



NON-REPORTABLE

THE STATE OF JHAKHAND**APPELLANT (s)**

JAGDISH LAKRARESPONDENT (s)

PRASANNA B. VARALE, J.

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undergo R.I for three years for the offences u/s 25-1B(a) of the Arms Act, 1959 (hereinafter referred to as 'Arms Act') to further undergo R.I. for one year for the offence u/s 26 of Arms Act, was set aside and the said criminal revision application was allowed by the High Court.

BRIEF FACTS

3. The factual matrix is that the instant case was registered on the basis of the statement of Chetnanad Sinha, Officer-incharge of Senha Police station. A special drive of nabbing extremists was organised by the police, and raids were being made with the help of Central Reserve Police Force. On receiving a secret information that certain extremists are staying in a village namely, village Torar, the police force rushed to village Torar. The further information revealed that the extremist left village Torar and proceeded to village Dora under the shelter provided by one Jagdish Lakra. Accordingly, the police force rushed to village Dora, the police force then cordoned house of Jagdish Lakra and on verification of information, it was further revealed that four extremists tried to escape from the spot but one of them was successfully nabbed by the police force whereas, the other three accused persons namely, Area Commander Nakuljee, Shiv Kumar

Sahu and Umesh Kumar were successful in fleeing away from the spot. Jagdish Lakra stated before the police that the extremists initially took rest in the house of one Jatru Oraon and then arrived at the house of Jagdish Lakra at 4.00 a.m. and on hearing the sound of vehicles, they fled away/escaped from the spot. One of the extremists namely, Birendra Oraon who was nabbed at the spot stated before the police that the other accused persons, though fled away from the spot, they have left their belongings such as money bag, uniforms, medicines and weapons like a stein gun in the house of Jagdish Lakra. House owner, Jagdish Lakra supported the statement of Birendra Oraon. House of Jagdish Lakra was searched by the police in presence of independent witnesses and in that search, police found certain incriminating articles namely, the weapons, such as country made stein gun, some literature and some medicines. Birendra Oraon made statement before the police and stated that the accused Nakuljee used to carry these medicines and another accused Anil Kumar Pandey used to provide aid and assistance to the accused Nakuljee in his treatment.

4. After completion of the investigation, charge-sheet was filed against Jagdish Lakra, Chatru Oraon, Birendra Oraon and Anil

Kumar Pandey, were charged under section 25 (1-B)a, 26,35 of the Arms Act and 116 I.P.C. and 17(i) of the Criminal Law Amendment Act, whereas the investigation was kept pending against accused Nakuljee. Subsequently, Nakuljee was arrested and his remand was obtained. Charge-sheet was separately submitted against the accused Nakuljee for commission of offences under Sections 116, 384, 378 of the I.P.C and 25(1-B)a, 26 of the Arms Act. The original record and the supplementary case record were amalgamated vide order dated 27.07.2006. The trial which had earlier commenced after framing of charges on 03.06.2002 in the original case, recorded the testimony of six witnesses, five of them turned hostile and P.W. 6 Rajendra Prasad was again cross-examined after the joint trial.

5. The prosecution has adduced both oral and documentary evidence in support of its case. After adducing the evidence, both the learned Trial Court as well as the learned Appellate Court have come to a concurrent finding regarding the guilt of the respondent herein and ordered for his conviction. Being aggrieved, only the respondent herein namely, Jagdish Lakra, the house owner, preferred a revision being Criminal Revision No. 285/2009 before the High Court.

6. On appreciation of evidence in record, the High Court vide its judgement dated 09.05.2023, allowed the Criminal revision filed by the respondent herein and set aside the judgement of conviction and order of sentence passed by the learned Court below as the Court was of the view that both the learned Trial Court as well as the learned Appellate Court had come to an erroneous finding regarding the guilt of the respondent herein under section 25 (1-B)a and 26 of the Arms Act, which is highly perverse.

7. Aggrieved by the said judgement of the High Court, the appellant i.e. State of Jharkhand is before us.

CONTENTIONS

8. Learned counsel for the appellant, Mr. Shantanu Sagar vehemently argued that the High Court failed to properly appreciate the consistent and reliable evidence adduced by the prosecution regarding the raid, arrest and seizure conducted on 12.08.2001 by the police and CRPF patrolling party. It was submitted that P.W.9, the informant, had clearly narrated the manner in which the raid was conducted and stated that after the house of respondent Jagdish Lakra was surrounded, four

persons attempted to flee from the back door, out of whom one Birendar Oraon was apprehended and disclosed the names of the remaining accused persons who escaped from the spot. It was further submitted that the search conducted in the house in presence of independent witnesses led to recovery of incriminating articles including rucksacks, ammunition pouch, extremist literature, a country-made stein gun and live cartridges, all of which were duly seized under seizure memo and produced before the Court as material exhibits. Learned Counsel submitted that the evidence of P.W.8 and P.W.9 fully corroborated each other on all material particulars relating to the raid, arrest and seizure and despite lengthy cross-examination, no material contradiction could be elicited by the defence. Learned counsel further submitted that the prosecution had duly proved the seizure list, confessional statement, arms examination report, written report, sanction order and material exhibits through competent witnesses and the same clearly established the prosecution case. It was also argued that merely because some independent witnesses turned hostile, the recovery and seizure cannot be disbelieved, particularly when the official witnesses and the Investigating Officer have consistently

supported the prosecution version. Reliance was placed on settled principles of law that evidence relating to recovery need not be discarded solely on account of hostile seizure witnesses if the testimony of official witnesses is trustworthy and convincing. It was further submitted that in cases involving extremist activities, reluctance of local witnesses to support the prosecution is not uncommon due to fear and intimidation prevailing in the area and, therefore, adverse inference ought not to have been drawn on that account. Learned counsel for the appellant lastly submitted that the High Court gravely erred in exercising revisional jurisdiction by interfering with the concurrent findings of conviction recorded by the learned Trial Court and affirmed by the Appellate Court, without assigning cogent reasons for differing from the findings concurrently arrived at by both Courts below. It was contended that the impugned judgment suffers from non-consideration of material evidence on record and is therefore liable to be set aside.

9. No counter affidavit has been filed on behalf of the respondent but the learned counsel for the respondent, Mr. Paramanand Gaur orally argued that members of the banned extremist organization MCC had forcibly taken shelter in his

house and he had no voluntary role in harbouring them. It was also submitted that the recovered stein gun belonged to the extremists who had come to the house and was not under the respondent's conscious possession or control. Mere recovery of a firearm from his house was insufficient to establish guilt under the Arms Act unless conscious possession and dominion over the weapon were proved. Learned counsel for the respondent further contended that the social realities in Jharkhand where extremists often forcibly occupy villagers' houses, compel them to provide shelter and food, and retaliation could expose villagers to grave danger. It was therefore argued that there was no evidence showing that the respondent voluntarily sheltered extremists or exercised dominion over the seized weapon, and consequently the conviction under Sections 25-(1B)a and 26 of the Arms Act was unsustainable.

ANALYSIS

10. We have heard learned counsel for the appellant as well as learned counsel for the respondent. We have also perused relevant documents on record and the judgments passed by the Trial Court, Appellate Court and High Court.

11. Though at the first blush, the submission of learned counsel appearing for the appellant/State of Jharkhand looks very attractive, but we are unable to accept these submissions of learned counsel for the reason that the High Court, in our opinion, had appreciated the evidence brought before the Trial Court in its proper perspective and by assigning justifiable reasons passed the judgment and order reversing the judgment and order of conviction and sentence awarded by the Trial Court and further uphold by the Appellate Court. The High Court was justified in observing that mere recovery of certain articles including the weapons from the house of the respondent/accused is not sufficient enough to hold the respondent/accused guilty for commission of offence unless the prosecution establishes that the articles were in the conscious possession of the accused and the accused had dominion over these articles. It seems that the Trial Court was swayed away by the mere recovery of articles, particularly, the firearm namely the country made stein gun, is ignoring the fact that there was no legal evidence to show that these articles were under conscious possession of Jagdish Lakra. It is admitted position of the prosecution case that initially the information received by the police force was all the extremists are

staying in one village Torar. When the police force rushed to village Torar, the further information disclosed that the extremists left village Torar and then rushed to village Dora. The material further disclosed that the accused persons arrived at the house of Jagdish Lakra at 4.00 a.m. As per the FIR, the police force reached at the house of Jagdish Lakra at 06.00 a.m. and when the police force reached the house on hearing the sound of vehicles, three of the accused persons fled away from the spot. Thus, the record clearly indicates that the other accused claimed as extremists by prosecution were in the house of Jagdish Lakra for merely two hours. Now, on the backdrop of these facts if we peruse the statement of respondent Jagdish Lakra made before the police, it reveals that the respondent offered an explanation for finding these incriminating articles in his house and the explanation is that under pressure of the extremists, the respondent had no other option but to keep those articles in his house. Even the submission of learned counsel for the appellant/State, referred to above, is that 'in cases involving extremist activities, reluctance of local witnesses to support the prosecution is not uncommon due to fear and intimidation prevailing in that area in a way supports the explanation offered

by the respondent/accused.” If it is admitted that the incriminating material was kept in the house due to grave fear and or threat of life, then certainly, it cannot be said that such possession is a conscious possession and such coercive possession or possession under threat of life cannot be a sole criteria to accept the prosecution case and to record the finding of the guilt against the respondent. The High Court was also justified in placing reliance on the judgment in the matter of ***Francis Xavier Salemao vs. State Through Public Prosecutor as reported in 2007 SCC online Bom 1261***, wherein it was held:

"that the possession of firearm must have an element of consciousness or knowledge of that possession and where he is not in actual physical possession, he has nonetheless a power or control over that weapon so that his possession thereof continues despite physical possession being in someone else. In any disputed question of possession specific facts admitted or proved will alone establish the existence of the factual relation of control or the dominion of the person over it necessary to determine whether that person was not in possession of the thing in question"

12. On this count only, we are of the opinion that the view adopted by the High Court was a plausible view on the just and proper appreciation of evidence. We are unable to find either any illegality or any perversity of the judgment impugned in the

present appeal. The appeal thus being devoid of any merit deserves to be dismissed. The same is accordingly dismissed.

.....J.
[SANJAY KAROL]

.....J.
[PRASANNA B. VARALE]

NEW DELHI;
JULY 13, 2026.