

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26574 of 2012

Arising Out of PS.Case No. -367 Year- 2010 Thana -null District- LAKHISARAI

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Md. Faiyaz Ahmad S/O Late Mumtazul Haque Resident Of Mohalla- Belan Bazar,
P.S.- Kasim Bazar, District- Munger At Present Posted As Working As E.C.R.C.,
Porab Sarai Reservation Office, Maldah Division, Eastern Zone, Kolkata

.... Petitioner

Versus

The Union Of India

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Vinay Ranjan, Advocate

For the Opposite Party : Mr. Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

C.A.V. JUDGMENT

Date: 24-07-2017

This petition has been filed by the petitioner Md. Faiyaz Ahmad under Section 482 of the Code of Criminal Procedure, 1973 challenging order taking cognizance dated 3.8.2012 passed by learned Railway Judicial Magistrate 1st Class, Kiul in Case No.367(C) of 2010 arising out of RPF/Post Jamalpur Case No.60 of 2010 dated 23.4.2010 whereby he has taken cognizance of the offence under Section 3 of Railway Property (Unlawful Possession) Act, 1966.

2. The petitioner at the relevant point of time was posted as Reservation Clerk at Purabsarai Railway Station under Eastern Railway.

3. The prosecution case in brief is that on 22.4.2010 a surprise check was conducted by railway officials at reservation counter Purabsarai Railway Station, one person namely Md. Shakil of



Gulzarpokhar, Munger was found inside the reservation counter and was found in possession of one reserved ticket bearing no.38542686, the ticket was in the name of some other person neither it was in his name nor of his family members, in addition to that he was also found in possession of five filled reservation slips. Md. Shakil accepted that he was engaged in unauthorized business of purchase and sell of reserved railway ticket and sell those tickets taking extra money. The petitioner was the Reservation Clerk and the said ticket was given by him. A seizure list of seized ticket and five filled in reservation slips recovered from Md. Shakil, who was inside the reservation counter manned by the petitioner, was prepared and statement of Md. Shakil was also recorded as well as statement of other witnesses. The petitioner Md. Faiyaz Ahmad in his statement has stated that Md. Shakil entered inside his cabin and by threatening him asked him for giving a reserved ticket so out of fear he had given him a reserved ticket. The case was investigated by the Incharge RPF, Jamalpur, Eastern Railway and submitted prosecution report finding a prima facie case being made out under Section 143 of the R.P. (U.P.) Act against Md. Shakil and Md. Faiyaz. However, learned Railway Magistrate has taken cognizance under Section 3 of the Railway Property (Unlawful Possession) Act.

4. Learned counsel appearing on behalf of the petitioner submitted that in the prosecution report submitted by the Investigating



Officer the petitioner Md. Faiyaz was not made an accused only Md. Shakil is shown in the accused column. Further submission is that the cognizance has been taken under Section 3 of the R.P.(U.P.) Act, 1966 though in the prosecution report, offence under Section 143 of the said Act is found to have been committed. It is also submitted that in departmental proceeding, initiated against the petitioner, he was found only careless and warned to be more alert and more cautious in future and it is concluded that charge memorandum could not be substantiated. Further, submission is that the entire service record of the petitioner is un-blemished, moreover no ingredient of Section 3 of RPUP Act is made out in this case against the petitioner.

5. Learned counsel appearing on behalf of the Railway submitted that the petitioner was at the relevant point of time Reservation Clerk and Md. Shakil was his tout and the petitioner issued reserved ticket in the name of some fictitious persons to Md. Shakil so his connivance is apparent so Md. Shakil obtained unlawfully a reserved railway ticket in name of fictitious person. The petitioner was engaged in selling reservation ticket through tout moreover under the departmental proceeding the sale proceed of tickets was found short of Rs.3757/- and the price of the reserved ticket issued to Md. Shakil was of Rs.3756/- and deficit amount was deposited by the petitioner on that very day, so in the present case prima facie case under Section 3 of the R.P.(U.P.) Act is made out



against the petitioner.

6. Having considered rival submissions of both sides and on perusal of record, I am of the view that the allegation against the petitioner is that being a reservation clerk of the railway in connivance with Md. Shakil, a tout, was engaged in selling reservation ticket on premium amount. According to Section 3 of the RPUP Act if any person found in possession of any railway property is reasonably suspected of having stolen or unlawfully obtained shall be punished unless he proves that railway property came into his possession lawfully. The reservation ticket seized from Md. Shakil was neither in his name nor in the name of his family members. Moreover, Rs.3576/- the cost of the ticket was also found short from the cash counter manned by the petitioner. Therefore, a prima facie case under Section 3 of R.P.(U.P.) Act is made out against the petitioner also. Accordingly, there is no illegality in the impugned order of taking cognizance of the offence under Section 3 of the R.P.(U.P.) Act against the petitioner.

7. Thus, finding no merit in this application, it is dismissed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	25-04-2017
Uploading Date	03-08-2017
Transmission Date	03-08-2017

