

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 329 of 2006

Order reserved on 23.01.2019

Order pronounced on 29 .08.2019

Abbas Ali S/o. Late Dilawar Ali, aged about 55 years, R/o. Rameshwar Nagar, P.S. Khamtarai, Tehsil & District Raipur, CG.

---- Applicant

Versus

Union of India through Ministry of Railways New Delhi.

---- Respondent

For Applicant : Shri Santosh Bharat, Advocate

For Respondent/Railways : Shri Abhishek Sinha, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

On 27.03.2004 when a team consisting of R.C. Mishra (PW-2) - the Inspector of RPF, Head Constable M.M. Chouhan, Constable R.B. Pandey and one I.A. Khan (PW-3) was on petrolling duty, it nabbed the accused/applicant herein carrying two pieces of brake blocks, four pieces of shackle pin, two pieces of shackle and four pieces of shackle stones, on the carrier of his bicycle without possessing any document in respect of the same. After effecting seizure, the articles were examined by the Railways and on that being done the same were found to be the Railway Property. During investigation, it was revealed that previously also vide order dated 30.03.2001 passed in Criminal Case No. 1986/1996 the applicant was convicted under Section 3 (a) of the Railways Property (Unlawful Possession) Act (herein after referred

to as “RPUP Act” for convenience) . Thereafter the complaint was made against the accused/applicant under Section 3(b) of the RPUP Act and investigation moved ahead.

2. Learned Special Magistrate (Railway) Raipur vide judgment dated 28.01.2006 passed in Criminal Case No. 2019/2004 found the accused/applicant guilty under Section 3(b) of the RPUP Act and sentenced him to undergo RI for two years with fine of Rs. 500/- plus default stipulation. On appeal being preferred, the findings recorded by the learned Magistrate have been confirmed vide impugned judgment dated 04.05.2005 passed in Criminal Appeal No. 32/2006.

3. Counsel for the accused/applicant submits that thus the prosecution has failed to prove that the property seized from the accused/applicant was the Railway Property but yet both the Courts below have convicted and sentenced him as described above and thereby committed a gross legal error in doing so. He further submits that the property so seized did not carry any identification mark of the Railways and, therefore, it cannot be said to be its Property.

4. Counsel for the respondent/Railways however, supports the judgment impugned holding it to be just and proper and submits that no illegality in the same is there to call for any interference in this revision.

5. Though the material on record does not indicate that the property seized from the accused/applicant was having any identification mark of the Railways yet Gulabchand (PW-1) – the Section Engineer of the Railways has categorically stated that the

said property was exclusively used by the Railways and normally it is not available in the open market. He has also stated that the accused/applicant was caught carrying the said property in the railways track itself and, therefore, the objection raised by the accused/applicant that it was not railways property is not worth acceptance. R.C. Mishra (PW-2) has also supported the case of the prosecution stating that on being asked the accused/applicant admitted that he committed theft of the articles being carried by him on his bicycle. Thereafter, he has described the articles including seizure thereof made under Ex. P-1 and none production of any receipt or authority letter with him regarding the same. I.A. Khan (PW-3) has also supported the case of the prosecution.

6. Thus there is ample evidence which speaks against the accused/applicant to the effect that on the date of incident he had committed theft of the aforementioned articles belonging to the Railways. Likewise, as the bicycle of the accused/applicant was used for carrying the stolen Railways Property, its confiscation ordered by the Court below also does not call for any interference.

7. In aforesaid view of the matter the judgment impugned is held to be based on the material collected by the prosecution and being so it is hereby maintained by dismissing the present revision petition.

Sd/-

(Vimla Singh Kapoor)

Judge