Court dealing with the situation as in the present case observed that police personnel are competent witnesses, and their evidence cannot be doubted solely on the ground that they belong to the police force in the case of ***Anil @ Andya Sadashiv Nandoskar vs. State of Maharashtra*** reported in ***(1996) 2 SCC 589.*** Furthermore, none of the accused persons were apprehended at the spot, the identity of the alleged fleeing persons has not been established, and the recovery is from a house stated to be jointly occupied by several persons without any clear evidence of exclusive or conscious possession. In such circumstances, the non-compliance with the procedural safeguards under Section 100 Cr.P.C. vitiates the very foundation of the prosecution case.

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III <u>ON THE POINT OF POSSESSION OF THE ARMS</u>

21. It is settled that the word 'possession' as mentioned in Section 25 of the Arms Act, 1959 would simply mean physical/constructive possession or 'conscious possession' has already been the subject matter of many judicial decisions and the law on the subject is no longer *res integra*. This court deems it profitable to refer to the decision of the Supreme Court in ***Gunwantlal v. State of Madhya Pradesh*** reported in ***(1972) 2 SCC 194***, wherein while reading into the word 'possession', the Constitution Bench has held there has to be an element of intention, consciousness or knowledge. The relevant observations are reproduced hereinunder:-

> ***"5.*** *What is meant by possession in the context of this section? Is it that the person charged should be shown to be in physical possession or is it sufficient for the purposes of that provision that he has constructive possession of any firearm or ammunition in contravention of Section 3 which prohibits him to be in such possession without a licence. It may be mentioned that under Section 19 of the Arms Act, 1878, an offence corresponding to Section 25(1)(a) is committed if a person had in his or under his control any arms or ammunition in contravention of Sections 14 and 15 of that Act. The word "control" under Section 25(1)(a) has been omitted. Does this deletion amount to the Legislature confining the offence only to the case of a person who has physical possession or does it mean that a person will be considered to be in possession of a firearm over which he has constructive possession or over which he exercises the power to obtain possession thereof when he so intends? If the meaning to be given to the word*

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"possession" is that it should be a physical possession only, then certainly the charge as framed on the facts of the prosecution case will not be sustainable but if the meaning to be given to the word "possession" is wider than that of actual or physical possession then it is possible, if the evidence produced by the prosecution is such as would sustain a finding, that he had constructive possession on September 17, 1966, when he handed it over to Miroo and Miroo handed it over to Chhaganlal because if it was not seized from Chhaganlal, the appellant could have at any time got back the physical possession of the revolver through Miroo. The possession of a firearm under the Arms Act in our view must have, firstly the element of consciousness or knowledge of that possession in the person charged with such offence and secondly where he has not the actual physical possession, he has nonetheless a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. If this were not so, then an owner of a house who leaves an unlicensed gun in that house but is not present when it was recovered by the police can plead that he was not in possession of it even though he had himself consciously kept it there when he went out. Similary, if he goes out of the house during the day and in the meantime some one conceals a pistol in his house and during his absence, the police arrives and discovers the pistol, he cannot be charged with the offence unless it can be shown that he had knowledge of the weapon being placed in his house. And yet again if a gun or firearm is given to his servant in the house to clean it, though the physical possession is with him nonetheless possession of it will be that of the owner. The concept of possession is not easy to comprehend as writers of Jurisprudence have had occasions to point out. In some cases under Section 19(1)(f) of the Arms Act, 1878 it has been held that the word "possession" means exclusive possession and the word "control" means effective control but this does not solve the problem. As we said earlier, the first precondition for an offence under Section 25(1)(a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control. In any disputed question of

possession, specific facts admitted or proved will alone establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. In this view it is difficult at this stage to postulate as to what the evidence will be and we do not therefore venture to speculate thereon. In the view we have taken, if the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver on September 17, 1966, does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver. It is also apparent that the words "on or before" were intended to bring home to the accused that he was not only in constructive possession of it on September 17, 1966, but that he was in actual physical possession of it prior to that date when he gave it to Miroo. It is submitted, however, that the word "on or before" might cause embarrassment and prejudice to the defence of the accused because he will not be in a position to know what the prosecution actually intends to allege. From a reference of Form XXVIII of Schedule 5 of the Code of Criminal Procedure, the mode of charging a person is that he "on or about"... did the act complained of. In view of the forms of the charge given in the Schedule to the Code, we think that it would be fair to the appellant if the charge is amended to read 'on or about' instead of 'on or before' which we accordingly order."

22. Subsequently, in case of ***Sanjay Dutt v. State Through CBI, Bombay (II)*** reported in ***(1994) 5 SCC 410***, a Constitutional Bench of the Apex Court elucidated the meaning of possession to be conscious possession and not mere custody, lacking any knowledge or intention to use. It was observed, as hereunder:-

"19. The meaning of the first ingredient of

> *„possession" of any such arms etc. is not disputed. Even though the word 'possession' is not preceded by any adjective like 'knowingly', yet it is common ground that in the context the word 'possession' must mean possession with the requisite mental element, that is, conscious possession and not mere custody without the awareness of the nature of such possession. There is a mental element in the concept of possession. Accordingly, the ingredient of 'possession' in Section 5 of the TADA Act means conscious possession. This is how the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorised substance has been understood. (See Warner v. Metropolitan Police Commissioner, (1969) 2 A.C. 256 and Sambasivam v. Public Prosecutor, Federation of Malaya, (1950) AC 458."*

IV. WHETHER THE PROSECUTION HAS ESTABLISHED THEIR CASE BEYOND ALL REASONABLE DOUBT?

23. In criminal jurisprudence, the prosecution is required to prove its case beyond reasonable doubt. In the present case, the evidence on record suffers from lack of independent corroboration and procedural lapses which may have prejudiced the appellant, however, it is a well settled law that mere non-joining of an independent witness, where the evidence of the prosecution witnesses may be found to be cogent, convincing, creditworthy and reliable, cannot create reasonable doubt on the version forwarded by the prosecution if there seems to be no reason on record to falsely implicate the appellant. Reference in this regard can be drawn from the judgment rendered by the Apex Court in the case of ***Gian***

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Chand *vs* ***State of Haryana,*** reported in ***(2014) 4 SCC (Cri) 226***, in paragraphs No.34 and 35 which are reproduced hereinafter:

> ***"34.*** *In Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696] this Court dealt with the issue of non-examining the independent witnesses and held as under : (SCC pp. 245-46, para 11)*
>
> *"11. ... the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilised people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties."*
>
> ***35.*** *The principle of law laid down hereinabove is fully applicable to the facts of the present case. Therefore, mere non-joining of an independent witness where the evidence of the prosecution witnesses may be found to be cogent, convincing, creditworthy and reliable, cannot cast doubt on the version forwarded by the prosecution if there seems to be no reason on record to falsely implicate the appellants"*

24. In view of the foregoing discussion and upon careful appreciation of the evidence on record, this Court is of the considered opinion that the prosecution case is primarily based on official witnesses with absence of independent corroboration, coupled with certain procedural irregularities pointed out during the course of trial. At the same time, the prosecution has also led evidence relating to raid, seizure, and

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sanction, which cannot be wholly disregarded merely on account of minor inconsistencies. However, in the facts and circumstances of the present case, the evidentiary material requires strict scrutiny as mandated in law. Accordingly, the matter calls for an appropriate judicial determination on whether the prosecution has been able to establish the guilt of the appellant beyond reasonable doubt in respect of the charges under Sections 25(1-AA) and 26(2) of the Arms Act.

25. The defence has neither cross-examined PW-6 on the contents of the sanction order in any material particular going to its validity, nor has it produced any evidence to demonstrate that the arms were not placed before the District Magistrate or that the relevant facts were withheld from him. In the considered opinion of this Court, Exhibit-1/2 constitutes sufficient proof of valid sanction under Section 39 of the Arms Act, and the requirement of prior sanction has been duly complied with in the present case.

26. Section 100(6) of the Code of Criminal Procedure, 1973 casts a mandatory obligation that a search shall be conducted in the presence of independent and respectable inhabitants of the locality, and the seizure list prepared in the course of such search must be attested by such witnesses so as

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to ensure transparency and lend credibility to the recovery. The provision is intended to act as a safeguard against arbitrary or doubtful searches by requiring independent corroboration of the police action. In such circumstances, the requirement under Section 100(6) Cr.P.C. cannot be said to have been substantially complied with, as the absence of independent attesting witnesses and lack of corroboration renders the seizure list unverified and weakens its evidentiary value. Consequently, the alleged recovery of arms and manufacturing materials, forming the foundation of the prosecution case under the Arms Act, 1959, becomes doubtful and fails to inspire confidence in the absence of adherence to the procedural safeguards mandated by law.

27. Upon a comprehensive appraisal of the evidence on record and the settled legal principles governing the field, it emerges that the prosecution case rests predominantly on the testimony of official witnesses, with no independent corroboration of the alleged search and seizure, thereby necessitating a cautious and strict scrutiny of such evidence. While it is well settled that the evidence of police officials cannot be discarded merely on the ground of their official status, the admitted non-compliance with the safeguards under Section

100 Cr.P.C., particularly the failure to associate independent witnesses or record their refusal, casts a serious doubt on the credibility of the recovery, which forms the substratum of the prosecution case. Further, none of the accused were apprehended at the spot, the identity of the alleged fleeing persons remains unestablished, and the recovery is from a house stated to be jointly occupied could not establish the *defacto* relation of control or dominion of the appellant to prove constructive possession of the firearm in question. The case of the appellant is squarely covered by the judgment of the Apex Court in case of such as ***Gunwantlal (Supra)*** and ***Sanjay Dutt (Supra)***. Moreover, in the absence of cogent evidence to demonstrate that the accused were engaged in the manufacture, sale, or transfer of prohibited arms in contravention of Section 7 of the Arms Act, the applicability of Sections 25(1-AA) and 26(2) becomes doubtful, as has been held by the Apex Court in ***Samir Ahmed Rafiqahmed Ansari (Supra)***. Although the prosecution has proved the factum of sanction under Section 39 of the Arms Act through Ext. 1/2, and such sanction cannot be said to be invalid in the absence of any challenge to its genuineness or application of mind, the same by itself does not cure the substantive deficiencies in the prosecution case. In view

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of the cumulative effect of these infirmities, including procedural lapses, lack of independent corroboration, and failure to establish conscious possession or constructive possession, and the essential ingredients of the offences alleged, being absent, this Court is constrained to hold that the prosecution has not been able to prove the guilt of the appellant beyond all reasonable doubt, thereby entitling the appellant to the benefit of doubt.

28. Accordingly, in view of the aforesaid discussions, I am of the opinion that the prosecution has not been able to establish the charges against the appellants beyond reasonable doubt and the learned trial court has erred in recording conviction. Accordingly, the present appeal is allowed.

29. The impugned judgment of conviction dated 19.12.2009 and order of sentence dated 21.12.2009 passed by the Additional District and Sessions Judge, Fast Track-III, Munger in S.T. No.174 of 2006 arising out of Munger Muffasil P.S. Case No. 137 of 2006 is hereby set aside. Since the appellant no.1 is on bail, as such, he is discharged from the liability of his bail bond. The fine deposited by the appellant no.1, if any, shall be refunded to him.

30. The Patna High Court, Legal Services Committee

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is, hereby, directed to pay a sum of Rs. 10,000/- (Rupees Ten Thousand) to Ms. Aditi Sharma, learned *Amicus Curiae,* as consolidated fee, for rendering her valuable professional service.

31. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	
CAV DATE	18.04.2026
Uploading Date	28.04.2026
Transmission Date	28.04.2026