
(2020) 10 JH CK 0017
In the Jharkhand High Court
Case No : Criminal Revision No. 49 Of 2014

Rajendra Ram

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 05-10-2020

Acts Referred:

Arms Act, 1959 — Section 15, 25(1-B)(a), 26
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2020) 10 JH CK 0017

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Krishna Murari, Rohit, Birendra Burman

Final Decision : Dismissed

Judgement

1. Heard Mr. Krishna Murari, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Birendra Burman, learned counsel appearing on behalf of the State.
3. This criminal revision has been filed against the judgement dated 09.12.2013 passed by the learned Principal Sessions Judge, Latehar in Cr. Appeal No. 31 of 2012 whereby the judgment and sentence passed by the trial court was confirmed. The petitioner was convicted for the offence u/s 25(1-B) (a) and 26 of the Arms Act and was sentenced to undergo rigorous imprisonment for one year and six months with fine of Rs. 2000/- for offence u/s 25(1-B) (a) of the Arms Act and was further sentenced to undergo rigorous imprisonment for two years and payment of fine of Rs. 2000/- for offence u/s. 26 of the Arms Act. It has been directed that in default of payment of fine, the petitioner has to further undergo simple imprisonment for four months. The trial court judgement was passed by the learned Judicial Magistrate, 1st Class, Latehar in G.R Case No. 442 of 2009 / Trial No. 273 of 2012 arising out of Manika P.S Case No. 47 of 2009.

Submissions of the petitioner

4. It is submitted that the judgment of trial court as well as appellate court are perverse and the errors are apparent on the record. It is submitted that the followings are such perversity and errors i. In para 12 of the trial court judgment, the learned Judicial Magistrate, Latehar has considered a Promissory Note in relation to the seized motorcycle issued by one Krishna Prasad Yadav in favor of the purchaser Sarju Ram on 13/4/2009 mentioning therein that he sold the vehicle to Sarju Ram who is the father of the petitioner.

It is submitted that a promissory note is not a public document and the same was required to be proved for admitting the same in evidence. The alleged promissory note has neither been proved, nor marked as an exhibit in the case. So, the trial court was fully unjustified in taking into consideration the contents of the promissory note as evidence against the petitioner. It is also submitted that no question was asked from the petitioner regarding promissory note while examining u/s 313 of Cr.P.C. The I.O. (PW-11) has also not whispered anything regarding promissory note in his evidence.

I.O. (PW-11) has clearly admitted in para-6 of his evidence that the vehicle in question belongs to one Raj Kumar Tiwari of Village Rakikala. No document was brought on record by prosecution to show that either the father of the petitioner or the petitioner had purchased the vehicle in question from the Raj Kumar Tiwari, who was the real owner of the vehicle.

ii. In para-27 of the judgment of the appellate court it has been mentioned that PW-12, Shankar Dubey, independent witness has supported to the extent that double barrel country made pistol (gun) and live cartridges were recovered from the possession of the accused Rajendra Ram. It is submitted that PW-12 Shankar Dubey has stated in his evidence that he knows Rajendra Ram and has heard that from the possession of Rajendra Ram pistol was recovered. In para-2 of his evidence he has stated that the article was not recovered in his presence.

Similarly, in para-28 of the judgment of appellate court, the learned Sessions Judge has held that PW-13 Bartu Oraon has also supported to the extent that Rajendra Ram was apprehended alongwith motorcycle and incriminating article i.e. double barrel country made pistol (gun) and live cartridges recovered and this witness has also identified Rajendra Ram present in the doc of the court. It is submitted that PW-13 is a hearsay witness. He has clearly stated that at the time of occurrence he was in his house and came to know that Rajendra Ram was apprehended while roaming and a pistol was recovered from a bag.

5. The learned counsel for the petitioner submits that there are two aspects of this case: -

I. The first aspect is as to whether the alleged double barrel country made pistol and live cartridges were recovered from the possession of the petitioner. On this point he submits that

a) Admittedly, as per the case of the prosecution the recovery was made from

the dicky of a motorcycle. The petitioner is admittedly not the owner of the aforesaid motorcycle. As per the statement of I.O. (PW-11) contained in para-6 of his evidence, the seized motor cycle belongs to one Raj Kumar Tiwari. Admittedly Raj Kumar Tiwari was neither made a witness, nor made an accused in the case.

b) As per the statement of PW-1 contained in para-3 of his evidence, the petitioner was apprehended at the distance of 20 - 30 feet from the seized motorcycle, where 10 - 20 other motorcycles were also standing. PW-5 has stated that 50 - 100 vehicles were parked near the place of occurrence.

c) Admittedly, the key of the seized motorcycle was also not found from the person of the petitioner and a motorcycle cannot move without the ignition key. There is no evidence of the prosecution to show that the petitioner was seen riding the aforesaid seized motorcycle and parking the same at the place of occurrence.

d) There is conflicting statement of the witnesses on the point of recovery of pistol and cartridges. PW-1 has stated that recovery was made from the person of the petitioner. PW- 2 has stated in para-5 of his evidence that he had seen pistol in the hand of the petitioner. However, it is a clear case of the prosecution in the FIR that the recovery of pistol and cartridges were made from the dicky of the motorcycle. PW-4 has stated so in his evidence as contained in para-5 of his evidence.

It is submitted that under the aforesaid circumstances, the trial court as well as appellate court were not justified in holding that the recovery of double barrel country made pistol and live cartridges were made from the conscious possession of the petitioner.

II. The second aspect of the case is as to whether the recovered articles were in fact firearms and ammunitions. On this point it has been submitted that

a) The expert who examined the articles has not been examined in this case. He was the only person to say that the alleged pistol and cartridges were in-fact pistol and cartridges were in working condition.

b) The report of the expert has also not been brought on record. There is no evidence on record to show that recovered materials were wrapped and sealed and properly kept in malkhana.

It is submitted that the Hon'ble apex court in Jasbir Singh Versus State of Punjab reported in (1998) 8 SCC 525; has held that the pistol and the cartridges had no mark and number on them and after seizing the same the police has to wrap them and apply a seal over them. No explanation in that behalf has been given by the prosecution witnesses. The Hon'ble apex court held that this aspect was not considered by the trial court, as the identity of the incriminating article was not established by the prosecution. The apex court allowed the appeal and set aside the conviction of the appellant both u/s 5 of the TADA Act and u/s 15 of the

Arms Act.

In the instant case also, the prosecution witnesses did not offer any acceptable explanation for not wrapping and sealing the material allegedly recovered.

c) There is conflicting statement of the witnesses regarding the place of preparation of seizure list. Seizure list (Exhibit-2) shows that seizure was made in front of the house of one Ramesh Prasad. It does not speak that the seizure was made from the dicky of a motorcycle. PW-4 has stated that seizure list was prepared at the place of occurrence. The statement of the I.O. on this point is silent.

d) PW-8 and PW-9 are alleged seizure list witnesses. PW-8 has identified his signature in seizure list, but stated in para-2 of his evidence that no recovery was made in his presence and he put his signature on seizure list on the request of the Bada Babu (Officer-in-Charge). PW-9 has given statement similar to the statement of PW-8. The aforesaid witnesses were not declared hostile and were cross examined by the defense. So, their evidences are to be considered in totality.

It is submitted that the aforesaid evidences clearly show that seizure was not made properly and alleged seized articles were not sealed in proper manner and sent to ballistic expert in proper manner.

e) The non-examination of ballistic expert is fatal to the prosecution case. Petitioner relies upon the decision of the Hon'ble Apex Court Abdula Pochamma Vs State of Andhra Pradesh reported in (1989) Supp.(2) SCC 152.

6. It is submitted that this Court was pleased to direct the State to produce criminal antecedent of the petitioner. In obedience of the order passed by this Hon'ble Court, the learned APP has filed counter affidavit which shows that the petitioner has no criminal antecedent except the instant case.

7. He further submitted that the conviction of the petitioner u/s 26 of the Arms Act is fully unjustified. Pistol and cartridges are such small thing which one cannot keep in his hand unless he has intention to criminally intimidate some person. One is expected to keep such weapons in his pocket. In the facts and circumstances of the case, there is no application of Section 26 of the Arms Act.

8. That the sanction for the prosecution has also not been properly proved. Only signature of the Deputy Commissioner appearing on the sanction order (Exhibit-5) has been proved. The I.O. has not stated anything as to what materials were made available to the Deputy Commissioner, Latehar for according sanction to the prosecution.

Arguments of the opposite party-state

9. In order to bring the culpability of the petitioner in this case prosecution has examined 13 P.Ws. All the prosecution witnesses have fully supported the case of prosecution, save and except the seizure list witnesses, but they have not

disputed their signature over the seizure list.

10. He further submitted that in limited scope of revisional Jurisdiction, the court has to examine, correctness, legality and propriety of any finding. That after going through the two judgments of the learned courts, this Court will find that both learned courts, after correctly appreciating the evidence and considering the submissions of the parties passed the impugned Judgments and have given full opportunity to the defence side and as such, no interference is called for by this Court. It is also well settled that the ground of attack which has not been availed by the defence before the two courts below cannot be allowed to be raised for the first time at the revisional stage as because re-appreciation of evidence is not permissible at this stage. It is submitted that the grounds raised before this Hon'ble Court have not been raised before the two courts below.

11. The trial court while passing impugned Judgment has appreciated the evidence and recorded finding at para 12 and 13 and found the petitioner guilty and accordingly convicted and sentenced the petitioner. The appellate court also re- appreciated the evidence of the trial court and confirmed the trial court Judgment of conviction and sentence of the petitioner by finding recorded at para 32 and 33 of the impugned Judgment. It is also submitted that minor contradiction is not fatal to the case of prosecution.

12. It is the proved case of prosecution that petitioner was found sitting over the motor cycle and as soon as he saw the police party and was trying to escape, he was apprehended and when the alleged motorcycle dicky was opened, then illegal arms were found for which petitioner failed to produce valid paper.

13. He further submitted that if the motor cycle did not belong to the petitioner, then how police opened the dicky unless and until the keys of dicky were provided by the petitioner or other option was to break open the dicky. No suggestion was given by the petitioner in cross-examination that petitioner did not provide keys of dicky and police break open the unknown motorcycle and falsely implicated the petitioner. The petitioner was found guilty of illegal arms not for the stolen motorcycle and as such, proving of ownership cannot be questioned at this stage for the first time. Ownership of motor cycle was of the father of the petitioner as is apparent from the statement recorded in para- 18 & 32 of the case diary which has been corroborated by P.W. 11 at para 6 of his deposition, and this fact has not been disputed by the petitioner in the cross-examination.

14. It is submitted the seizure list contains the signature of the petitioner and this fact has not been disputed by the petitioner as to how his signature was found over the Exh.2 i.e. Seizure list. In respect of the working condition of the arms, the learned counsel for the opposite party submits that it can be found from the statement made by P.W.11 (I.O) at para- 4 of his deposition (where arms were stated in working condition), which has also not been disputed by the petitioner during cross-examination. That fact of sanction for prosecution also

finds place from para.3 of testimony of P.W.11, which has also not been disputed by the petitioner during cross-examination.

Findings of this Court

15. The specific case of the prosecution was that on 31.07.2009 at about 5 p.m. on the basis of secret information, Officer in charge of Manika Police Station Anil Singh (P.W. 4) reached the house of Ramesh Prasad at Manika market and he noticed that the man sitting on the motorcycle was fleeing after seeing the police party. He was apprehended and in the presence of two witnesses namely, Jugesh Kumar (P.W. 8) and Dharmendra Kumar (P.W. 9), he was interrogated and then he disclosed his name as Rajendra Ram (petitioner) and when dicky of the motorcycle was opened, one white plastic bag was recovered containing one double barrel local pistol of .315 bore and three live cartridges of .315 bore. It is further case of the prosecution that when the documents of motorcycle were asked, he claimed to produce the ownership documents as well as license of arms, but he could not give any satisfactory answer and thereafter, they were seized. The motorcycle was without registration number, but its engine number and chassis number were found for which seizure list was prepared and signatures of the witnesses were taken. The officer-in-charge namely, Anil Singh registered the case and assigned the investigation to Shamim Ahmad, A.S.I. (P.W. 11) who investigated the case and submitted charge-sheet against the petitioner for commission of offence under Sections 25(1-B)(a) and 26 of the Arms Act.

16. The prosecution has examined altogether 13 witnesses including the informant as well as investigating officer of the case and in support of prosecution case following documents were also exhibited without any objection from the side of the defence:

Exhibit-1 is the written report; Exhibit-2 is the seizure list; Exhibits-2/1 and 2/2 are the signatures of seizure list witnesses namely, Jugesh Kumar and Dharmendra Kumar; Exhibit-3 is the formal F.I.R.; Exhibit-4 is the Forwarding note regarding producing of seized material; Exhibit-5 is the sanction order of the offence dated 17.09.2009. The material exhibits are, Material Exhibit-I is the local pistol; Material Exhibits- II, III and IV are live cartridges of .315 bore. Statement of the petitioner was recorded under Section 313 of the Cr. P.C. during which the petitioner denied the allegation. The petitioner did not lead any defence evidence.

17. This Court finds that the learned trial court considered and scrutinised the materials on record including the evidence of all the 13 witnesses and found that the P.W. 4, the informant had stated that he had filed the case, seized articles and arrested the accused. He has fully supported the case of the prosecution including recovery and seizure and also claimed to identify the petitioner and further during cross-examination, he had deposed that he himself searched the accused, gave his own search to the witnesses and denied the suggestion of

defence that the accused was innocent. The learned trial court considered the evidence of P.W. 1, P.W. 2, P.W. 3, P.W. 5 and P.W. 6 who are the police personnel and found that they have supported the case of prosecution with one voice and were also cross-examined by the defence. Learned trial court also examined the P.W. 8 and P.W. 9, seizure list witnesses, who identified their signatures on the seizure list, but in their cross-examination, they had stated that nothing was recovered in their presence. However, their signatures on the seizure list are admitted. Learned trial court recorded that P.W. 12 Shanker Dubey and P.W. 13 Bartu Oraon being independent witnesses had also supported the recovery of double barrel pistol from the petitioner, although they are hearsay witnesses, but they supported the recovery. P.W. 7 produced the seized articles in the court and was duly cross examined and he answered the questions satisfactorily. Learned trial court recorded that P.W. 9 Vishwanath Roy did not support the case. P.W-10 had stated that one motor cycle was seized by the police and at the time of the incident a crowd was present at the place of occurrence, but did not support the prosecution version and in cross-examination, he has stated that he knows nothing as to what articles were recovered.

P.W. 11 is the Investigating Officer of the case who identified the place of occurrence and stated regarding recording of statements of the witnesses, sanction for prosecution duly approved by the District Magistrate, Latehar which was exhibited. He had also stated that he received the examination report of seized arms which was found in working order in the report of Sergeant Major. During cross examination, he deposed that he has mentioned the fact of recovery in para 2 and the size of seized arms has also been mentioned in para 2 of the case diary and denied the suggestion of the defence that he has falsely submitted the charge-sheet against the petitioner. The investigating officer of the case fully supported the prosecution case and has been thoroughly cross-examined.

18. Learned trial court also considered the arguments of the petitioner who had submitted that P.W. 8, 9, 10, 12 and 13 are hostile; P.W. 1 to 7 are police officials and that the owner of the motorcycle has not been examined and also the argument that none of the prosecution witnesses have supported the case of the prosecution.

19. This Court further finds that the learned trial court considered the evidence of each and every witness as well as the material and documentary evidences on record and came to a finding that the petitioner was apprehended with motorcycle and during the search of dicky of the motorcycle, one double barrel local pistol and three live cartridges were recovered. Learned trial court was of the considered view that there was no reason to discard the evidences of the witnesses who had supported the prosecution case in one voice and the petitioner could not show any reason as to why the police has implicated him without any fault and concluded that the prosecution has been able to establish the case beyond all reasonable doubt and accordingly punished the petitioner.

20. On the point of ownership of the motor cycle , the learned trial court recorded that I.O. of the case annexed promissory note of the motorcycle which was issued by one Krishna Prasad Yadav in favour of Sarju Ram, father of the petitioner on 13.04.2009 mentioning that he had sold the vehicle to Sarju Ram which showed that the vehicle was in possession of Sarju Ram and was being used by his son (petitioner) wherein the pistol with three live cartridges were recovered as per the statement of the witnesses.

21. Learned lower appellate court also considered the evidences on record in the light of the submissions advanced by the parties and came to concurrent findings and refused to interfere with the trial court judgement. The learned lower appellate court has also recorded that P.W. 4 has stated that the petitioner was apprehended at Manika Bazar i.e. in front of house of Ramesh Prasad and he was apprehended along with motorcycle while he was fleeing away on seeing the police personnel, but was caught red-handed and incriminating articles were recovered for which no valid paper/license was produced.

Learned appellate court has also considered the evidence of P.W. 5 and found that P.W. 5 has supported the case of the prosecution to the extent that the petitioner was apprehended alongwith incriminating articles by the police when he was trying to flee away for which he had no valid papers and they were seized, and seizure list was prepared in presence of independent witnesses. This witness had also signed the seizure list and this witness, during the cross examination, had stated that the accused was apprehended in his presence and in para 5, he had stated that the accused was apprehended alongwith motorcycle and after that incriminating articles were also recovered. P.W. 6 had also supported the prosecution case as stated by P.W-4 and P.W-5. The witnesses were duly cross- examined.

The learned lower appellate court also considered the evidence of P.W. 7 who proved the forwarding note which was signed by this witness and marked as Exhibit-4 and this witness has further supported that incriminating articles were recovered and sealed and at the time of sealing, he was present and he had also given the details of double barrel country- made pistol and live cartridges and had stated their description as A.K.S. R.S.M. PLM C.M. 47/09 and it was seized in Manika P.S. Case No. 47/09. This witness has also identified the signature of Shamim Ahmad who had signed the same on 31.07.2009 and accordingly, the material exhibits I, II, III and IV were exhibited. This witness has also supported the aforesaid material exhibits produced before him and it was brought from the Malkhana of the police station and it was deposited in Malkhana after sealing and it was in a sealed pack and this witness has further stated that in a sealed pack "word CJM" is written and his initial is also present in it. Learned lower appellate court found that from the perusal of the evidence of P.W. 7, it was clear that this witness had supported about the recovery of incriminating articles i.e. double barrel country made pistol (gun) and live cartridges which was seized and sealed in his presence and it was proved as material Exhibits I, II, III and IV

respectively.

Learned appellate court also considered the evidence of P.W. 8 and P.W. 9 who are seizure list witnesses who have identified their signature on the seizure list and marked as Exhibits- 2/1 and 2/2 and in their cross examination they have stated that nothing was recovered in their presence but they had signed it. Learned lower appellate court considered the evidence of P.W. 10 in which he has stated that one motorcycle was seized by the police at the time of incident and crowd was present at the place of occurrence, but in cross examination this witness has stated that he does not know as to what article was recovered. The evidence of P.W. 11 was also considered by the learned appellate court who has fully supported the prosecution case and also proved the sanction order dated 17.09.2009 issued by the District Magistrate, Latehar and in cross-examination, this witness has also stated that motorcycle was without having any number plate and aforesaid motorcycle was registered in the name of Raj Kumar Tiwary, resident of Village Panki, but he was not interrogated and the said motorcycle was purchased by the father of the petitioner and in para 8 of cross examination, this witness has stated that the description of the aforesaid double barrel country-made pistol (gun) and live cartridges has also been mentioned in para 2 of the case diary. P.W. 12 is the independent witness who has supported the prosecution case to the extent that pistol and live cartridges were recovered from the possession of the petitioner. He is a hearsay witness. P.W. 13 also supported the prosecution case to the extent that the petitioner was apprehended alongwith motorcycle and incriminating material. He also identified the petitioner in the dock, but in cross examination, he has stated that he was not interrogated by the police and nothing was recovered in his presence, but he had heard about the same.

22. Learned appellate court, upon appreciating the materials on record came to a clear finding that country made double barrel gun/pistol and three live cartridges were seized and recovered from the dicky of the motorcycle possessed by the petitioner and the prosecution was able to prove the case beyond the shadow of all reasonable doubt and was of the considered view that the evidence of P.W.s available on record cannot be brushed aside merely on the basis of some omission and held that the learned trial court has rightly convicted the petitioner.

23. This Court finds that the learned courts below have given consistent finding of facts that the petitioner was apprehended with motorcycle and during the search of dicky of the motorcycle, one double barrel local pistol and three live cartridges were recovered.

24. So far as the point of the petitioner that the petitioner is not the owner of the motorcycle is concerned, this Court finds that evidence of the investigating officer of the case regarding father of the petitioner being in possession of the motorcycle which was being used by the petitioner, as discussed above have been considered by the learned courts below and they have given concurrent findings on this point against the petitioner. However, in view of the consistent

findings of the learned courts below that the petitioner was apprehended with motorcycle and during the search of dicky of the motorcycle, one double barrel local pistol and three live cartridges were recovered, the actual ownership of the motorcycle becomes irrelevant.

25. So far as argument of the petitioner regarding appreciation of evidences of various P.Ws are concerned, this Court finds that the learned courts below have thoroughly appreciated the evidence of the witnesses and come to concurrent findings and there is no scope of re-appreciation of the evidences and come to a contrary finding in absence of any perversity.

It is well settled principle of law that the finding recorded by court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant /inadmissible material. If decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse.

In the present case, the petitioner has not been able to make out any such case calling for interference by this court in revisional jurisdiction.

In view of the evidences on record as discussed by the learned courts below, there is no scope for re-appreciating the evidence to come to a different conclusion that the petitioner was not apprehended with the motorcycle and the arms with cartridges.

26. So far as examination of expert is concerned, this court finds that the prosecution has clearly brought on record that in relation to the seized ammunitions, expert had given opinion in favour of prosecution and sanction for prosecution was also exhibited before the learned court below. This Court finds that the judgments passed by the Hon'ble Supreme Court reported in (1998) 8 SCC 525 and (1989) Suppl. (2) SCC 152, relied upon by the learned counsel for the petitioner do not apply to the facts and circumstances of the case.

27. So far as the judgment passed by Hon'ble Supreme Court reported in 1989 Supp (2) 152 (Abdula Pochamna Vs. State of Andhrapradesh) is concerned, the same does not apply to the facts and circumstances of the case. In the said case, there was no evidence to show that the object found in the handbag was hard grenade or other explosive substance and admittedly they were not sent for examination by expert. In the present case, the seized fire-arms were sent for examination by expert and the P.W. 11 (the Investigating Officer) deposed that he had received the examination report of the seized arms which was found in working order in the report of sergeant major. Further the sanction order for prosecution duly approved and signed by the then District Magistrate, Latehar was exhibited and marked as Exhibit-5 without any objection from the side of the defence. During cross examination, P.W. 11 had stated that the size of the seized arms was mentioned in para 2 of the case diary and denied the suggestion of false implication. The finding that fire arms were recovered from the conscious

possession of the petitioner is based on cogent evidence. Further from the perusal of the judgment passed by the learned trial court, it is apparent that no such objection or plea was taken by the petitioner regarding the articles being fire-arms in working condition or in connection with sanction for prosecution. Even before the learned appellate court, no such arguments were advanced.

28. So far as the judgment reported in (1998) 8 SCC 525 (Jasbir Singh vs. State of Punjab) is concerned, the same also does not help the petitioner in any manner. In the said case, the identity of the weapon and cartridges produced before the court could not be exhibited by the prosecution and they did not even have any mark or number on them and after seizing the same the police had not thought it fit to wrap them and apply a seal over them. In this background, the Hon'ble Supreme Court held that identity or incriminating articles were not established. However, in the present case the evidences of P.W. 11 and P.W. 7 were appreciated and the lower appellate court gave a clear finding that P.W. 7 had fully supported the recovery and identity of the incriminating article and had also given the description. The evidence of P.W. 7 in this regard has been already mentioned above while dealing with the appellate court's judgment.

29. In the case of Selvaraj vs State reported in (2015) 2 SCC 662 in para 19, it was observed that it is settled principle of law that benefit of reasonable doubt is required to be given to the accused, only if the reasonable doubt emerges out from the evidence on record. Merely for the reason that the witnesses have turned hostile in their cross-examination, the testimony in examination-in-chief cannot be outrightly discarded provided the same (statement in examination-in-chief supporting prosecution) is corroborated from the other evidence on record and the conviction can be recorded believing the testimony given by such witnesses in the examination-in-chief, however, such evidence is required to be examined with great caution.

30. In the case of Yogesh Singh versus Mahabeer Singh reported in (2017) 11 SCC 195, it has been held in para 15 that it is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts, however, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Para-15 of the said judgement is quoted as under:-

"15. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J. in State of U.P. v. Krishna Gopal: (SCC pp. 313-14, paras 25-26) "25. ... Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere

vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice." [See also *Krishnan v. State*⁵; *Valson v. State of Kerala*⁶ and *Bhaskar Ramappa Madar v. State of Karnataka*.]"

31. This court is of the considered view that even when the seizure witnesses turned hostile, the evidence of the Investigating Officer, if otherwise credible, can be made the basis to believe the seizure. In the present case evidence of the investigating officer and other witnesses who have supported the case of the prosecution and given consistent evidence have been relied upon by the learned courts below to convict the petitioner in spite of and considering the fact that the seizure witness did not support the case, but had admitted their signatures on the seizure list. This Court finds no illegality or perversity with the aforesaid approach of the learned courts below.

In *State of Kerala v. M.M. Mathew*, (1978) 4 SCC 65, the Supreme Court held prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case. This view was reiterated by the Supreme Court in *State of U.P. v. Krishna Gopal*, (1988) 4 SCC 302.

32. The Hon'ble Supreme Court in *Rameshbhai Mohanbhai Koli and others - versus- state of Gujarat* reported in (2011) 11 SCC 111, while dealing with the appreciation of evidence in connection with hostile witnesses has held that merely because a witness is hostile, the evidence of such witness cannot be said to be completely washed off. In para 16 to 18, it has been held as under:-

" Hostile witness

16. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide *Bhagwan Singh v. State of Haryana*¹, *Rabindra Kumar Dey v. State of Orissa*², *Syad Akbar v. State of Karnataka*³ and *Khujji v. State of M.P.*⁴)

17. In *State of U.P. v. Ramesh Prasad Misra*⁵ this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra*⁶, *Gagan Kanojia v. State of Punjab*⁷, *Radha Mohan Singh v. State of U.P.*⁸, *Sarvesh Narain Shukla v. Daroga Singh*⁹ and *Subbu Singh v. State*¹⁰.

18. In *C. Muniappan v. State of T.N.*¹¹ this Court, after considering all the earlier decisions on this point, summarised the law applicable to the case of hostile witnesses as under: (SCC pp. 596-97, paras 83-85) "83. ... the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (Vide *Sohrab v. State of M.P.*, *State of U.P. v. M.K. Anthony*, *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, *State of Rajasthan v. Om Prakash*, *Prithu v. State of H.P.*, *State of U.P. v. Santosh Kumar* and *State v. Saravanan*.)"

33. The learned counsel for the petitioner has vehemently argued that the seizure list witnesses have not supported the case of the prosecution by stating that there was no seizure in their presence, but at the same time it is not in dispute that they have admitted their signatures on the seizure list. In the present case, the investigation officer as well as other witnesses as discussed in the trial court and appellate court judgement have fully supported the prosecution case including on the point of seizure. In the judgement passed by the Hon'ble Supreme court, *Modan Singh vs State of Rajasthan* reported in (1978) 4 SCC 435, it has been held that where the evidence of the investigating officer who recovered the material object is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not

support the prosecution version. This judgement has been followed in the subsequent judgement passed by the Hon'ble Supreme court including in the case of Rameshbhai Mohanbhai Koli and others versus State of Gujarat reported in (2011) 11 SCC 111 wherein reliance of the evidence of the investigating officer was considered in para 32 to 35 and it was held that merely because the panch-witnesses have turned hostile is no ground to reject the evidence, if the same is based on the testimony of the Investigating Officer alone. Para 32 to 35 of the aforesaid judgement is quoted as under :-

"Evidence of the investigating officer "32. An argument was advanced about reliance based on the evidence of investigating officer. This Court in State of U.P. v. Krishna Gopal has held that courts of law have to judge the evidence before them by applying the well-recognised test of basic human probabilities.

"3. ... prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case." (Vide State of Kerala v. M.M. Mathew at SCC p. 68, para 3.)

33. In Modan Singh v. State of Rajasthan it was observed (at SCC p. 438, para 9) that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in Mohd. Aslam v. State of Maharashtra.

34. In Anter Singh v. State of Rajasthan, it was further held that: (SCC p. 661, para 10) "10. ... even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated."

35. This Court has held in a large number of cases that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant case, it is not the case of defence that the testimony of the investigating officer suffers from any infirmity or doubt. (Vide Modan Singh case, Krishna Gopal case and Anter Singh case.)"

34. The Hon'ble Apex Court has explained the power of revisional court in the case of Jagannath Choudhary and others reported in (2002) 5 SCC 659 at para. 9 as under:-

"Incidentally the object of the revisional jurisdiction as envisaged u/s 401 was to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some underserved

hardship to individuals. (See in this context the decision of this Court in Janata Dal Vs. H.S. Chowdhary) . The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the application would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction."

35. The revisional power is further explained in the case of Ramesh Kumar Bajaj reported in (2009) 1 JCR 684 (Jhar) at para. 13 as follows:

"It is well settled that revisional interference may be justified where:

- (i) the decision is grossly erroneous.
- (ii) there is no compliance with the provisions of law.
- (iii) the finding of fact affecting the decision is not based on evidence.
- (iv) material evidence of the parties is not considered and
- (v) judicial discretion is exercised arbitrarily or perversely."

36. In the case Duli Chand v. Delhi Administration, (1975) 4 SCC 649, the Hon'ble Supreme Court while considering the scope of revisional power held in paragraph-5 as follows:

"5. The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

37. In view of the aforesaid discussions and findings and considering the entire facts and circumstances of this case, this Court is of the considered view that the learned courts below have passed well-reasoned judgements considering every aspect of the matter and every argument advanced on behalf of the petitioner. There being no perversity or illegality in the impugned judgements, no interference is called for.

38. Accordingly, this criminal revision petition is hereby dismissed.

39. Bail bond furnished by the petitioner is hereby cancelled.

40. Interim order, if any, stands vacated.
41. Pending interlocutory application, if any, is also dismissed as not pressed.
42. Let the lower court records be immediately sent back to the learned court below.
43. Let a copy of this order be communicated to the learned court below through 'e-mail/FAX'.