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THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

CRIMINAL REVISION NO. 597 /2003

APPLICANTS

(In Jail)

1. Koushal Kumar Singh
S/o Aditya Narayan Singh
Aged about 35 years,
R/o Shahid Bhagat Singh Marg,
Ramnagar, Bhilai, P.S. Supela,
Distt. Durg (C.G.)
2. Ramesh Kumar S/o Jagannath
Patel, Aged about 25 years, R/o
Camp-1, Near Basant Talkies, Bhilai
Power House, Distt. Durg (C.G.)

VERSUS

State of Chhattisgarh, Through
Railway Security Force, Post Bhilai,
Distt. Durg (C.G.)

NON-APPLICANT

**REVISION PETITION UNDER SECTION 397 READ WITH 401 OF
THE CODE OF THE CRIMINAL PROCEDURE**

4720/03
Filed on 05/12/03
by Shri R. M. Maude
Advocate
R.D.D.R. (J)
(05/12/03)



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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Justice P. Sam Koshy

Criminal Revision No.597 of 2003

Applicants

Koushal Kumar Singh and
another

VERSUS

Non-applicant

State of Chhattisgarh

Present: Shri KN Nande, counsel for the applicants.
Shri Arvind Shukla, PL for the State.

Oral Order
(31.01.2014)

By way of the instant revision, the applicants have challenged the judgment dated 2.12.03 passed by the Additional District Judge, Raipur in Criminal Appeal No.187/03 whereby the appellate court has convicted the applicants for the offence punishable under Section 3(A) of Railway Property Unlawful Possession Act of 1966 (hereinafter referred to as the Act, 1966) and sentenced to undergo R.I for 3 months and fine of Rs.1,000 each.

2. Brief facts of the case are that on 12.12.96 SN. Ghoshal (PW-2) along with his staff, on receiving some information, stopped the Metador bearing registration No.MOR 8632 at around 2.00 pm along with GR. Sada (PW-6) – Sub-Inspector for checking and while checking, it was found that the vehicle was being driven by applicant No.2 – Ramesh Kumar and applicant No.1 – Koushal Kumar Singh was sitting with him in the cabin. The said vehicle is registered in the name of one Jagannath Patel who is the father of applicant No.2 – Ramesh Kumar. During the search from the said vehicle, it was found that the vehicle was carrying property belonging to Railway Department like Extension Rod- 5 pieces, Anchor – 20 pieces, Pendral Clip - 13 pieces and Iron Scrap – 3 tons. Thereafter, the matter was reported to the police and an offence was registered against 3 persons i.e. both the applicants as well as the father of applicant No.2 under Section 3(A) of the Act, 1966).

3. The trial court, after taking into consideration the entire evidence that has come on record, vide its judgment dated 19.6.03 in Criminal

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Case. No.745/97, found the applicants to be guilty of the offence under Section 3(A) of the Act, 1966 and acquitted the 3rd accused Jagannath from the charges levelled against him. Accordingly, vide the said judgment dated 19.6.03, the trial court imposed punishment of RI for 1 year to each of the applicants.

4. The said judgment dated 19.6.03 passed by the Special Railway Magistrate, Raipur was put to challenge in Criminal Appeal No.187/03 before the 1st Additional Sessions Judge, Raipur.

5. The appellate court also, after considering the submissions put forth by the applicants and taking into consideration the evidence that has been adduced by the parties vide its order dated 2.12.03, found the applicants to be guilty of the offence registered against them. However, the appellate court, upholding the conviction, considered question of sentence imposed against the applicants and taking into consideration firstly that it is the first offence by the applicants, secondly the age of the applicants, thirdly the entire circumstances and lastly giving sympathetic consideration, reduced the sentence imposed by the Sub-Railway Magistrate from 1 year RI to 3 months RI to each of the accused/applicants. The said court while reducing the sentence from 1 year to 3 months has also imposed fine of Rs.1,000 each.

6. It is this judgment dated 2.12.03, which has been put to question by the applicants in the instant civil revision.

7. On going through the evidence that has been adduced before the court below and also perusing the order passed by the appellate court vide its order dated 2.12.03, it is evidently clear that the charge leveled against the applicants has in fact been established beyond all reasonable doubts.

8. The statement of RK. Dixit (PW-3) and the statement of other witnesses also clearly establish the fact that the property which was seized from the possession of the applicants in their vehicle was in fact the property belonging to Railway Department. Similarly, statements of SN. Ghoshal (PW-2) and RK. Dixit (PW-3) have corroborated with that of GR. Sada (PW-6), Sub-Inspector of that area at the relevant point of time who has reiterated the facts which have been narrated by SN. Ghoshal (PW-2) and RK. Dixit (PW-3) in respect of the seizure of the articles

specified in the earlier paragraphs belonging to the Railway Department.

9. Taking into consideration, the statements of NN. Ghoshal (PW-2), RK. Dixit (PW-3) and GR. Sada (PW-6) as well as the other witnesses who have made their statements before the court below, it is amply proved that the charges leveled against the applicants have been duly established and proved beyond all reasonable doubts and the findings arrived at by the court below are purely on the basis of the evidence that has come on record.

10. Counsel for the applicants relied upon the decision of the Allahabad High Court in the matter of State of U.P. vs. Suresh reported in 1996 CRI.L.J 3970 wherein the dynamo belt used in the railway was found to be in possession of the respondents therein and for which a case under Section 3, 2(d) of the Act, 1966 was registered and the trial court i.e. JMFC had acquitted the accused persons therein from the said charges holding that there was no representation from the railway side in respect of the said property being the railway property, the JMFC having acquitted the same, the acquittal was further confirmed by the High Court in the appeal preferred by the State. However, the facts and circumstances in the instant case are slightly different and if we see the evidences of NN. Ghoshal (PW-2), RK. Dixit (PW-3) and GR. Sada (PW-6), the railway officers who have categorically given their statements and have also given a report in this regard, it is clear that the property which was seized from the possession of the applicants in the vehicle was in fact the property which was used by the railway and that these properties are not available in the open market. Therefore, the applicants cannot get the advantage of the ratio laid down by the Allahabad High Court in the matter of State of U.P. vs. Suresh (supra).

11. Further Section 3 of the Act, 1966 itself reiterates the fact that unless the accused proves that the railway property came into his possession lawfully, it would be construed that the property was stolen or unlawfully obtained.

12. Counsel for the applicants submits that the revision petition is pending since 2003 and it is almost 11 years now and therefore, this Court further taking into consideration the age of the applicant as well as that it was their first offence and also sympathetically considering the fact that in the event the revision is rejected, the applicants would now again

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have to go to jail for a period after 11 years which perhaps would not be in the larger interest of justice.

13. In view of the fact that instant is a revision petition under Section 397/401 Cr.P.C and that facts which the counsel for the applicants wants the revisional court to consider have already been duly considered and appreciated by the appellate court as is evidently clear from para - 13 of its judgment wherein in very categorical terms, the appellate court has held that the charges have been proved, however taking into consideration the offence which was the first offence of the applicants and their age and considering sympathetically the facts and circumstances, earlier punishment of 1 year RI as imposed by the Railway Magistrate was reduced substantially by the appellate court to 3 months. The appellate court has already taken these facts into consideration and it may not be possible for the revisional court again to further dilute the punishment which has already been diluted and reduced by the appellate court.

14. I do not find any merits in the instant revision petition, the same is accordingly rejected.

Sd/-
P. Sam Koshy
Judge