

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.511 of 2009**

- Mohammed Najir @ Lallu S/o. Late Mohammed Rashid, aged about 32 years, R/o. Ward No.12, Sasnjay Nagar, Talapara, Police Station Civil Line, Bilaspur, District Bilaspur (CG)

---- Applicant**Versus**

State of Chhattisgarh, Through Police Station Railway Police Force Bilaspur, District Bilaspur (CG)

---- Respondent

For Applicant	:	Shri CJK Rao, Advocate.
For respondent	:	Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****04.5.2016**

The applicant has filed instant criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 (for short 'the Code') as he was convicted by judgment dated 28.11.2008 in Criminal Case No. 585/2008. The Special Railway Magistrate, Bilaspur competent to try the case under the Railway Property (Unlawful possession) Act, 1966 (for short 'the Act 1966') convicted him for the offence under Section 3(b) of the Act 1966 and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.2,500/-, in default of payment of fine, to further undergo simple imprisonment for 75 days. Against the said judgment, the applicant has preferred Criminal Appeal No.04/09 before Ninth Additional Sessions Judge (FTC), Bilaspur and the learned Additional Sessions Judge vide judgment dated

22.10.2009 dismissed the appeal and affirmed the judgment passed by the trial Court.

2. Against the said judgment, the applicant has preferred the instant criminal revision stating that the trial Court erred in not appreciating the entire evidence in its right perspective, thereby committed illegality and infirmity. The appellate Court also committed error of law and facts while affirming the judgment passed by the concerned trial Court. The prosecution failed to examine any independent witnesses. Only the witnesses of the Railway Protection Force were examined and cited as witnesses which goes to show that the prosecution had not taken care for examination of any other independent witnesses. The trial Court as well as the appellate Court committed the mistake while convicting the applicant as the prosecution failed prove its case beyond reasonable and probable doubt, hence, it is prayed that the instant criminal revision may be allowed and the impugned judgment of conviction and sentence passed by the trial Court and affirmed by the appellate court may be set aside.

3. Heard learned counsel for the parties and perused the judgment impugned.

4. Learned counsel for the applicant submits that as instructed, he is not contesting the criminal revision on its merits regarding judgment of conviction under Section 3(b) of the Act 1966. On the other hand, he is confining his arguments only on the point of quantum of sentence. He would submits that the

incident is about 8 years 4 months old, a hill block and three small pieces of railway lines as shown in the seizure memo measuring 2 ½ ft., 2 ft. and 1 ft. were seized. The applicant has deposited the entire fine amount. During trial, he remained in jail from 02.01.2008 to 05.3.2008 i.e. for 64 days and thereafter from the date of judgment of the appellate Court i.e. from 22.10.2009 till order of suspension of sentence by this Court dated 29.10.2009 and also after few days of the said order, he furnished the bail bonds before the trial Court. With this, in total he has served the sentence for more than 102 days. Looking to the entire facts and circumstances, he may be sentenced for the period already undergone. The applicant is a labourer, he has purchased aforementioned railway property by mistake, he will not commit any offence in future and after the incident dated 01.1.2008 in the last about 8 years 4 months, he has not involved in any of the offence, liberty may be granted to the applicant to remain in the society by following the law.

5. On the other hand, learned State counsel opposes the arguments advanced by learned counsel for the applicant and submits that the applicant has committed subsequent offence for which the trial Court adequately punished and sentenced and the appellate Court affirmed the same. The sentence awarded by the trial Court is appropriate, which requires no any interference, hence, criminal revision may be dismissed on both counts.

6. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties and other facts of the case. Upon minute examination, it appears that before the Special Railway Magistrate, Bilaspur the prosecution has not adduced any documentary evidence regarding commission of offence earlier. Only on the alleged admission of the accused before the concerned investigating officer of Railway Protection Force that earlier also he was tried by the Special Railway Magistrate though the said statement is not barred under the provisions of Section 25 of Indian Evidence Act, 1872 as the investigating officer and the members of the Railway Protection Force does not fall under the category of Police Force, but to prove regarding commission of earlier offence, the investigating officer was required to file documents to show regarding commission of subsequent offence. Merely on the basis of the admission of the accused, the same cannot be held as conclusive proof regarding commission of earlier offence, though the applicant himself admitted when charge has been framed by the trial Court under Section 3(b) of the Act 1966. With this, the offence committed by the applicant, on admission comes under the ambit of Section 3(b) of the Act 1966. But the charge suffers infirmity. So far as the offence regarding entire facts are concerned, the applicant is not assailing the instant criminal revision for the conviction part. Even otherwise, on perusal of the entire evidence, I do not see any material to take a different view. In the considered view of this Court, conviction of the applicant

under Section 3(b) of the Act 1966 by the trial Court and affirmed by the appellate Court, requires no interference. The same is affirmed by this Court also.

7. So far as the sentence part are concerned, the incident is about 8 years 4 months old, the specification of the seized articles and also value of the said property was not mentioned in the seizure memo and in the charge sheet and looking to the material seized also with the facts that the applicant has deposited the entire fine amount though minimum sentence provided for the offence, in the considered view of this Court, as the applicant served the sentence for more than 102 days and as submitted the applicant was not involved in any other similar offence after 01.1.2008, in the considered view of this Court, the period already undergone along with fine sentence as awarded would serve the purpose and interest of justice with aforementioned entire facts.

8. Consequently, the instant criminal revision is allowed in part. Judgment of conviction under Section 3(b) of the Act 1966 by the trial Court, affirmed by the appellate Court, also the fine sentence awarded by the trial Court, affirmed by the appellate Court are hereby affirmed. However, substantive jail sentence awarded by the trial Court and affirmed by the appellate Court is modified and instead of RI for two years, the applicant is sentenced for the period already undergone by him. The applicant is on bail. He be set at liberty forthwith. His bail bonds

shall continue for further period of six months as per the requirement under Section 437A of the Code.

9. Criminal Revision allowed in part.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE