

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Revision 97 of 2008
Date of Decision: July 4, 2016.**

Sanjay Kumar	Versus	Petitioner
The State of Haryana and another		 Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Deepak Aggarwal, Advocate

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S.MANN, J. (Oral)

The petitioner alongwith Bijender @ Kalu was tried for committing offence punishable under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 (here-in-after referred as '**the Act**'). Vide judgment and order dated 22/26.2.2007, learned Additional Chief Judicial Magistrate, Panipat, convicted them for the aforementioned offence and sentenced them to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo simple imprisonment for two months. The fine imposed upon the petitioner was deposited by him there and then.

Aggrieved of his conviction and sentence, the

petitioner preferred an appeal but remained unsuccessful as the same came to be dismissed by learned Additional Sessions Judge, Panipat, vide judgment dated 4.1.2008. Still not satisfied, the petitioner filed the present revision which stood admitted and he is currently on bail.

The facts of the case have been narrated by the lower appellate Court in para 2 of its judgment, which read as under:-

“That on 11.7.2000, Sub-Inspector Shiv Ram alongwith Head Constable Dharam Pal and Constable Umed Pal Singh from Police Post, Railway Protection Force, Panipat reached at Railway Station Samalkha by a passenger train where they met Constable Dalbir Singh from the same Police Post. They all started walking down towards Railway Station Bhodwal Majri on patrolling. When they crossed gate No. 42/C, Kewal Singh and Ratna, both railway employees met them and disclosed that two persons were seen roaming on the railway line in suspicious circumstances and they had kept some railway property hidden near the railway line at KM No.70/00. They conducted a Naka at that very place to nab the culprits. At about 10.30 O'clock, both the accused came there with a rickshaw and started loading the hidden material in the same one by one. After loading said material, when they were proceeding further, they were nabbed. On checking 11 pieces of CST plates and one gunny bag containing 47 keys of railway tracks were recovered from the rickshaw. The

accused could not produce any proof for lawfully possessing the said railway property. However, they disclosed that they had lifted the said railway property from the railway line in the area of village Janjara and were carrying the same in rickshaw, but their rickshaw got punctured. They hid said material at that place and went to get the rickshaw repaired. After getting the rickshaw repaired, they again came to that place to carry further said material. They were arrested. Said material alongwith rickshaw was taken into possession. Statements of the witnesses were recorded. Both the accused were produced in the Court. On completion of investigation, complaint was filed against them in the Court of learned Addl. Chief Judicial Magistrate, Panipat, for the offence under Section 3 of the Act.”

After hearing learned counsel for the parties and on going through the judgments passed by the Courts below, this Court finds that the prosecution had brought cogent and convincing evidence on the file to bring home guilt against the petitioner. He alongwith co-accused Bijender @ Kalu was found in possession of 11 pieces of CST plates and 47 numbers of railway keys by SI Shiv Ram, who was leading the team conducting patrol duty near Gate No. 42/C towards Railway Station, Bhorwal Majri and apprehended them near kilometer No.70 while loading the aforesaid railway property in the rickshaw trolley. His testimony was duly corroborated by PW2 Constable

Dalbir Singh, PW4 Constable Umed Pal Singh and PW6 Constable Kewal Singh. Further during the investigation of the case, both the accused had suffered disclosure statements regarding theft of the aforesaid railway property. The said disclosure statements were admissible in law as an Officer of R.P.F. making an inquiry in respect of offence under Section 3 of the Act is not a police officer. In view of the above, no ground is made out for any interference in the conviction of the petitioner.

Coming to the question of sentence, it may be noticed that Section 3 of the Act provides for imposition of imprisonment upto five years with minimum imprisonment of one year. However, for adequate and special reasons, the said punishment can be less than the minimum prescribed.

As per the petitioner, he is facing the agony of criminal prosecution for the last about sixteen years. He is a poor person and the only one to look-after his old parents and small children. He is also not shown to be a previous convict. As per the custody certificate produced by learned State counsel, he has already undergone a period of one month and twenty eight days. It has also been stated therein that neither there is any other case pending against him nor he stood convicted in any other case.

Having heard learned counsel for the parties and keeping in mind the aforementioned circumstances, this Court is

of the view that adequate and special reasons exist for awarding sentence of imprisonment for less than one year. Accordingly, a case is made out for reducing the sentence of imprisonment of the petitioner to the one already undergone by him.

Resultantly, the conviction of the petitioner under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs.1,000/- is, however, enhanced to Rs.2,000/-. The enhanced amount of fine be deposited by the petitioner with the trial Court within three months from today, failing which, he shall be required to undergo simple imprisonment for two months.

But for the modification in the quantum of sentence of imprisonment and fine, as indicated above, the revision fails and is, therefore, dismissed.

July 4, 2016
amit rana

(T.P.S. MANN)
JUDGE