

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 204 of 2018

Order Reserved on 16/11/2018

Order delivered on 30/01/2019

1. J. Santosh Kumar S/o Late J. Yograj, Aged about 26 years R/o Buniyad Nagar, Ward No. 5, P.S. Khamtarai, Raipur, District Raipur (C.G.).
2. Panchlal Agariya S/o Late Mithailal Agariya S/o Late Mithailal Agariya, Aged about 30 years R/o Buniyad Nagar, Bhanpuri Raipur, Tenent in the house of Hira Dubey, PS Khamtarai, District Raipur (C.G.).

--- Applicants

Versus

Union of India, through RPF Post, WRS Raipur, District Raipur, Chhattisgarh

---- Respondent

For Applicant	:	Mr. Rajesh Kumar Tiwari, Advocate.
For Respondent	:	Mr. Ghanshyam Patel and Mr. Amit Buxy, Advocates

Hon'ble Shri Justice Arvind Singh Chandel

CAV Order

1. This revision has been preferred against judgment dated 22/12/2017 passed by the First Additional Judge to the Court of First Additional Sessions Judge, Raipur in Criminal Appeal no. 263/2017 affirming the order of conviction and sentence dated 12/09/2017 passed in Criminal Case No. 1610/2013 by the Special Railway Magistrate, Raipur convicting both the Applicants under Section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966 and sentenced Applicant No. 1 to undergo SI for 4 days with fine of Rs. 6000/- and sentenced Applicant No. 2 to undergo SI for 2 days with fine of Rs. 6000/-.

2. As per prosecution story, on 03/02/2013 Sub Inspector of the RPF Post, WRS Raipur during patrolling stopped the Applicants on the way and found them in possession of Unit Cam Shaft in their vehicle namely Hero Honda Pleasure bearing registration No. CG04 KB 8313. On being asked, they could not produce any document in respect of the above articles. It is alleged that at the time of incident, Applicant No. 2 escaped from the spot. Applicant No. 1 disclosed the name of Applicant No. 2 who was escaped from the spot. During course of investigation, confessionol statement of Applicant No. 2 was recorded by B.K. Choudhary (PW2) vide Ex.P.19. After completion of investigation, a charge-sheet was filed before the trial Court. The learned Special Court, Raipur framed the charges against the Applicants and convicted them as mentioned in paragraph one of this order, which was also affirmed by the Appellate Court. Thus, this revision.
3. This revision has been preferred against the above judgments of Appellate Court as well as of trial Court on the ground that both the Courts below have failed to properly appreciate the evidence and document available on record. The learned Court below committed an error of law by convicting the Applicant relying solely on the statement of prosecution witnesses who are officials of the Railway itself. No independent witness has been examined.
4. Counsel for the Applicant submits that both the Applicants are workers of Railway. They have been falsely implicated in the case. The Courts below has only relied the evidence of interested witnesses. In these circumstances, the Applicants are entitled to get benefit of doubt.
5. Counsel for the State opposes the same and submits that after appreciation of evidence available on record, both the Courts below has

rightly convicted the Applicants.

6. I have heard counsel for the parties and perused the record minutely.
7. On perusal of the record of trial Court, I do not find any illegality in concurrent finding of both the Courts relying to the fact that both the Applicants were found in possession of Unit Cam Shaft which the property of Railway. Though all the witnesses were examined by the prosecution who are official of railway, merely on this ground their statement can not be discarded. In my considered opinion and after appreciating the evidence available on record, the trial Court has rightly convicted the Applicants under Section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966. I do not find any illegality in conviction of the Applicant, thus the conviction of the Applicants is maintained.
8. With regard to sentence part, from perusal of record, it is clear that the Applicants are government servant and are working with the Railway and they are facing the *lis* since 5 years and there is no known criminal antecedent registered against them. Taking this into consideration and the manner and circumstances in which the offence was committed, I considered present to be a fit case to extend the benefit of Section 4 of Probation of Offenders Act to both the Applicants. Therefore, the sentences awarded to each of the Applicants are set-aside. In spite of that it is directed that within a period of 1 month from today each of the Applicants, in accordance with law, shall submit a personal bond in sum of Rs. 20000/- with one surety in the like amount for a period of 6 months to maintain piece and be of good behavior to the satisfaction of the trial Court, in the event of their committing breach of condition of the bond, to go and receive the sentence.

9. Though, the conviction is maintained, but the Applicants are given benefit of Section 4 of the Probation of Offenders Act in the terms mentioned above.
10. To the extent indicated above, the revision is disposed of.

Sd/-

(Arvind Singh Chandel)
Judge

Rahul