

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P. No. 654 of 2016**

State of Chhattisgarh through the RPF Railway, Jagdalpur, District- Bastar, CG.

---- Petitioner**Versus**

Ranveer Sing Dangi S/o Seva Singh, age 44 years, R/o Gandhi Nagar Ward, Jagdalpur, District-Bastar, CG

---- Respondent

For Petitioner/State : Shri B. Gopa Kumara, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****08/07/2016**

Heard on I.A. No. 01/16, application under Section 5 of the imitation Act for condonation of delay occurred in filing the appeal.

2. On due consideration and finding the reasons assigned in the application satisfactory, I.A. No.01 is allowed and the delay in filing the instant Cr.M.P. is condoned.

3. By way of the present Cr.M.P. leave has been sought to file an appeal against the judgment dated 28.12.2015 passed by the Chief Judicial Magistrate, Bastar in Criminal Case No.1356/2010 whereby the Court below has convicted the co-accused Bablu for the offence under Section 3 (a) of Railway Protection Unlawful Possession Act, 2012 (for short hereinafter referred as 'the Act') and acquitted the present respondent from the said offence.

4. Case of the petitioner is that on 30.06.2010 the Railway Protection Force found the co-accused Bablu in possession of around 25 & 28 meters length two copper wire belonging to the railway department used for the purpose of providing signal in the railway. Subsequently, on the

memorandum statement of co-accused Bablu, the present respondent Ranveer Singh Dangi was arrested and it is said that from his possession the RPF could recover 7 Kg. of copper wire. The matter was subsequently put to trial before the Chief Magistrate, Bastar in Criminal Case No. 1356/10. The Court below after concluding the trial vide impugned order dated 28.12.2015 convicted and sentenced the co-accused Bablu for the offence under Section 3 (a) of the Act and at the same time, acquitted the respondent from the said offence.

5. State counsel submits that the Court below has committed an error of law in not appreciating the fact that the recovery and the seizure from the respondent were duly proved by the prosecution and that there was no reason to disbelieve the prosecution witnesses nor has there been sufficient facts extracted from the cross-examination of the prosecution witnesses to disbelieve the same. Therefore, the order of acquittal against the respondent was not proper more particularly when the co-accused Bablu has been found guilty for commission of the said offence. He submits that the evidence of PW-4 Sunil Kumar and PW-8 Kiran Kumar has sufficiently established the recovery and seizure made from the respondent in this case but the same has been disbelieved by the Court below only on the ground of these two witnesses being department witnesses. Therefore, State counsel sought leave to appeal against the impugned judgment so far as the respondent is concerned.

6. Having considered the contentions put forth by the counsel for the State and on perusal of the record what is an admitted fact is that PW-4 and PW-8 both are personnels belonging to the RPF and therefore they cannot be said to be independent witness to substantiate the case of the prosecution. It is an admitted position from the materials which have been brought before the Court below that the place from where the recovery and seizure was made was a public place and there were a lot of inhabitants

available but only the departmental witnesses have been produced by the prosecution as witness to the recovery and seizure which creates great element of doubt on the prosecution story. This aspect has weighed much in the mind of the Court below as to the non availability of independent witnesses particularly when the place from where the recovery from the respondent was made was a crowded area and therefore, there is no reason why an independent witness could not be produced by the prosecution. In the absence of any independent witness to establish the recovery and seizure from the respondent, the impugned judgment cannot be said to be bad in law. It is settled position of law that even if a slightest of doubt is created in favour of the accused, the conviction cannot be ordered on that basis and therefore the Court below granting benefit of doubt in favour of the respondent acquitted him of the offence levelled against him. Thus, this Court does not find any illegality or infirmity committed by the Court below while passing of the impugned order acquitting the respondent of the offence under Section 3 (a) of the Act calling for interference by this Court.

7. Thus, the present Cr.M.P. being devoid of merit deserves to be and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**