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**(2009) 11 PAT CK 0052**

**In the Patna High Court**

Satyendra Kumar, Ashok Kumar @ Sadhu, Dharmnath Yadav  
and Amarnath Ojha

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 12-11-2009

**Acts Referred:**

Arms Act, 1959 — Section 25(1B), 39

**Citation :** (2010) CriLJ 1134 : (2010) 1 PLJR 946 : (2009) 2 PLJR 672 : (2010) 7 RCR(Criminal) 491

**Hon'ble Judges :** Mandhata Singh, J

**Bench :** Single Bench

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**Judgement**

Mandhata Singh, J.—Heard the learned Counsel for the petitioners and the State.

This revision application has been filed against the judgment dated 10.08.2009 passed in Cr. Appeal No. 20 of 2008 by the Sessions Judge, Kaimur at Bhabua, by which he has dismissed the appeal confirming the judgment and order of sentence passed by the Judicial Magistrate, 1st Class, Bhabua, on 17.06.2008 in G.R. No. 715/1998, Tr. No. 342/2008, in which learned Magistrate has convicted all the petitioners and sentenced them to undergo R.I. for one year and to pay a fine of Rs. 1000/- each and in default thereof to further undergo R.I. for two months.

2. Prosecution case in brief is that the informant of this case who was in usual vehicle checking intercepted a Jeep bearing No. BR-1P-5425 in which accused Kamla Kant Mandal, Satyendra Kumar, Vimleshwar Rai, Dharmnath Yadav, Amar Nath Ojha and Ashok Kumar alias Sadhu were the occupants. Accused Satyendra Kumar was found in possession of one D.B.B.L. gun with 08 live cartridges of 12 bore; One D.B.B.L. gun with 08 live cartridges of 12 bore was recovered from the possession of accused Vimleshwar Rai; One D.B.B.L. gun with 08 live cartridges of 12 bore was found in possession of accused Dharmnath Yadav; One. 315 bore rifle and 11 live cartridges of 315 bore was recovered from the possession of accused Amar Nath Ojha and 13 live cartridges of 12 bore were recovered from

the possession of accused Ashok Kumar alias Sadhu. The seizure list of all the arms and ammunitions was prepared. They were asked to furnish papers regarding their arms and ammunitions but they could not produce the same. All the arms and ammunitions were seized and a case was lodged in which charge sheet was also submitted and after trial all the appellants have been convicted for the offence u/s 25(1-B) a of the Arms Act.

3. Detail of the witnesses examined in the court for concluding the trial and so many infirmities have been shown on behalf of the learned Counsel for the petitioners but stress is made about absence of any sanction order on record which could only be accepted or not. Further defence of the petitioners is that they were not unauthorised occupants of the arms and ammunitions rather all the arms were licensed arms and license holder had authorized them for carrying to attend a marriage for a legal purpose.

4. The only question to consider is as to whether giving of sanction order by District Magistrate can be reached without his report on record is replied in negative because of the reason that copy of sanction order can only be treated as a document adduced on behalf of the prosecution and without its proof never can be taken into consideration. Prosecution can never be allowed to establish this fact on oral statement of the witnesses may be of Investigating Officer or other police officials.

5. Circumstance was existing in the case whether sanction could be given or not as all the arms and ammunitions were of license holders, might be a case of unauthorised occupation as the same were being carried by family members of the license holders that too for attending marriage ceremony. So, without production of sanction order and getting examining the same, it can never be said that the prosecution has discharged its liabilities to establish the sanction. Sanction of prosecution is mandate as laid down by Arms Act itself. Section 39 of the Arms Act makes it mandatory which runs as follows:

39. Previous sanction of the District Magistrate necessary in certain cases.- No prosecution shall be instituted against any person in respect of any offence u/s 3 without the previous sanction of the District Magistrate.

6. This aspect has been discussed by the trial court but surprisingly it is observed that one of his (prosecution) witnesses, namely, P.W. 3, I.O. of the case stated about receiving the sanction order without bringing the same on record. Even then, that has been accepted which is wrong. One thing appears that trial courts are more interested in either acquitting or convicting an accused than to do justice. It is always for the trial court to follow the mandate of Legislation. If there was authority by the license holder as claimed, then no question arises even to constitute a case. In that case also, mandate of the legislation has been ignored. Whenever, a provision is given for sanction for prosecution that is clear indication that legislature was cautious enough avoiding false implication. But both the courts are not careful for the same, so the conclusion reached by the

trial court and confirmed by the appellate court is wrong and not liable to be sustained.

7. Considering the aforesaid facts and circumstances of the case, I allow the revision and set aside the order dated 17.06.2008 passed by the Judicial Magistrate, 1st Class, Bhabua in G.R. No. 715/1998, Tr. No. 342/2008 as well as the order dated 10.08.2009 passed by the Sessions Judge, Kaimur at Bhabua in Cr. Appeal No. 20 of 2008 and all the petitioners are acquitted of the charge. As the petitioners, namely, Satyendra Kumar, Ashok Kumar @ Sadhu, Dharmnath Yadav and Amarnath Ojha are in custody so are directed to set at liberty forthwith, if not required in any other case.

Let the order be faxed to the court below at the cost of the petitioners.