

GAHC010199382010



2024:GAU-AS:12793

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./333/2010

MD. ARJU ALI @ BHUYAN
S/O MD SAHJAHAN ALI R/O DIKHARI TINIALI P.O. and P.S. DEMOW, DIST.
SIVASAGAR, ASSAM.

VERSUS

N F RAILWAY
DIVISION TINSUKIA, P.S. DEMOW, DIST. SIVASAGAR, ASSAM.

Advocate for the Petitioner : MR.PARAG J SAIKIA, MR.R ALI,MS.N PHUKAN

Advocate for the Respondent : SC, RAILWAY, MR.D K DEY,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT & ORDER (ORAL)

Date : 13-12-2024

- 1.** Heard Mr. P.J.Saikia, learned counsel for the petitioner and Mr. D.K.Dey, learned Standing Counsel, Railway for the sole respondent.
- 2.** The present criminal revision petition under Sections 397/ 401 read with Section 482 of the Code of Criminal Procedure, 1973 is filed challenging the legality, propriety and

correctness of the judgment and order dated 05.06.2009 passed by the learned Special Judicial Magistrate (Railway) First Class, Tinsukia in connection with SR/CR Case No. 174/2005 vide RPF/POST/MXN Case No. 1(4)/2005 convicting the petitioner and sentencing him to undergo Simple Imprisonment (SI) for 6 (six) months. Further, the challenge is against the judgment and order dated 12.08.2010 passed by the learned Sessions Judge, Sivasagar in Criminal Appeal No. 7(3)/2009 upholding the impugned judgment and order dated 05.06.2009, as noted above.

3. The prosecution story in nutshell is that-

(i) On 21.04.2005, the Inspector of RPF Mariani N.F. Railway, lodged a complaint alleging that on 18.04.2005 at about 17:00 hours, he received an FIR from the Senior Section Engineer (SSE), P-way, N.F. Railway Simaluguri regarding the theft of CST/9 Pot and Tie Bars with fittings from KM No. 25/0-13 in between Simaluguri town and Dishang Siding station in the night of 17/18.04.2005. On receipt of the aforesaid information, the complainant along with SI Jibeswar Mushahary, the SSE, Sri Bharat Kakoty jointly verified the fact and made a joint verification of the spot. Thereafter, search was conducted but the theft items could not be recovered. However, on 20.04.2005, on receipt of a secret information, the said complainant along with other office personnel with the assistance of the police of Demow police station as well as the independent witnesses, conducted search in the scarp damp of the accused/petitioner and recovered various materials belonging to the railways. On enquiry, the scarp damp owner, i.e., the accused/petitioner failed to produce any document and could not reply satisfactorily with regard to his possession of the said materials.

(ii) Based on the aforesaid complaint, Case No. 1(4)/2005 under Section 3 (a) of the Railway Property (Unlawful Possession) [RP (UP), in short] Act, 1966 was registered and after completion of the investigation, charge sheet was filed under Section 3 (a) of the RP (UP) Act, 1966 against the accused/petitioner and another accused. On the basis of the evidences adduced before the charge and after holding a camp Court for the exhibition of the materials, charge under Section 3 (a) of RP (UP) Act, 1966 was read over and

explained to both the accused person to which they pleaded not guilty and claimed to be tried.

(iii) Prosecution examined 12 (twelve) witnesses which included the complainant and the Enquiry Officer to bring home its charge and also exhibited 14 documents in its support. These witnesses were vigorously cross-examined by the defence.

(iv) On completion of the prosecution evidence, both the accused persons were examined under Section 313 CrPC. After considering the relevant materials and examining the witnesses, the Trial Court convicted the petitioner for commission of offence under Section 3 (a) of the RP (UP), Act, 1966 and sentenced him to undergo SI for 6 (six) months. Thereafter, though the accused/ petitioner approached the Appellate Court by filing a petition being Criminal Appeal No. 7(3)/2009 but the learned Appellate Court dismissed the same.

4. Being aggrieved, the present petition is filed.

5. Mr. Saikia, learned counsel for the petitioner, at the outset, submits that he shall not challenge the impugned order of conviction on merit and shall confine his submission for grant benefit of probation.

6. Mr. Saikia, learned counsel for the petitioner argues that the accused/petitioner is entitled for the benefit under Sections 360/361 Cr.P.C. and under the Probation of Offenders Act, 1958 (hereinafter referred to as Act, 1958) which had not been granted by both the learned Courts below. Mr. Saikia, learned counsel for the petitioner further submits that the accused/petitioner had not been convicted previously for any offence and he is first time offender.

7. According to Mr. Saikia, learned counsel for the petitioner though the learned Trial Court ought to have considered for granting the benefit under the Act, 1958, however, the same was rejected only on the consideration that the petitioner had committed the instant crime knowingly and the learned Appellate Court also did not

consider to grant benefit to him as the nature of the offence was being relating to commission of theft of national property. Thus, failed to properly apply the provision of law in this regard.

8. The learned Standing counsel, Railway, Mr. Dey, has objected to such prayer of grant of probation.

9. I have heard the submissions advanced by the learned counsels for the parties.

10. This Court has perused the records of the learned Trial Court including the evidence of the witnesses as well as the judgments of the learned Courts below.

11. This Court after perusal of the materials available on record has also not found any patent error or illegality in the judgments. Therefore, this Court will now deal with the entitlement of the petitioner of the benefit under the Act, 1958.

12. It is well settled that Act, 1958 is a milestone in progress of modern liberal trend of reform in the field of Penology. It is the result of recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. It was also held by the Hon'ble Apex Court in the case of ***Ved Prakash Vs. State of Haryana*** reported in ***1981 1 SCC 447***, that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial Court should collect necessary material to award a just punishment in circumstances. It was further held that the social background and the personal factors of the crime doer are very relevant in this regard.

13 In the case of ***Sita Ram Paswan Vs. State of Bihar*** reported in ***AIR 2005 SC 3534***, the Hon'ble Apex Court has laid down certain principles for exercise of discretionary power under the Act and the consideration required. The Hon'ble Apex Court opined that while exercising the discretionary power under the Act, 1958, the Courts are to consider the circumstances of the case, the nature of offence and the character of the offender. While considering the nature of offence, the Court must take a realistic view of

the gravity of the offence, the impact which the offence had on the victim. It was concluded by the Hon'ble Apex Court that the benefit available to the accused under Section 4 of the Act, 1958 is subject to the Limitation embodied in the provision and the word 'may' clearly indicates that the discretion is vested with the Court whether to release the offender in exercise of power under sections 3/4 of the Act, 1958, having regard to the nature of the offence, the character of the offender and overall circumstances of the case.

14. It was further held by the Hon'ble Apex Court that such power can be exercised by the Court even at the appellate or revisional stage or also by the Apex Court hearing appeal under Article 136 of the Constitution of India.

15. Now in the backdrop of the aforesaid settled propositions of law, let this Court consider the arguments advanced by the learned counsel for the parties.

16. In the case in hand, the offence was committed on 18.04.2005. The nature of offence cannot be said to be heinous in the given circumstances of the case. It is also asserted by the learned counsel for the petitioner that the accused/petitioner has not committed any offence of similar nature or to say any offence prior to the incident or during pendency of this appeal till date. The learned standing counsel, Railway has also submitted that he has no instruction as regards any criminal activities of the petitioner. This Court has also considered that the accused/petitioner has suffered for almost 14 years litigating in the Court and facing trial, appeal and revision.

17. Considering the above stated facts and without entering into the merit of the impugned judgments and following the relevant provisions and the settled propositions of law and the period of lapse from the date of incident as well as the allegation and also that the incident took place without any premeditation of mind, this Court is of the considered opinion that this is a fit case where the benefit of provisions of the Probation of Offenders Act, 1958 should be given to the accused/petitioner by this Court in exercise of its revisional power. Accordingly, for the reasons recorded hereinabove, the petitioner,

namely, **Md. Arju Ali @ Bhuyan**, be given the benefit under the provisions of the Probation of Offenders Act, 1958 and accordingly, the sentence is modified to that effect and it is provided that instead of sending him to jail, he should be given the benefit of Section 4 of the Probation of Offenders Act, 1958.

18. Accordingly, it is directed that the petitioner, namely, **Md. Arju Ali @ Bhuyan**, will file one surety to the tune of Rs. 10,000/- along with personal bond before the learned Trial Court i.e., Special Judicial Magistrate (Railway) First Class, Tinsukia and undertake to the effect that the petitioner shall maintain peace and good behaviour during the period of one year from today. The aforesaid bond be filed by the petitioner within a period of 2 months from the date of this judgment.

19. With the aforesaid, the criminal revision petition stands allowed.

20. LCR be returned back.

JUDGE

Comparing Assistant