

---

**(2011) 06 JH CK 0071**

**In the Jharkhand High Court**

**Case No : Criminal M.P. No. 1005 of 2008**

Bijay Choubey

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

---

**Date of Decision : 30-06-2011**

**Acts Referred:**

Arms Act, 1959 — Section 25(1), 26, 27, 35  
Contract Labour (Regulation and Abolition) Act, 1970 — Section 17(1)(II)  
Criminal Procedure Code, 1973 (CrPC) — Section 482  
Penal Code, 1860 (IPC) — Section 120B, 124A, 147, 148, 149

**Citation : (2011) 06 JH CK 0071**

**Hon'ble Judges : D.K. Sinha, J**

**Bench : Single Bench**

**Advocate :** Shailesh, for the Appellant; Md. Hatim, Assistant Public Prosecutor, for the Respondent

**Final Decision : Allowed**

---

## **Judgement**

D.K. Sinha, J.—The Petitioner has invoked the inherent jurisdiction of this Court u/s 482 of Code of Criminal Procedure for quashment of the order impugned dated 24.5.2007 by which cognizance of the offence was taken by the CJM Chatra under Sections 147/148/149/307/353/124A/120B of the Indian Penal Code, Section 25(1-b)/26/35/27 of the Arms Act as also u/s 17(1)(II) of CLA Act in Piparwar P.S. Case No. 18 of 2006 corresponding to G.R. No. 347 of 2006.

2. The criminal law was set in motion on the self statement of the informant Police Officer of Piparwar police station recorded on 31.5.2006 near Bhalu Bandh forest at about 13.30 hours. The informant narrated that while he along with police party was engaged in the combing operation against the extremists(Moist) near Bhalu Bandh, the informant and the members of the police party were attacked by the extremists which resulted into exchange of fire as the police retaliated. The extremists(Moist) however retreated by raising slogans and tried to run away but some of them could be apprehended by the police and from search of their persons large number of arms and ammunitions were recovered

from the place of occurrence. The extremists who were apprehended by the police confessed their guilt and also disclosed the complicity of co-accused in the offence. One lady terrorist in her confession before the police admitted that during their stay at Piparar the Petitioner Bijay Choubey arranged food for them. The police after investigation submitted charge sheet against the Petitioner and Ors..

3. Mr. Shailesh, the Learned Counsel, appearing on behalf of the Petitioner submitted that there was no legal evidence at all against the Petitioner except the confessional statement of co-accused Unnila Devi with limited allegation that the Petitioner had arranged food for them. Mr. Shailesh further submitted that even on the basis of confessional statement of the co-accused no offence much less alleged in the cognizance order could be made out against the Petitioner. The Petitioner was innocent, a man of clean antecedent having no association with ultras. The only allegation against the Petitioner was though denied, that he had served food to the M.C.C. people during their stay in his village. The Petitioner admitted that he was coerced and terrorized and finding no way out to save his life and the lives of the members of his family he was compelled to serve food and it was not the voluntary act of the Petitioner rather it was an act in the exercise of right of private defence of his person and therefore in no manner the offence is attracted u/s 17(I)(II) of the CLA Act. The essence of the said Act lies in the fact that a person must have either contributed/assisted/participated in the meetings/promoted the unlawful association in any manner, whatsoever and in view of the fact alleged in the written report the culpability of the Petitioner could not be established who admitted having provided food to the ultras under given circumstances. The Petitioner cannot be prosecuted merely on the confession of the co-accused.

4. In Arup Bhuyan Vs. State of Assam, the Apex Court held:

In the instant case, the prosecution case mainly relies on the alleged confessional statement of the Appellant made before the Superintendent of police, which is an extra-judicial confession and there is absence of corroborative material. Therefore, we are of the opinion that it will not be safe to convict the accused on the basis of alleged confessional statement.

5. Mr. Md. Hatim the learned A.P.P. appearing on behalf of the State fairly conceded that there was no legal evidence against this Petitioner except confessional statement of the co-accused that he served food to the ultras during their stay in the house of the Petitioner but now the Petitioner confessed having served food under duress and on threat of his life..

6. Having regard to the facts and circumstances of the case, I find that there was no legal evidence except the confessional statement of the co-accused before the police which was revealed before the informant prior to recording of his self statement. The police failed to establish the nexus of the Petitioner with the ultras and even if the prosecution case is taken to be true as per allegation, the

Petitioner admitted having serve the food once in exercise of right of private defence. Section 96 Indian Penal Code speaks, "Nothing is an offence which is done in the exercise of right of private defence and I find that the Petitioner has meticulously explained as to under what circumstances he was compelled to serve food to the ultras. It was not the allegation that he used to serve food to them in routine manner and thereby willfully promoted the activities of the M.C.C. organization which attracted offence u/s 17(I)(II) CLA Act or any other offence alleged against him.

7. In the circumstances, this petition is allowed and the criminal prosecution of the Petitioner Bijay Choubey in Piparwar P.S. Case No. 18 of 2006 corresponding to G.R. No. 347 of 2006 including the order dated 24.5.2007 by which cognizance of the offence was taken against this Petitioner are set aside.