

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1055 OF 2005

JUDGMENT:

Accused No.2 in C.C. No.26 of 1999, who is appellant in Criminal Appeal No.311 of 2004, is the present revision petitioner. Questioning the conviction recorded by the XIII Metropolitan Magistrate for Railways, Secunderabad, under Section 248 (2) of the Code of Criminal Procedure, 1973 (for short 'Code') for the charge under Section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966, and sentence of rigorous imprisonment for a period of one year inflicted and to pay a fine of Rs.1,000/- in default to suffer sentence of simple imprisonment for a period of one month, in C.C. No.26 of 1999, by judgment, dated 29.10.2004, he preferred Criminal Appeal No.311 of 2004 before the Special Judge for the trial of offences under the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act - cum - VI Additional Metropolitan Sessions Judge, Secunderabad, and he was unsuccessful as the learned Sessions Judge confirmed the conviction and the sentence of imprisonment and fine. That is how he approached this Court by preferring the present Criminal Revision Case under Sections 397 and 401 of the Code.

2. Touching certain relevant facts, the prosecution case has been that as many as ten accused have been arraigned. They indulged

in committing theft of railway property, selling the stolen property, receiving stolen property, shifting the same by assisting the main accused. Thus, accused Nos.1 and 2 are habituated in committing theft of railway property; accused Nos.3 and 4 used to sell the stolen property, accused Nos.5, 6 and 7 are the receivers of the stolen property, accused No.9 is the driver of the lorry, in which accused Nos.1 and 2 shifted the stolen property, accused No.10 used to procure the CST-9 plates and 9OR railway pieces from accused Nos.1 and 2 through accused Nos.3 and 4 by shifting the material through DCM lorry.

3. The learned Magistrate having observed due formalities after taking cognizance, examining the accused persons under Section 239 of the Code, proceeded with trial. The prosecution examined as many as fourteen witnesses as PWs.1 to 14 and marked Exs.P-1 to P-65. One D. Shiva Kumar was examined as DW.1 and Exs.D-1 to D-5 were marked on behalf of accused.

4. The learned Magistrate, on appraisal of evidence, both, oral and documentary, let in by the prosecution, found accused Nos.2 to 7 and accused No.9 were unlawfully dealing with the theft material of railways and convicted them under Section 248 (2) of the Code. The learned Magistrate inflicted the sentence of rigorous imprisonment for a period of one year to each of them, besides imposing a fine of Rs.1,000/- with default sentence and acquitted accused No.10. The

case against accused No.1 was split up and numbered as C.C. No.15 of 2002. Accused No.8 was discharged by order, dated 06.01.2003 in Crl.M.P. No.1305 of 2002.

5. When the aforesaid accused preferred the appeal, the learned Sessions Judge, on his independent analysis of evidence on record, believed the prosecution case and finding that no error crept in, in the findings recorded by the learned Magistrate, affirmed the conviction and sentence of imprisonment and fine.

6. So far as the present revision petitioner's involvement is concerned, upon confession being made by accused No.1 and the revision petitioner at their instance, from their possession under a cover of *mahazar* in the presence of independent witnesses, two CST-9 plates were recovered. Their confessional statements were led the police to arrest the remaining accused persons in the course of investigation.

7. Questioning the concurrent findings recorded by the Courts below, accused No.2 preferred the present Criminal Revision Case.

8. In fact, the present revision petitioner approached this Court without surrendering himself before the learned Magistrate on confirmation of conviction and sentence of rigorous imprisonment and fine and, therefore, this Court on 07.07.2005, observing that the petitioner was absent on the date of judgment rendered by the learned

appellate Court, directed the Registry to place the petition after his surrender. On 15.07.2005, since the learned counsel for the petitioner reported that the petitioner surrendered before the learned Magistrate's Court on 14.07.2005 and committed to the jail for serving out the sentence of imprisonment, this Court suspended the sentence of imprisonment by granting bail, pending disposal of the present Criminal Revision Case.

9. Since then though, at least half a dozen times the case came up for hearing, the revision petitioner was not getting ready. When there was no representation for the revision petitioner and the present Criminal Revision Case relates to the year 2005, on 09.11.2017, the Registry was directed to list the matter under the caption 'for orders'. Thereafter, on 16.11.2017, Smt. Jayanti Devi, learned counsel, representing Sri G. Vidhyakar Rao, learned counsel for the revision petitioner, since sought time, the Registry was directed to list the matter on 23.11.2017, also requiring the learned Additional Public Prosecutor to verify and give the details as to whether other accused persons have also preferred any Criminal Revision Cases. On 23.11.2017, again there was no representation for the revision petitioner, and the learned Additional Public Prosecutor submitted that except the present Criminal Revision Case, no other accused persons preferred any Criminal Revision Cases.

i) To hear the learned counsel for the revision petitioner, again adjourned to 28.11.2017, on which day, the learned counsel sought time and, therefore, adjourned to this day.

10. Heard Sri G. Vidhyakar Rao, learned counsel for the revision petitioner, and the learned Additional Public Prosecutor for the State of Telangana.

11. The learned counsel would submit that so far as other accused persons are concerned, except accused No.1, this Court in Criminal R.C. Nos.980, 993, 1002, 1003 and 1056 of 2005, by his judgments, dated 27.01.2011, 27.04.2011, 23.12.2010, 23.12.2010 and 28.12.2012, respectively, modified the sentence of imprisonment to that of the period they have already undergone and as far as the fine of Rs.1,000/- imposed by the learned Magistrate's Court is concerned, this Court directed to pay additional fine of Rs.9,000/- before the learned Magistrate's Court within two (2) months with default sentence of simple imprisonment for a period of two (2) months. Copies of the orders adverted to by the learned counsel for the petitioner, are filed for perusal.

12. When the other accused are treated alike, certainly, the present accused cannot be an exception. Therefore, the period of imprisonment is modified to that of the period he has already undergone in prison maintaining the fine amount already imposed by

the learned Magistrate Court and affirmed by the learned Sessions Judge. However, as regards other directions given in other revision cases, a sum of Rs.9,000/- towards fine ordered by this Court, the same is not imposed in this case for the reason that there is no request for enhancement.

13. Accordingly, the Criminal Revision Case is disposed of with the above modifications. The orders in Criminal Revision Case Nos.980, 993, 1002, 1003 and 1056 of 2005, dated 27.01.2011, 27.04.2011, 23.12.2010, 23.12.2010 and 28.12.2012, respectively, shall form part of the record.

As a sequel thereto, miscellaneous petitions, if any, pending in the present revision, stand closed.



A. SHANKAR NARAYANA, J

December 04, 2017.

Mgr/PV