

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.3270 of 2022**

Arising Out of PS. Case No.-54 Year-2015 Thana- SACHIVALAYA District- Patna

=====  
Anant Kumar Singh @ Anant Singh, Son of Late Chandradeep Singh @  
Late Chandradip Singh, Resident of village - Nadawan, P.S.- Barh,  
District - Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====  
**Appearance :**

For the Appellant/s : Mr.P.N. Shahi, Sr. Advocate

Mr.Shivam, Advocate

For the Respondent/s : Mr.Ajay Mishra, Special P.P.

=====  
**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA  
CAV JUDGMENT**

**Date : 14-08-2024**

Heard Mr. P.N. Shahi, learned senior counsel appearing on behalf of the appellant-convict and Mr. Ajay Mishra, learned Special Public Prosecutor for the State.

**2.** The present appeal preferred under Section 374(2) of the Code of Criminal Procedure (in short the "Cr.P.C.") challenging the judgment of conviction dated 14<sup>th</sup> July, 2022 and order of sentence dated 21<sup>st</sup> July, 2022, as passed by learned Special Judge, MP/MLA, Patna in connection with Sessions Trial No. 92/2017/Special Case (MP/MLA) No. 70/2018 arising out of Sachivalaya P.S. Case No. 54 of 2015, whereby and whereunder the appellant has



been convicted for the offences under Section 25(1-A), 26(2)/35 of the Arms Act and sentenced to undergo R.I. for a term of ten (10) years with fine of Rs. 20,000/- for the offence under Section 25(1-A)/35 of the Arms Act, in default of payment of fine, the appellant/convict further ordered to undergo R.I. for a period of six months. The appellant/convict has further sentenced to undergo same punishment under Section 26(2)/35 of the Arms Act. Both sentences shall ordered to run concurrently.

**Brief facts of the case**

**3.** The case of the prosecution, as it is available through written report **(Exhibit-3)** of Amrendra Kumar Jha/informant/PW-3, that while he was posted as Inspector of Police-cum-Officer-Incharge of Sachivalaya Police Station, Patna, where for executing the search warrant issued against the appellant/convict in relation with Barh P.S. Case No. 241/2015, he alongwith other police personnels as mentioned in the F.I.R. itself, went to the Mal Road, Patna, which is a government quarter (Flat No.1) allotted to the appellant/convict alongwith two independent witnesses



namely, Md. Javed and Ajay Kumar, and while started conducting search inside the campus of aforesaid government flat, he found six magazines of Insas rifle from a bush, grown up near a pond situated in the west north of the house of the appellant/convict, wrapped in murky colour polythene. It is further stated that during the course of conducting search from a wooden folding cot, which was lying in the western side of the compound, a black colour bullet-proof jacket without sleeves, which appears to be kept hidden behind a broken door was also recovered. Upon inquiry, the appellant/convict neither gave satisfactory answer, nor produced any valid papers in support of recovered fire-arms and bullet-proof jacket. The other persons present in the house were also asked about the recovered articles, but they shows their complete ignorance. It is stated that thereafter a seizure list was prepared in presence of above-named two independent witnesses, who signed over the seizure list. The appellant/convict allegedly refused to receive the seizure list and also to sign over the same.



**4.** On the basis of aforesaid written report/**Exhibit-'3'**, formal F.I.R. (**Exhibit '2'**), was drawn, leading to lodging of Sachivalaya P.S. Case No. 54/2015 dated 24.02.2015 for the offences under Section 25(1-B)a, 26/35 of the Arms Act.

**5.** The police, after completion of investigation and on the basis of materials collected thereof, submitted charge-sheet No. 76/2015 dated 21.09.2015 (**Exhibit '6'**) under Section 25(1-A)/26/35 of the Arms Act. Learned Jurisdictional Magistrate, after taking cognizance on 24.11.2015, and after complying the provision of Section 207 of the Cr.P.C., committed this case to the court of sessions for trial, as provisioned under section 209 of the Cr.P.C. on 30.01.2017.

**6.** To substantiate its case, the prosecution has examined altogether nine (9) witnesses. They are: (1) PW-1 Gulam Sarvar (the then Officer-in-charge of Airport Police Station); (2) PW-2, Kamakhya Narayan Singh (the then Inspector-cum-Officer-in-charge of Digha Police Station); (3) PW-3, Amrendra Kumar Jha (then the Officer-in-Charge of



Sachivalaya Police Station/informant); (4) PW-4, Birendra Kumar Singh Chauhan (then the Inspector-cum-Officer-in-Charge of Gardanibagh Police Station, who has been declared hostile); (5) PW-5, Ashish Kumar Singh, (who conducted the ballistic examination of the Insas Rifle Magazines alleged to have been recovered from the house of appellant); (6) PW-6, Rajesh Kumar Sharma (the then Inspector-cum-Officer-in-Charge of Gandhi Maidan Police Station); PW-7, Ajay Kumar (the then Inspector-cum-Officer-in-Charge of Kotwali Police Station, Patna); PW-8, Umesh Kumar (the then Sub-Inspector of Sachivalaya Police Station), who is second I.O. of the case) and PW-9, Abhay Kumar (the then sub-Inspector of Sachivalaya Police Station and First I.O. of the case).

**7.** Furthermore, one court witness namely, Arbind Kumar, Sub-Inspector of Sachivalaya Police Station, was also examined, who produced Insas Rifle magazines and bullet-proof jacket, marked as **material Exhibit 'I'** and **material Exhibit 'II'** respectively before the court during the trial.



<b>Exhibit Number</b>	<b>List of Documents</b>
<b>Exhibit '1'</b>	Search & Seizure List dated 24.06.2015 at 16:30 P.M.
<b>Exhibit '1/1'</b>	Search & Seizure List dated 24.06.2015 at 18:00 P.M.
<b>Exhibit '2'</b>	F.I.R.
<b>Exhibit '3'</b>	Typed written report on the basis of which formal F.I.R. was drawn.
<b>Exhibit '3/1'</b>	Endorsement on written report.
<b>Exhibit '4'</b>	Test report of Ashish Kumar Singh
<b>Exhibit '5'</b>	Sanction order
<b>Exhibit '6'</b>	Charge-sheet

**8.** After closing the prosecution evidence, statement of appellant/convict under Section 313 of the Cr.P.C. was recorded on 09.02.2022/30.03.2022, where he completely denied his involvement by denying the incriminating evidences/circumstances as surfaced during the trial and stated that he was implicated in this case falsely and also claimed his innocence.

**9.** No witness was examined by appellant/convict during the trial and further no documents were also exhibited in support of his defence.

**10.** Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the



learned Trial Court has convicted the appellant/convict for the offences under Sections 25(1-A), 26(2)/35 of the Arms Act and sentenced him in the manner as stated above.

**11.** Being aggrieved with the aforesaid judgment of conviction, the appellant/convict has preferred the present appeal.

**12.** Hence, the appeal.

**Submission on behalf of the appellant/convict**

**13.** Mr. P.N. Shahi, learned senior counsel appearing on behalf of the appellant/convict, while arguing in this matter, submitted that from the facial perusal of *fardbeyan* of informant/PW-3 itself, it appears that he went to the residence of appellant/convict in connection with Barh P.S. Case No. 241/2015, for execution of a search warrant, as issued by the court, but no such search warrant was brought on record during the trial. It is further submitted in this context that the informant/PW-3, during his cross-examination, stated that he went to the house of the appellant/convict to execute search warrant issued in Barh P.S. Case No. 241/2015, but no police personnel either of



Barh Police Station or Bihta Police Station were accompanied him while conducting search of the house of the appellant/convict, therefore, the motive which appears to assigned for present search was not proved during trial and it only appears that the fire-arms which alleged to be recovered from the house of the appellant/convict was planted, as there was no occasion to visit the government premises of appellant/convict.

**14.** It is further submitted by Mr. Shahi, learned senior counsel that the trial court's order dated 27.06.2015 clearly shows that a petition was filed by the investigating officer of this case to remand the appellant/convict in the present case i.e. Sachivalaya P.S. Case No. 14/2015 from Bihta P.S. Case No. 859/2014, which further gets it strength from the order dated 08.07.2015 of learned trial court that appellant/convict was remanded in the present case. Taking shelter of these two judicial orders, it is submitted by Mr. Shahi that the narration of F.I.R. as available through statement of PW-3 is completely false that appellant/convict was present in his house at the time of search and he





refused to sign the seizure list and also to receive it. In view of same, deposition of PW-3 that appellant/convict was brought to Sachivalaya police station in connection with aforesaid recovery and was arrested thereof is nothing but a misleading statement on oath, thus by strongly suggesting that appellant was wrongly framed with present case. It is further pointed out in this context that there is no arrest memo of appellant/convict available on the record in support of deposition that he was arrested from his house immediately after recovery of Insas rifle magazines and bullet-proof jacket.

**15.** Mr. Shahi, further submitted that the two independent witnesses with whom the informant proceeded to search the house of the appellant/convict namely, Md. Javed and Ajay Kumar, were not examined during the trial and in want of their examination, the seizure list cannot be said proved as to established the case of the prosecution beyond all reasonable doubts and, moreover, no other independent witnesses in the present case was examined. It is submitted that all witnesses are police officers and they



are interested witnesses as to secure conviction of the appellant/convict being the personnel of same department. Moreover, their depositions are full of inconsistencies and contradictions on major issues regarding facts of the recovery, sealing, seizure, arrest and presence of appellant etc. at the time of raid.

**16.** It is also pointed out by Mr. Shahi, that ballistic report i.e. **Exhibit '4'** also appears doubtful as said report nowhere suggest that when seized fire-arms were tested, as it appears from deposition of PW-5, Ashish Kumar Singh. It is also not appears from the said report that when the seized articles were received by him for examination. There is no evidence in support of the fact that seized magazines were sealed at the place of recovery itself. It is pointed out that learned trial court on this point gave its finding in very perversed manner, by accepting sealing at the place of occurrence because no negative evidence is available in this regard that the materials were not seized at the place of occurrence. It is also submitted by Mr. Shahi, that PW-9, who is the first investigating officer of this case,



categorically deposed in his cross-examination that he received the recovered magazines on 27.06.2015, but as per the deposition of informant/PW-3, it appears that same was handed over to PW-9 on 24.02.2015 itself. If the version of PW-9, who is the first investigating officer of this case, be believed on its face, then, it can be said with all certainty that the magazines in issue were in possession with informant/PW-3 for next three days. Prosecution is silent on this issue that where recovered magazines and bullet proof jacket were kept for long three days and with whom. All such facts support false implication of appellant by way of planting the magazines inside his government premises.

**17.** While concluding the argument, Mr. Shahi submitted that the appearance of court witness No. 1 namely, Arbind Kumar, who produced the seized magazines and bullet proof jacket before the court, is also cast a doubt as no summon was ever issued against him by learned trial court to produce the seized materials, neither any direction was given to him by his superior authority. However, from his deposition, it is clear that recovered bullet-proof jacket



was not sealed and as far the seized magazines are concerned, it was kept inside the sealed cloth, and it was neither bearing the signature of informant/PW-3, nor of any seizure list witnesses, as stated above. It is also pointed out in this context that there was overwriting on the cloth which used for sealing the magazines creating a doubt regarding entire sealing. Therefore, the circumstances and the deposition of witnesses clearly suggest that the material exhibits were not seized and sealed properly at the place of recovery and where it was kept for three long days before handing over to the first investigating officer/PW-9, when it was supplied to ballistic expert and further when it was opened for examination and again sealed before producing the same in court during the trial.

**18.** Mr. Shahi, learned senior counsel summing up his argument, precisely submitted that the manner of recovery of magazines alongwith bullet-proof jacket, its seizure at the place of occurrence, presence of appellant/convict inside the government premises, his immediate arrest in this case, ballistic examination report



and the manner in which it was produced before the court during the trial, are some major factors which is sufficient to suggest that prosecution miserably failed to established its case against appellant during the trial.

**19.** In support of his submission as made above, learned senior counsel relied upon the legal report of Hon'ble Supreme Court as available through **Amarjit Singh alias Babbu Vs. State of Punjab** reported in **1995 Supp (3) SCC 217; Pabitar Singh Vs. State of Bihar [1972 AIR SC 1899]; Sahib Singh Vs. State of Punjab [(1996) 11 SCC 685]** and also in the matter of **Tahir v. State (Delhi) [(1996) 3 SCC 338]**.

**Submission on behalf of the State**

**20.** Mr. Ajay Mishra, learned Special Public Prosecutor for the State, while opposing the appeal, submitted that faulty investigation cannot be a ground to disbelieve the credibility of the eye witnesses, if it appears otherwise credible and inspired confidence. It is also submitted that deposition of witnesses cannot be discarded exclusive note that they are from the same department i.e.



police. It is pointed out that contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise, the designed mischief would be perpetuated and justice would be denied to the complainant party.

**21.** In this context, learned Spl.P.P. relied upon the legal report of Hon'ble Apex Court as available through **Ram Bihari Yadav Vs. State of Bihar [(1998) 4 SCC 517]** and submitted that if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice.

**22.** Mr. Mishra further referred the legal report of Hon'ble Supreme Court as available through **Karnel Singh Vs. State of M.P. [(1995) 5 SCC 518]**; wherein it has been categorically held by Hon'ble Apex Court that in case of defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in



acquitting an accused person solely on account of the defect and to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

**23.** It is further submitted by learned Special P.P. that the premises in issue is a government house allotted to the appellant/convict in capacity of M.L.A. is not a disputed fact, therefore, his presence or absence is hardly matter and in such circumstances, conviction as recorded by learned trial court, *qua* appellant/convict with the aid of section 35 of the Arms Act, cannot be said bad in the eyes of law and as such same does not deserves to be interfered at appellate stage.

**Discussion of Evidence:**

**24.** I have perused the trial court records carefully and gone through the evidences available on record as also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

**25. PW-1 Gulam Sarvar,** who is Police Inspector-cum-S.H.O. of Airport Police Station, who came to Sachivalaya Police Station on 24.06.2015 under the



direction of Superintendent of Police, Patna, where he came to know after arrival at Sachivalaya Police Station that some warrant is to be executed against appellant/convict namely, Anant Kumar Singh @ Anant Singh. He was the part of raiding party alongwith Amrendra Kumar Jha/PW-3 Police Inspector-cum-S.H.O. Sachivalaya Police Station, Rajesh Kumar Verma/PW-6, Police Inspector-cum-S.H.O. Gandhi Maidan Police Station; Ajay Kumar/PW-7 Police Inspector-cum-S.H.O. Kotwali Police Station; Birendra Kumar Singh Chauhan/PW-4, Police Inspector-cum-S.H.O., Gardanibagh Police Station and Kamakhya Narayan Singh, Police Inspector-cum-S.H.O., Digha Police Station and other police officers and personnel. The team was headed by S.H.O. of Sachivalaya Police Station, PW-3, namely, Amrendra Kumar Jha. It was deposed by him that in course of search of residential M.L.A. flat of appellant/convict, from western side of pond two types of magazines were recovered. He also deposed that near to west north corner of pond six magazines were recovered from a bush which was wrapped in a murky colour plastic. It was seized by S.H.O. Amrendra





Kumar Jha/PW-3 before witnesses and seizure list of said recovery was prepared. It was deposed by him categorically that appellant/convict was present at that point of time and he refused to sign over the seizure list. He also deposed that one bullet-proof jacket was recovered from western side of the house which was under a wooden log and a separate seizure list was also prepared for that. Appellant/convict refused to sign over the said seizure list. He failed to depose the name of witnesses. Upon queries, no satisfactory answer was given by the appellant/convict and he also refused to receive a copy of seizure list. He identified the handwriting of PW-3 regarding seizure list and also his signature, which upon his identification exhibited as '**Exhibit '1' & Exhibit '1/1'**' respectively. Specific questions were asked to him that whether witnesses were signed before him, upon which he replied that he could not say anything regarding this due to memory loss. He identified the appellant/convict before the court who was present there.

**25.1.** Upon cross examination, he said that his signature is not available in seizure list. It is stated that



nothing mentioned over there that recovered magazines and bullet-proof jacket were seized at place of recovery itself. It is also not mentioned over **Exhibit - 1 & Exhibit - 1/1**, which may suggest that same were refused to receive by appellant/convict. It was stated by him that the search was continued for four (4) hours which completed by 7:30 P.M., at that time, Sr.S.P., Patna, S.P., Town, Dy.S.P., Sachivalaya, Patna and other police officers were also present. After raid, M.L.A. Anant Kumar Singh was brought at Sachivalaya Police Patna, where he failed to state that till when appellant/convict was remained there. He also stated that M.L.A. Anant Singh was brought to police station after his arrest and he was arrested by S.H.O. Sachivalaya Police Station Amrendra Kumar Jha/PW-3. He failed to disclose as to whether any arrest memo was prepared or not. He stated that he is aware about the contents of F.I.R. which nowhere disclosing that appellant/convict was brought at Police Station by raiding party and same is also not disclosing whether any police personnel from Barh and Bihta Police Station were present at that time. It is also stated by him



that the Investigating Officer of this case is S.I. Umesh Kumar (PW-8). He recorded his statement on 24.06.2015 in night itself. He stated that his signature is not available on any document/paper related with aforesaid raid which may prove his participation in raiding party. The seized material was also not brought before him during the trial for his identification.

**26. PW-2 Kamakhya Narayan Singh**, who on the alleged date of occurrence i.e. 24.06.2015 was posted as S.H.O. Digha Police Station and was a member of the raiding team. As per his deposition, the time of recovery was between 3:00 P.M. to 4:30 P.M. It was also deposed by him that he alongwith other members of the raiding team went to the flat of appellant/convict for execution of warrant. They were accompanied by two independent witnesses namely, Md. Javed and Ajay Kumar in the presence of whom, the search and seizure were effected. He also supported the recovery of six magazines of Insas Rifles and one bullet-proof jacket from the govt. premises of appellant/convict. The magazines were stated to be wrapped in a *Matmaila*



(murky colour) polythene. He also identified the handwriting and signature on seizure list which already identified as **Exhibit '1' and Exhibit '1/1'** during the trial after identifying by PW-1. He identified the appellant/convict who was present in the court during the trial.

**26.1.** Upon cross examination, He stated that he did not sign any paper or documents. He failed to disclose the name of persons who were authorized to execute the search warrant issued by Barh Police Station. He also stated that seizure list is nowhere suggesting whether same was refused to be accepted by appellant/convict. He also stated categorically that both seizure lists are not suggesting the fact that alleged arms were sealed and seized at the place of occurrence itself. He categorically stated that it is not mentioned in the F.I.R. that appellant/convict was arrested. He also failed to disclose whether any arrest memo was prepared. He stated to arrive at Sachivalaya Police Station between 5:00 P.M. to 5:30 P.M. from the place of recovery. The materials seized were given to Amrendra Kumar Jha/PW-3. It was stated that appellant/convict was enquired



about recovered items but he is not aware whether his statement was recorded in writing. He also failed to disclose that whether Insas Rifles were with any police team or not. He also stated that the persons who were available at the residence were also asked to be the witness of the seizure, but they refused. The security guard who were deployed there were not asked to be the witness of seizure list. It was categorically stated by him that appellant/convict was arrested in connection with Bihta Police Station case and was brought to police station, where he failed to depose by saying that he is not in a position to say that appellant/convict was arrested in present case. He also failed to give details of Bihta Police Station, in which appellant/convict was arrested. It was also stated by him that F.I.R. is not suggesting whether appellant/convict was arrested in connection with said case for which warrant was issued. He also made search but did not find anything incriminating. He denied the suggestion of false implication of appellant/convict.

**27. PW-3, Amrendra Kumar Jha**, who is the



informant of this case and on the date of occurrence i.e. 24.06.2015, he was posted as S.H.O. Sachivalaya Police Station. As per his deposition, available through his examination-in-chief, the occurrence is of 3:00 P.M. It was stated by him that from the north-western corner of pond located inside the premises of appellant/convict, six magazines of Insas Rifle was recovered, which found wrapped in a *Matmaila* (murky colour) polythene kept hidden in a bush grown over there and he also stated to recover a bullet-proof jacket from western side of residential premises which was under a wooden log. It was deposed that seizures of both recovered items were effected in presence of two independent witnesses, who voluntarily signed seizure list. It was deposed by him that appellant/convict refused to sign seizure list and also to receive its copy. He categorically deposed that he brought the appellant/convict to Sachivalaya Police Station alongwith seized items and thereafter registered the present case and also informed regarding his arrest to Hon'ble Speaker Legislative Assembly, Bihar through Sr.S.P. Patna. He stated that F.S.L. team was also



accompanied with him. He identified his signature and handwriting on seizure list which already exhibited as **Exhibit '1'** and **Exhibit '1/1'** respectively. He also identified the handwriting of Police Sub-Inspector Vinay Kumar, who authored formal F.I.R. which on his identification exhibited as **Exhibit '2'** without objection. It further deposed that written information was typed under his instruction which bears his signature over which he made endorsement as to lodge present case. Upon his identification, the typed written information and his signature over there exhibited as **Exhibit '3' and '3/1'** respectively. It was deposed by him that he handed over the seized materials and written information immediately to the investigating Officer/PW-9 of this case, who recorded his statement. He identified appellant/convict before the court.

**27.1.** Upon cross-examination, it was stated by him that the seizure list is nowhere mentioning whether it was refused to sign and receive by appellant/convict. Search warrant was said to be issued in connection with Barh P.S. Case No. 241/2015 and copy of same was not enclosed with



F.I.R. He also stated that none of the police personnel from Barh Police Station or Bihta Police Station were present with him. It was also stated by him that it is not mentioned in the F.I.R. whether appellant/convict Anant Kumar Singh was brought to police station after his arrest. He stated categorically that he never prepared arrest memo of appellant/convict Anant Kumar Singh. He also stated that nothing mentioned on seizure list to suggest whether it was sealed at place of recovery or at police station. No mark of identification was given. It is stated that Abhay Kumar PW-9 was appointed as Investigating Officer of this Case, to whom he handed over seized material on 24.06.2015 itself after arriving at police station but he could not recollect the timing of handover, due to memory loss. He denied the suggestion that he did not handed over the seized materials to I.O. of this case on 24.06.2015. It was also stated by him that *Malkhana*/godown was available in Sachivalaya Police Station, but he failed to disclose that who was the incharge of said *Malkhana*. He also deposed that house guards were present in the premises in issue. It is also stated by him that





he enquired regarding seized items from appellant/convict but his statement was not reduced in writing. His statement is also not available through F.I.R. He categorically deposed that the security guards who were from Bihar Police, were not asked to be witness of seizure list and neither their statement was recorded. It was stated by him that no arms related to said seized magazines was recovered from the appellant/convict. He seized bullet-proof jacket as it appears to him that same was manufactured by foreign company. He handed over seized bullet-proof jacket to I.O./PW-9 of this case namely, Abhay Kumar Singh immediately after coming to the police station. He nowhere mentioned in the F.I.R. that bullet-proof jacket and magazines were recovered by him though it was actually recovered by him only. He also failed to depose the name of persons who typed F.I.R. and also stated that it is nowhere mentioned in F.I.R. that same was typed under his instruction. It was stated by him that **Exhibit '1' and Exhibit '1/1'** shows timing of seizure as 4:30 P.M. and 6:00 P.M. It is also stated by him that there is no any document to suggest that appellant/convict was



handed over to I.O./PW-9 of this case by him. It is also not mentioned that he was handed over to any police officer of any police station. He also stated that he has not mentioned in the F.I.R. that appellant/convict was taken into custody as to produce before the court, though he denied the suggestion that during search and raid M.L.A. Anant Kumar Singh was not available at his residence on 24.06.2015. He categorically stated that though offence alleged is cognizable and non-bailable despite of that there is no document to suggest that appellant/convict Anant Kumar Singh was arrested on 24.06.2015 by him. He denied the suggestion that seizure list is forged and fabricated. It was stated by him that F.I.R. is not suggesting whether videography or photography of search was made. It was also stated by him that independent witnesses are not from same locality. He also stated that nothing mentioned in the F.I.R. as to suggest that he made endeavor to search for local independent witnesses. He denied the suggestion that he lodged false case under pressure of senior police officials and also under political pressure.



**28. PW-4 is Birendra Kumar Singh Chauhan.**

He also supported the recovery of six magazines and one bullet-proof jacket from the premises of appellant/convict on 24.06.2015. He was the part of raiding party being S.H.O. of Gardanibagh Police Station. During raid, he remains at gate only. He even failed to disclose whether independent witnesses were present during search or not. He also failed to state that anything was recovered from the premises in issue. He also failed to recollect whether any six magazines and one bullet-proof jacket were recovered from alleged place. He was declared hostile by prosecution and nothing surfaced out of his cross-examination by State, which may corroborate or contradict the version of other prosecution witnesses in support of prosecution.

**28.1.** On cross-examination by defence, he reiterated his version that during search he remains at the gate of the premises in issue and, therefore, cannot say that how the search was conducted and by whom.

**29. PW-5 is Ashish Kumar Singh, Prachari Pravar,** who prepared the ballistic report of seized



magazines on 29.06.2015 as received for Sachivalaya P.S. Case No. 54/2015. He tested magazines under the approval of the learned Magistrate - 1<sup>st</sup> Class, Patna. He stated through his examination-in-chief itself that the six magazines were given to him by S.I. Abhay Kumar of Sachivalaya Police Station (PW-9) on 29.06.2015 at 12:15 P.M. Four magazines was marked as LOT-87-3/2002 and two magazines were marked as LOT-88-4/2002. The base plate of each magazines was with mark of 'Nilkamal'. He found all recovered magazines effective. By 12:50 P.M. he returned all magazines to I.O. of this case after putting his signature on all magazines under seal cover. He signed his report on 29.06.2015 which upon his identification exhibited as **Exhibit '4'**.

**29.1.** Upon cross-examination, he categorically stated that the six magazines which were tested by him are not before him in court while deposing in this case. He also stated that he did not mention the size, width and depth of magazines in his report. he also stated that test report is not suggesting whether seized materials were sealed or not. It is



also not available in his test report. He also failed to mention through his test report, whether magazines were manufactured by any authorized or foreign company. He also failed to mention through his test report that from which department said magazines can be issued. He also failed to mention that which test method was followed by him to test seized magazines. He denied the suggestion that six seized magazines were not produced to him in physical form and he prepared test report only under undue pressure of his senior officials.

**30. PW-6 is Rajesh Kumar Sharma**, who on the date of occurrence was posted as S.H.O. Gandhi Maidan Police Station and supported the raid in premises of appellant which was conducted in connection with execution of a warrant issued by the court of learned A.C.J.M., Barh in connection with Barh P.S. Case no. 241/2015. He also supported the recovery of magazines and bullet-proof jacket as deposed earlier by prosecution witnesses, particularly by PW-3. It was deposed by him that appellant/convict refused to accept the copy of seizure list and also to sign over it.



**30.1.** Upon cross-examination, he stated that he cannot say the sections under which the present F.I.R. was lodged. It was stated by him that the entire raid was conducted for about four hours. He stated that some police personnel of Barh P.S. were present with him, but he failed to disclose their designation and name. He categorically stated that after raid the appellant/convict was arrested and brought to Sachivalaya Police Station by Amrendra Kumar Jha/PW-3. He failed to disclose whether any police personnel of Bihta P.S. was present with them or not. It is stated that his signature is not available on any paper or documents related with present occurrence/recovery.

**31. PW-7 is Ajay Kumar.** He was posted on the date of occurrence i.e. 24.06.2015 as Police Inspector-cum-S.H.O. Kotwali, Patna. He supported the recovery of six magazines and bullet-proof jacket from the premises of appellant/convict. He stated that he could not say whether appellant/convict was arrested or not. It was stated by him that raid/search was continued for two hours i.e. from 3:00 P.M. to 5:00 P.M. He did not sign any paper related to



occurrence/recovery. He also denied whether any photography or videography was done regarding search.

**32. PW-8 is Umesh Kumar**, who was the Sub-Inspector of Sachivalaya Police Station and had taken the investigation of this case on 30.07.2015. He obtained letter regarding sanction of prosecution issued by the then D.M., Patna, Sri Sanjay Kumar Agrawal. It was shown to him, upon which he identified the short signature of the then D.M., Patna, available on sanction letter, which upon his identification exhibited as **Exhibited '5'**. He after completing investigation submitted charge-sheet No. 76/15 dated 21.09.2015 under Section 25(1-A) & 26/35 of the Arms Act. He identified his handwriting of charge-sheet and signature over there and also identified the signature of the then S.H.O. namely, Amrendra Kumar Jha/PW-3. Upon his identification, the entire charge-sheet was exhibited as **Exhibit '6'**.

**32.1.** Upon cross-examination, it was deposed by him that he did not record the statement of any witness. He also stated to visit the place of occurrence but he did not



inspect the place from where the seized material was alleged to be recovered. He did not record the statement of any security personnels available at the residence of appellant/convict. He did not even made any effort to record the statement of independent witnesses. It was stated that the first I.O. of this cse was Abhay Kumar/PW-9.

**33. PW-9, Abhay Kumar,** who is the first Investigating officer of this case and was posted as Sub-Inspector of Police in Sachivalaya Police Station on 24.06.2015, and was authorized to investigate this case i.e. Sachivalaya P.S. Case No. 54/2015. It was deposed in his examination-in-chief itself that immediately after taking charge of investigation he was handed over, the F.I.R., copy of seizure list, which he recorded in the case diary. He stated that during the course of investigation, he recorded the re-statement of PW-3 and statement of other witnesses, thereafter, visited the place of occurrence/premises in issue. He obtained the supervision note of S.P. Patna. He also mentioned criminal antecedent of appellant/convict in para 23 of the case diary. He obtained the permission of court





regarding testing of seized materials and also prayed for production warrant before the court of learned Judicial Magistrate as to remand appellant/convict in the present case from Bihta P.S. Case No. 859/2014. He also stated to receive the test report of *prachari Praver/PW-5*. It is stated by him that under the direction of District Prosecution Officer, he added Section 25(1-A) of the Arms Act. He categorically stated that formal F.I.R., typed written information, two copies of seizure list and test report of magazines were received by him which is already exhibited. He never arrested any person in connection with the present case, but he identified appellant/convict.

**33.1.** Upon cross-examination, he stated to be present at 7:30 P.M. on 24.06.2015 at Sachivalaya Police Station. It is stated that the facts of this case is based upon the statement of informant/PW-3. It is stated that from written information (**Exhibit '3'**) and seizure list (**Exhibit -1 and Exhibit 1/1**), it cannot be said whether the seized material were sealed at the place of occurrence or after bringing the same at police station. He categorically stated



that he mentioned in para 27 of the case diary that on 27.06.2015 at about 9:00 P.M., he received six magazines from informant/PW-3. He categorically stated that seized six magazines were not made available to him by the informant before 27.06.2015. During his investigation, he never received seized magazines/bullet (**Exhibit - 1/1**). He did not mention during entire investigation that with whom and where said seized magazines and bullet-proof jacket remained during investigation. He did not prepare the map of place of recovery. It is stated that nothing available in the case diary, as to suggest that on 24.06.2015, informant/S.H.O. of Sachivalaya P.S. namely, Amrendra Kumar Jha/PW-3, brought the appellant/convict Anant Kumar Singh alongwith him at police station. It is also nowhere mentioned that he saw appellant/convict Anant Kumar Singh on 24.06.2015 at Sachivalaya P.S. He also stated that the typed copy of informant which is the basis of F.I.R. is not even disclosing the arrest of Anant Kumar Singh. It is also not suggesting that whether any police personnel from Barh or Bihta Police Station were present



over there or appellant/convict Anant Kumar Singh was arrested in Bihta P.S. Case No. 859/2014 from Sachivalaya Police Station. He never received any copy of any search warrant as issued by the court of learned A.C.J.M. in Barh P.S. Case No. 241/2015. He did not record the statement of any person residing in the out-house, within the premises of appellant/convict. He categorically stated that the recovered six magazines are used in government Insas Rifles. He categorically stated that no country made Insas Rifle, either of government made company or foreign made was recovered from the premises in issue. He categorically stated that his investigation is silent whether seized six magazines **(Exhibit '1')** was kept in Malkhana, and furthermore, no Malkhana register number in this connection was mentioned anywhere. It is submitted that said six magazines was never produced by him before the court.

**34.** Interestingly, one Arbind Kumar, who was Sub-Inspector of Police, Sachivalaya Police Station appeared before the trial court as CW-1, who examined on 29.03.2022. It was deposed by this court witness that he



was posted in Sachivalaya P.S. as Sub-Inspector and came to court with material exhibits, though he has no paper in support as authorizing him to produce the material exhibits before the court. He produced bullet-proof jacket in open condition and one cloth in sealed condition mentioning Sachivalaya P.S. Case No. 54/2015 dated 24.06.2015 under Section 25(1-B)A 26/35 of the Arms Act. It was stated by him that the seized magazines of Insas Rifle is there. He also stated that Bullet-Proof Jacket, bearing mark MRN1/2017, is in open condition and not sealed. He brought both material exhibits together. He opened the seal with permission of the court. The sealed cloth also mentioned the name of Sri Raghevendra Narayan, *Prachari Pravar* (PW-5), Police Kendra, Patna and also the name of judicial Magistrate, 1<sup>st</sup> Class, Patna, where the short signature dated 27.06.2015 is available. After opening the sealed cloth, in open plastic, six magazines of Insas Rifle were present which was exhibited as **Exhibit I, Exhibit I/II, Exhibit I/III, Exhibit I/IV & Exhibit I/V**. The bullet-proof jacket was exhibited as **Exhibit 'II'**.



**34.1.** Upon cross-examination, it was stated by him that he was posted at Sachivalaya P.S. on 05.04.2020 and he was not in police service since 24.06.2015. It was stated by him that he did not receive any order from court as to produce the material exhibits today. He did not even receive any written instruction of present S.H.O. Chandra Shekhar Prasad Gupta of Sachivalaya Police Station to produce the seized material before the court. It was stated that prior to this, he came to this court on two different occasions with material exhibits even without any direction or court order but it could not exhibited. It was stated by him that the bullet-proof jacket is not mentioned with "Sachivalaya P.S. Case No. 54/2015" and only "police case No. 54/2015" is mentioned over there. It was also stated by him that it is missing the signature of S.H.O. PW-3/Amrendra Kumar Jha. The said bullet-proof jacket is also missing signature of Md. Javed and Ajay Kumar. He also failed to disclose that whether any endorsement of "MR No. 1/2017" was mentioned on bullet-proof jacket and "police case No. 54/2015" was written over there. It was also stated



by him that the cloth containing material exhibits i.e. magazines was missing with signature of Amrendra Kumar Jha/PW-3. It was also stated that the signatures of Md. Javed and Ajay Kumar (both independent witnesses as claimed by PW-3) were also missing. It is stated that MR No. 1/2017 is overwriting where eight (8) manipulated as seven (7). He also failed to depose that when and by whom the cloth bag was sealed. It is categorically stated that neither of material **Exhibits No. I to I/V** are showing the signature of Amrendra Kumar Jha/PW-3 and of independent witnesses namely, Md. Javed and Ajay Kumar and further none of the material exhibits i.e. **Exhibit I to I/V** are showing mentioning of Sachivalaya P.S. Case No. 54/2015. It is also stated that material exhibit i.e. **Exhibit I to I/V** are not separately sealed.

**35.** After completion of examination of prosecution witnesses, the statement of appellant/convict was recorded under Section 313 of the Code of Criminal Procedure. It appears from record that his statement was recorded on 9<sup>th</sup> February, 2022 where he categorically denied any raid and



seizure as alleged. It was stated by him that in absence of any seizure the questions did not arise as to accept it or to sign over it. He further stated that the entire allegation is false, he is innocent and as he contested State Legislative election being an independent candidate, he was falsely implicated with the present case.

**Conclusion:**

**36.** At the outset, testimony of aforesaid prosecution witnesses are not suggesting that this is a case of only faulty investigation as argued by learned A.P.P. Mr. Mishra, rather it creates a serious doubts regarding entire raid, search, seizure, sealing of seized magazines and bullet-proof jacket from the place of recovery itself. Besides that the examination of independent witnesses, immediate handing over of seized materials to Investigating Officer and the manner in which the material exhibits were brought before the court during the trial are other major contradictions.

**37.** It is apparent from the deposition of PW-3 who is the informant of this case that raid was conducted on



24.06.2015 to execute the search warrant of the premises of appellant/convict in connection with Barh P.S. Case No. 241/2015, which was registered for the offence under Section 341, 323, 307, 364, 302, 201 and 120B of the Indian Penal Code. Same also appears from the narration of written information which is **Exhibit '3'** before this Court.

**38.** Case of Prosecution is not that any secret information was received for keeping any prohibited fire-arm within the premises of appellant/convict who by that time was sitting M.L.A. It is a case of chance recovery. It appears from the deposition of almost all prosecution witnesses who are the higher rank police officers, maximum of them are S.H.O. of different police station of Patna that six magazines of Insas Rifle were recovered from north-western corner of a pond situated within the premises of appellant/convict, which is a govt. residence allotted to him in capacity of M.L.A. It appears from their deposition, particularly from deposition of informant/PW-3 that the recovered six magazines of Insas Rifle and one bullet-proof jacket were sealed on spot itself in presence of independent witnesses, same also appears from





the narration of **Exhibit '2'** but during the course of trial, it was deposed by almost all the prosecution witnesses including informant/PW-3 that they are not sure whether said magazines of Insas Rifle were sealed at the place of occurrence/recovery itself.

**39.** It also appears from the deposition of PW-9, who is the first Investigating Officer of this case that six magazines which were seized from the resident of appellant/convict on 24.06.2015 was handed over to him alongwith seized bullet-proof jacket on 27.06.2015 only. The entire prosecution case is silent that for long three days where these seized magazines and bullet-proof jacket were kept and with whom. None transferring of seized materials to I.O. of this case despite of his presence at police station when informant/PW-3 came over there alongwith seized articles is a serious lacuna in prosecution case. Non-examination of independent witnesses who were accompanied with informant/PW-3 and raiding party also cast a serious doubt over entire seizure and sealing of seized articles at the place of recovery itself.



**40.** In this context, it would be apposite to reproduce the relevant part of the findings of learned trial court in **paragraph '11'** of the judgment itself, which reads as under:

***"11. ... .... I agree about the seal of the recovered magazine at the place of occurrence that there is no direct evidence is available on record but it is also true that there is no negative evidence is available on record that the magazine had not been sealed at the place of occurrence."***

**41.** This appears a perverse finding on its face by learned trial court that despite of having no evidence, as no negative evidence is available on record that the magazines had not been sealed at the place of occurrence, it was presumed by the trial court that the recovered materials were seized at the place of occurrence itself. No doubt, this aspect is to be proved by the prosecution and not by the appellant/convict under the basic principle of criminal jurisprudence, where prosecution is duty bound to establish its case beyond all reasonable doubt.

**42.** In this context, it would be appropriate to reproduce paragraph '7' of **Amarjit Singh @ Babbu's case**



(supra) which is as under:

*"7. The entire prosecution case, thus, is clouded with number of infirmities which compel this Court not to accept such an unworthy evidence. These infirmities have been brushed aside by the Designated Court by observing that since the model number of the revolver was noted down, the non-sealing of the revolver or the handing over of the same to some other police official or a private person, who has not been examined are of no consequence. We are unable to agree and subscribe to this view in a case of this nature. The non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. The report of PW 4 that the weapon is capable of being fired is insignificant since it cannot be said with certainty as to what was the condition of the weapon at the time of the recovery, apart from the evidence of PW 4 that he did not test-fire the revolver."*

**43.** It would be further apposite to reproduce para '6' of **Sahib Singh's case** (supra) which reads as under:

*"6. Having gone through the record we find much substance in each of the above contentions. Before conducting a search the police officer concerned is required to call upon some independent and respectable people of the locality to witness the search. In a given case it may so happen that no such person is available or, even if available, is not willing to be a party to such search. It may also be that after joining the search, such persons later on turn hostile. In any of these eventualities the evidence of the police officers who conducted the search cannot be disbelieved solely on*



the ground that no independent and respectable witness was examined to prove the search but if it is found — as in the present case — that no attempt was made even by the police officer concerned to join with him some persons of the locality who were admittedly available to witness the recovery, it would affect the weight of evidence of the police officer, though not its admissibility. We next find from the record that the arms and ammunition allegedly recovered from the appellant and seized were not packeted and sealed. In *Amarjit Singh v. State of Punjab* [1995 Supp (3) SCC 217 : 1995 SCC (Cri) 828] this Court has observed that non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. From the record we further find that there is no evidence to indicate with whom the revolver was after its seizure by PW 3 till it was sent to the Arms Expert for testing through Head Constable Baita Singh. This missing link also weakens the prosecution case. For all these infirmities we are of the view, that the appellant is entitled to the benefit of reasonable doubt.”

**44.** As per the testimony of prosecution witnesses particularly PW-3/informant, it appears that appellant/convict was present in his premises at the time of search and seizure and he refused to accept the copy of seizure and also to sign over the seizure list. It further affirms in view of deposition of prosecution witnesses particularly PW-3 that appellant/convict was brought to Sachivalaya P.S. after



aforesaid seizure of magazines and bullet-proof jacket from his premises. On this point, it is important to mention that **Exhibit '3'** which is the written information authored by PW-3 himself, nowhere suggest that appellant/convict was arrested and brought to police station on 24.06.2015 after completing raid. He specifically deposed that no arrest memo was prepared on that day regarding arrest of appellant/convict. The order of learned trial court dated 27.09.2015 and 08.07.2015 clearly reveals that appellant/convict was remanded in this case from Bihta P.S. Case No. 859/2014. Out of these court's order, it is crystal clear that on the date of raid, appellant/convict was in jail in connection with other case and, therefore, his presence in premises during the time of raid and also to refuse to sign and further refuse to receive the copy of seizure list appears a false statement of informant/PW-3 and other prosecution witnesses during trial on oath, making them a witness under category of "**wholly unreliable**".

**45.** The narration of written information i.e. Exhibit '3' also not suggesting anything that



appellant/convict was brought to police station after arresting him, hence, this Court has no doubt to accept that entire search, seizure and sealing procedures were carried out in absence of appellant/convict.

**46.** It would be apposite here to reproduce para '6' of the legal report of Hon'ble Supreme Court in **Tahir's** case (supra), which reads as under:

"6. ... .. no infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

**47.** No doubt, on the basis of deposition of prosecution witnesses, who are police officers, conviction can be secured, if it inspired confidence and trustworthy in nature. In this context, it would be apposite to mention that PW-4, who is Birendra Kumar Singh Chauhan and was the



then S.H.O. of Gardanibagh Police Station and the member of raiding party turns hostile. Even none of the prosecution witnesses are sure whether sealing was made at the place of occurrence or at the police station. Same is the position about preparing of seizure list.

**48.** It also appears from deposition of prosecution witnesses that they are not even sure whether appellant/convict was present at the time of raid, search, seizure and sealing. In such background, conviction, as secured in the present case on the basis of witnesses, who are from police department are not appearing wholly reliable, and as such, did not inspired confidence in favour of conviction.

**49.** It would be further apposite to reproduce paragraph No. 32 and 33 of the legal report of Hon'ble Supreme Court in the matter of **Nand Lal v. State of Chhattisgarh [(2023) 10 SCC 470]** which reads as under for a ready reference:

*"32. Undisputedly, the present case rests on the evidence of **interested witnesses**. No doubt that two of them are injured witnesses. This Court, in Vadivelu Thevar v. State of Madras [1957 SCC OnLine SC 13], has observed thus:*

*"11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is*



*concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:*

*(1) Wholly reliable.*

*(2) Wholly unreliable.*

*(3) Neither wholly reliable nor wholly unreliable.*

*12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."*

**33.** It could thus be seen that in the category of "wholly reliable" witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of "wholly unreliable" witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a "wholly unreliable" witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial."

**50.** It also appears from the deposition of PW-3/informant and other prosecution witnesses and further from **Exhibit '3'** that raid was conducted for execution of warrant, issued by the court of learned A.C.J.M., Barh in connection with Barh P.S. Case No. 241/2015, but no such





search warrant which ought to be the part of F.I.R. were collected during the course of investigation or was made available during the trial, therefore, entire raid which was conducted in the premises of appellant/convict appears doubtful, making this case a chance recovery.

**51.** One of the important consideration in the present case is the manner in which seized magazines of Insas Rifle was tested by PW-5. It appears from his deposition that he received said Magazines at 12:15 P.M. for testing and again returned back to I.O. Abhay Kumar/PW-9 at about 12:50 P.M., alongwith his report. Within 35 minutes, entire procedure of testing and preparation of reports were carried out. His deposition is even silent that how these magazines were tested and which method of testing was followed by him as to test these magazines. He categorically deposed that he put his signature on all six magazines after testing it with finding that same is in working condition. This statement not appears corroborated in terms of deposition of CW-1 namely, Arbind Kumar, who produced material exhibits before the court and deposed that



name of PW-5 was only mentioned on the cloth covering all the magazines and it was not appears mentioned on each of the six magazines as deposed by PW-5 through his examination-in-chief itself. It also appears from deposition of CW-1 that **Exhibit I to I/V**, suggesting that all six Insas magazines rifle were not seized separately. It not even bear the signature of informant (PW-3) and also of seizure list witnesses. It not even bearing police case number. This witness further stated that the bullet-proof jacket was not sealed contrary to the statement of PW-3 and other prosecution witnesses and it was marked only as P.S. Case No. 54/2015 without mentioning the name of police station and therefore, tampering with seized articles cannot be denied. From the deposition of PW-5 and CW-1, a serious doubt *qua* case of prosecution can be gathered regarding the manner in which the functionality of seized Insas Rifle Magazines were tested and it was exhibited before the court during trial.

**52.** In view of aforesaid, it cannot be said that this is a case of only faulty investigation, rather it is a case



where different material questions, regarding sealing of seized articles at spot itself, non-examination of independent witnesses/seizure list witnesses, as claimed, the disputed version regarding arrest and presence of appellant in premises, the manner in which the seized magazines were tested and produced before the court and above all where seized six magazines and bullet proof jacket were kept for long three days after seizure i.e. from 24.06.2015 to 27.6.2015, are such material questions, which prosecution was duty bound to answer during the trial, but failed.

**53.** It further appears that conviction of appellant in present case was secured with aid of Section 35 of the Arms Act. In this context, for better understanding of law, it would be apposite to reproduce Section 35 of the Arms Act, which is as under:

**"35. Criminal responsibility of persons in occupation of premises in certain cases.**—Where any arms or ammunition in respect of which any offence under this Act has been or is being committed are or is found in any premises, vehicle or other place in the joint occupation or under the joint control of several persons, each of such persons in respect of whom there is reason to believe that he was aware of the existence of the arms or ammunition in the premises, vehicle or other



place shall, unless the contrary is proved, be liable for that offence in the same manner as if it has been or is being committed by him alone.”

**54.** In this context, it would be further apposite to reproduce para '11' and '12' of the legal report of Hon'ble Supreme Court as available through **Pabitar Singh's** case (supra), which are as under:

**11.** The next and the crucial question that arises is whether the prosecution has established the essential ingredients of the offence in the light of the provisions of Section 35 of the Act. It has been urged that when the appellant was using the kitchen it was legitimate to expect that he would be aware of the existence of the gun which was concealed there. The gun was concealed in such a manner that it was not visible to the naked eye. Although there may be very grave suspicion that the appellant was aware of the existence of the gun but the prosecution is bound to establish facts from which the court could have reason to believe that he was aware of the existence of the unlicensed firearm. We are not satisfied in the present case that any such facts have been established.

**12.** Lastly it cannot be over-emphasised that in cases of the present nature where not only the liberty of a citizen is involved but also his whole career on conviction a person in service is bound to be dismissed great care and attention should be



devoted by the courts to all questions of law and fact which unfortunately has not been done in the present case. That has led to miscarriage of justice. The appellant is entitled to the benefit of doubt and he is hereby acquitted.”

**55.** Having aforesaid legal position and settled legal ratio, it appears that none of the prosecution witnesses deposed during trial as to suggest that appellant was aware about the existence of magazines of Insas Rifle within the premises of his Govt. allotted residence. Appellant was in jail during raid. Prosecution is bound to establish facts from which court could have “reason to believe” that appellant was aware about the existence of unlicensed recovered fire-arms magazines. This Court is satisfied that in present case any such facts have been established by prosecution.

**56.** Hence, the judgment of conviction dated 14<sup>th</sup> July, 2022 and order of sentence dated 21<sup>st</sup> July, 2022, as passed by learned Special Judge, MP/MLA, Patna in connection with Sessions Trial No. 92/2017/Special Case (MP/MLA) No. 70/2018 arising out of Sachivalaya P.S. Case No. 54 of 2015 is hereby quashed and set-aside.

**57.** The appellant, namely, Anant Kumar Singh @



Anant Singh is acquitted of the charges levelled against him by the learned trial court. He is directed to be released forthwith, if his presence is not required in any other case.

**58.** The appeal stands allowed.

**59.** Let a copy of this judgment alongwith the Trial Court Records be sent to the learned Trial Court forthwith.

**(Chandra Shekhar Jha, J.)**

Rajeev/-

AFR/NAFR	AFR
CAV DATE	23.07.2024
Uploading Date	14.08.2024
Transmission Date	14.08.2024

