

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1358 of 2003

GANESH SARKAR
VS.
STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Abhra Mukherjee, Adv.
Mr. Sauradeep Dutta, Adv.

For the Opposite Parties : Mr. Amajit De, Adv.

Hearing concluded on : 11th November, 2022

Judgement on : 11th November, 2022

Siddhartha Roy Chowdhury, J.:

1. Challenge in this revisional application is to the judgement passed by the learned Additional Sessions Judge at Raghunathpur, Purulia in Criminal Appeal No. 23 of 1999 by which the learned Appellate Court was pleased to affirm the judgement and order of conviction passed by the learned Chief Judicial Magistrate, Purulia.
2. Briefly stated, one Sri S.K. Das, S.I. of R.P.F. Adra set the criminal administration justice into motion, by registering a complaint on 15.5.1995 against Sri Ganesh Sarkar, an employee of S.E. Railway, alleging inter alia that on 15.5.1995 at about 11.15 hours one Mr. R. N. Tripathi A.S.I. R.P.F. found a person going towards the main gate

with jute bag in his hand in a suspicious manner. The said man entered into a small room. Mr. Tripathi followed that man, searched the small room and found few M.S. plates were lying on the floor of the said room. Mr. Tripathi detained the said man and asked S.S./Dy.S.S./ W.R.S. to come to spot. Sri S.K. Das. S.I. R.P.F. and A.S.I. A.K. Putatunda also came there. On interrogation the person disclosed his identity as Ganesh Sarkar but failed to produce any legal or valid receipt or authority to justify the lawful possession of those properties. Accordingly, those properties were seized in presence of available witnesses and Sri Sarkar was arrested under Section 6 of R.P. (U.P.) Act, 1966. A Complaint case was accordingly registered being Case No. 14 / 95 dated 15.9.95 under Section 3(a) R.P. (U.P.) Act against the accused person. Charge was framed under Section 3 (a) R.P.(U.P.) Act against Sri Sarkar on 06.9.1997 and pleading his innocence who claimed to tried.

3. Learned Trial Court having considered the testimony of ten witnesses examined on behalf of the prosecution recorded an order of conviction and released the convict on probation under Section 4 of the Probation of Offenders Act, 1958.
4. Aggrieved by the said judgment the convict preferred an appeal being Criminal Appeal No. 23 of 1999 before the learned Additional District Judge, Raghunathpur. But the learned Appellate Court did not find any infirmity with the judgement of learned Trial Court and was pleased to dismiss the appeal.
5. Challenging in the said judgement of learned Appellate Court the convict has preferred the application under consideration.

6. Mr. Abhra Mukherjee, learned counsel appearing on behalf of the petitioner submits that though the petitioner was released on probation but there was no lawful reason for him to get stigmatized being convicted under Section 3(a) of the R.P. (U.P.) Act.
7. Drawing my attention to the judgement passed by the learned Appellate Court and to the testimony of P.W. 1, K.S. Sarbadhyakya, Mr. Mukherjee strenuously argued that nothing was recovered from the possession of the petitioner and the judgement passed by the learned Trial Court and affirmed by the learned Appellate Court demonstrate how learned Courts below failed to appreciate the evidence of PW 1, K.S. Sarbadhyakya and built up nexus between M.S. plates kept on the floor of the room within the workshop compound and Genesh Sarkar, the Railway employee with figment of imagination.
8. Refuting such contention, however, Mr. Amajit De, learned Counsel for the Opposite Party vehemently argued that factum of possession of railway property with the petitioner has been established by overwhelming evidence adduced by not only R.P.F. personnel, even by the superior officer of the convict petitioner. The convict admitted that he was carrying the goods but without any lawful authority. Once such possession was established, onus shifted upon the convict to justify the possession, which he could not. Thereby he made himself culpable for committing offence under Section 3(a) of the R.P.(U.P.) Act, 1966. According to Mr. De learned Appellate Court was absolutely justified in expressing his agreement with the view of learned Chief Judicial Magistrate who recorded the order of conviction. However,

lenient view was taken by both the Court in not sending the petitioner to correctional home for the offence committed by him.

9. Section 3(a) of R.P. (U.P.) Act says as follows:-

“3(a) - for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;”

10. The crucial question in this lis is the possession of the railway property; from the oral testimony of P.W. 1, I find that the railway properties were found lying on the floor of a small room used as temporary store room of the workshop. During working hours articles are kept in the aforesaid temporary store room as stated by P.W. 1 K.S. Sarbadhyakya, the Superintendent of Wagon Repairing Shop, South Eastern Railway, Adra. During the lunch break employees used to keep articles and instruments in the aforesaid store room and for that no permit or authorization was required.

11. P.W. 1 further stated that Mr. Ganesh Sarkar the accused told him that before lunch break he came there from his section for keeping some articles in the temporary store room with which he was working.

12. From the impugned judgment it appears that it is the specific case of the prosecution that one Mr. Tripathi of R.P.F. was following one person who entered into a small room and Mr. Tripathi after entering into the said room found some railway articles lying on the floor of the said room those were seized. This fact makes the claim of the prosecution regarding seizure of the railway property from the

possession of the convict petitioner doubtful. When from the oral testimony of P.W. I as well as from the complaint lodged against the convict petitioner it appears that railway properties were not found precisely from the possession of the convict petitioner and during break employees working with railway properties used to keep the materials in the said room, benefit of doubt should have been extended to the convict. It is settled principle of law when two probable view come to surface, one tilting in favour of the accused should be accepted. In my humble opinion the learned Appellate Court had no reason to deny such benefit of doubt to the accused person. In this regard the judgement of Hon'ble Supreme Court, pronounced in this case of **C.K. ANTHONY VS. RAGHAVAN NAIR** reported in **2003 CRI. L. J. 411** may be looked into Hon'ble Apex Court held:-

“This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court. See [Bhim Singh Rup Singh v. State of Maharashtra](#) (1974 3 SCC 762)

and *Dharamdeo Singh & Ors. v. The State of Bihar* (1976 1 SCC 610).”

13. The Hon’ble Apex Court in ***BHIM SINGH RUP SINGH VS. STATE OF MAHARASHTRA*** reported in **(1974) 3 SCC 762** held:-

“If two reasonable conclusions can be reached on the basis of the evidence on record, the Appellate Court should not disturb the finding of the Trial Court.”

14. Under such circumstances, I feel it expedient to interfere with the findings of the learned Appellate Court for ends of justice by invoking inherent jurisdiction under Section 482 of the Cr.P.C. to reverse the impugned judgement and order of conviction into an order of acquittal, respectfully differing with the view expressed by Mr. Amajit De.

15. The Criminal Revision is thus allowed.

16. The impugned judgement passed by the learned Appellate Court is set aside. Consequently the petitioner is found not guilty to the charge under Section 3(a) R.P. (U.P) Act and is acquitted.

17. The copy of this judgement be sent down to the learned Trial Court for information and necessary action.

18. The parties shall act upon the server copy duly downloaded from the official website of this Court.

19. Urgent Photostat certified copy of this, if applied for, be supplied to the parties, if applied therefor, upon completion of requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)