

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1295 of 2016**

Union of India, Railway Protection Force, PS Kirandul, Distt. South Bastar, Dantewada (CG).

---- **Petitioner**

Versus

Dhanraj Singh, S/o Goverdhan Singh, aged about 24 years, R/o Indra Nagar, Ward No.1, Patan, PS Patan, Distt. Durt (CG).

---- **Respondent**

For Petitioner

Shri HS Ahluwalia, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

02/01/2017

1. Heard on IA No.1, which is an application for condonation of delay in preferring this petition.
2. Taking into consideration the reasons assigned in the application and date-wise details explaining the delay, this court is of the opinion that sufficient reasons have been given to condone the delay. Accordingly, IA No.1 is allowed and delay of 285 days in filing this petition is condoned.
3. Heard on admission.
4. The present petition has been preferred assailing the order dated 29.09.2016 passed by the Chief Judicial Magistrate, Dantewada, in Criminal Case No.129 of 2013.
5. The brief facts of the case is that on 23.03.2012, the respondent who is

the driver of Mini Truck bearing registration No.CG-04-C-5065 was found carrying certain iron scrap materials by the police authorities of Police Station Dantewada. Later on immediately the matter was reported to the RPF post at Kirandul in this regard and thereafter the RPF seized the articles and conducted an investigation. Statement of respondent and other witnesses were recorded and in due course of time they reached to the conclusion that the iron scrap materials seized from the Truck which was being operated by the respondent was railway property and that the said property was stolen by the respondent.

6. Accordingly, a case under Section 3(a) of The Railway Property (Unlawful Possession) Act, 1966 (for short, the Act) was registered against the respondent in Crime No.3 of 2013 registered at RPF police Station, Kirandul and the matter was put to trial before the court of Chief Judicial Magistrate, Dantewada. The prosecution in all has examined six witnesses.
7. After completion of evidence, the court below reached to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubts by which the offence under Section 3(a) of the Act could have been proved and accordingly acquitted the respondent from the said charge. It is this impugned judgment of acquittal which is sought to be challenged by the petitioner-Railway.
8. Counsel for the petitioner submits that it is a case where the court below has not properly appreciated the evidence of PW-6, B.K. Jaina, who had conducted the investigation on receipt of complaint from the police

Station Dantewada. According to the petitioner, the respondent in the instant case during the course of the investigation had specifically confessed before PW-6 in respect of having stolen the said property. Thus, the case of the prosecution stood proved. He further referred to the evidence of PW-3, Vinod Tiwari, the person who had seized the vehicle at the first instance and then reported the matter to the RPF, Kirandul. It is also submitted that it is a case where the statement of PW-2, Kumar Kaushal, also has not been appreciated in its correct perspective as PW-2 has specifically deposed before the court below that the articles which were seized from the possession of the respondent were infact articles which are used in the railway track fitting and also in railway wagon. Thus, the property being that of the railway stands established and yet the court below has acquitted the respondent not believing the statements of PW-2, PW-3 and PW-6.

9. According to the appellant, it is a case where the case of the prosecution stood established beyond all reasonable doubts from the statement of PW-6, B.K. Jaina, Sub Inspector of RPF, Kirandul. Thus, prayed for grant of leave to appeal against the impugned judgment of acquittal.
10. Having considered the submissions of counsel for the petitioner and on perusal of record what is reflected from the proceeding that drawn before the court below is the fact that seizure witness namely Brajesh Singh and Kaushal Yadav, the two persons before whom PW-3 is said to have allegedly recovered the stolen articles from the possession of the respondent, for the reasons best known, have not been examined at all

by the prosecution. Thus, the very seizure of the articles from the possession of the respondent becomes doubtful. The fact that there is a statement in favour of the prosecution by PW-3 as well PW-6 by itself cannot be a sufficient ground for accepting the contention of the prosecution without there being any corroboration by any independent witness and the respondent could not have been convicted relying only upon the deposition of PW-3 and PW-6.

11. Another aspect which has also taken note of by the court below is the fact that the prosecution has not been able to establish the fact that alleged property seized from the possession of the respondent was infact the property belonging to the petitioner-Railway. Though the prosecution relies the statement of PW-2 in this regard, but all that PW-2 has stated is that these materials are used in railway track fitting and in railway wagon, but the core issue whether the property seized was infact of the railway property or not, there is no evidence either ocular or documentary. Neither the articles seized bear the symbol of railways so as to draw an inference that it was railway property. The investigation with regard to owner of the said truck or whether the goods were lifted by the owner/driver is also not reflected from the record.
12. The sole document i.e. the statement recorded of the accused person alone cannot be a strong ground for convicting him for the offence unless it has been corroborated with cogent and strong evidence brought by the prosecution during the course of trial. In the light of all these specific deficiencies, if the court below has granted advantage to

the respondent-accused and have acquitted him of the charge, it cannot be said that the court below has committed any illegality or infirmity while acquitting the respondent-accused.

13. Thus, in the opinion of this court, no strong case for grant of leave to appeal is made out. The petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge