

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

Crl. Revision 1068 of 2009
Date of Decision : May 17, 2016

Dalbir Singh

.....Petitioner

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Brijender Kaushik, Advocate

Mr. Dhruv Dayal, Deputy A.G., Haryana

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

The petitioner alongwith Jai Singh and Jasbir Singh were tried for committing the offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 (here-in-after referred to as '**the Act**') on the allegations that on 7.9.2003 all of them were found in possession of three plastic bags containing six rear cover aluminium and one front cover excel aluminium which had railway mark on them. Vide judgment and order dated 13.11.2007, learned Special Railway Magistrate, Haryana, Ambala Cantt. convicted them for the aforementioned offence and sentenced them to undergo rigorous imprisonment for one month. Aggrieved of their conviction and sentences, only the petitioner and Jai Singh filed separate appeals. Vide judgment dated 17.4.2009, learned Additional Sessions Judge, Ambala affirmed

the findings of the learned Special Railway Magistrate qua their conviction under Section 3 of the Act. The sentence of imprisonment was upheld. However, it was ordered that they would undergo simple imprisonment for one month and not rigorous imprisonment for one month. Still not satisfied, the petitioner preferred the present revision which was admitted on 28.4.2009. Subsequently, on 1.5.2009, this Court was pleased to suspend the sentence of the petitioner and released him on bail.

The case of the prosecution has been noticed by the trial Court in para 2 of its judgment which is reproduced here below:-

“The matrix of the case are that on 7.9.2003, ASI Rattan Singh and HC Mahavir Singh alongwith other RPF personnel were on patrolling duty in the area railway station, Jagadhri Workshop. On suspicion, they apprehended three persons namely Dalbir Singh son of Shri Inder Singh, Jai Singh son of Shri Chanda Ram and Jasbir Singh son of Shri Deputy Ram, who were having in their possession three plastic bags containing six rear cover aluminium and one front cover excel aluminium and all these items had railway mark on them. It is further alleged that all these items were railway property and all the three accused namely, Dalbir Singh son of Shri Inder Singh, Jai Singh son of Shri Chanda Ram and Jasbir Singh son of Shri Deputy Ram could not produce any licence or authority to carry such property and had confessed

to have stolen the same. Statements of witnesses were recorded. Accused were formally arrested. The case property was taken in custody and were got tested from the railway expert, as per whom the value of the items was Rs. 4700/-. On completion of usual formalities of investigation, complaint was presented in the Court for trial of accused for the commission of offence punishable u/s 3 R.P. (U.P) Act, 1966.”

Having heard learned counsel for the petitioner, this Court finds that the prosecution has been able to prove the charge under Section 3 of the Act against the petitioner as he was found in possession of the property belonging to the railways. In this regard, reference may be made to the testimonies of PW1 Rajinder Kumar, J.E., PW2 ASI Harbans Singh, PW3 ASI Mahavir Singh, PW4 Satish Chander, Senior Section Engineer and PW5 SI Sharan Singh. The petitioner could not bring any material on the record from which it could be said that he had licence or authority to carry the railway property. Under these circumstances, the conviction of the petitioner under Section 3 of the Act is found to be meritorious.

Coming to the quantum of sentence, the law requires imposition of minimum imprisonment for one year on an offender held guilty under Section 3 of the Act. However, for adequate and special reasons, the said punishment can be less than the minimum prescribed. At the same time, it may be noticed that the

trial Court itself awarded only one month imprisonment to the petitioner. As per the custody certificate produced by the learned State counsel, the petitioner has already undergone an actual sentence of twenty two days. The petitioner is facing the agony of criminal prosecution for the last about thirteen years. He is not shown to be involved or convicted in any other case.

Taking into consideration the facts and circumstances of the case, this Court is of the view that the petitioner need not be sent behind the bars, once again, for undergoing the remaining sentence of imprisonment imposed upon him. Ends of justice would be suitably met if his sentence of imprisonment is reduced 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.

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

May 17, 2016
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(T.P.S. MANN)
JUDGE