

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 1724 of 2003

**Sunil Karmakar
-Vs.-
The State of West Bengal**

For the Appellant : Mr. Prabir Majumder, Adv.

Heard & Judgment on : 07.04.2022.

Bibek Chaudhuri, J.

In Complaint Case No. 498/1995 under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 the petitioner was convicted and sentenced to suffer imprisonment for one year and fine of Rs.1,000/-, in default, to undergo imprisonment for one month more. The petitioner challenged the said order of conviction and sentence in appeal before the Learned Additional Sessions Judge, 3rd Court at Nadia in Criminal Appeal No. 17/1999. The said appeal was disposed of on 7th July, 2003 affirming the judgment and order of

conviction and sentence passed by the Learned Sub-Divisional Judicial Magistrate, Krishnagar at Nadia.

The petitioner has preferred the instant criminal revision challenging the concurrent finding of both the Courts below.

At the outset, Mr. Majumder, Learned Advocate for the petitioner frankly submits that in the instant revision there is no scope for the revisional Court to appraise the evidence-on-record afresh because the power of the revisional Court is only limited to consider as to whether the impugned order passed by the Learned Additional Sessions Judge, 3rd Court at Nadia in Criminal Appeal No. 17/1999 suffers from any illegality, impropriety or material irregularity. It is also submitted by Mr. Majumder that the evidence-on-record is sufficient to warrant conviction against the petitioner. Therefore, he does not wish to challenge the order of conviction passed by both the Courts below. However, Mr. Majumder submits that the petitioner is a blacksmith by profession. On 6th September, 1994, Police conducted raid in his shop-cum-workshop and found only three iron materials which were subsequently proved to be Railway properties. Section 3 stipulates penalty for unlawful possession of Railway property. It runs thus:-

"3. Penalty for unlawful possession of railway property. –

Whoever is found or is proved to have been in possession of any

railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable, -

- (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;*
- (b) for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine 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 two years and such fine shall not be less than two thousand rupees”.*

So far as Section 3(a) of the RP(UP) Act is concerned, the statute provides punishment 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 or 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.

In the instant case, the petitioner is facing a criminal case in different forums of judiciary since 1994. Almost 28 years have elapsed in the meantime. The petitioner has suffered tremendous mental agony during all these years due to the pendency of a proceeding under Section 3(a) of the RP(UP) Act. This is undoubtedly the first offence of the petitioner. Since the petitioner is a blacksmith by profession he collected some iron materials on good faith to prepare some other household articles with the said iron materials which were subsequently found to be Railway properties. The petitioner had no *mens rea* to commit the offence under the Act. Therefore, his sentence may be reduced by imposing only fine instead of custodial detention.

This Court concurs with the submission made by Mr. Majumder. After 28 years of the occurrence, this Court is of the view that the petitioner shall be adequately punished if only sentence of fine be imposed against the petitioner for committing offence under Section 3(a) of the RP(UP)Act.

Accordingly, the instant criminal revision is **disposed of** modifying the order of sentence directing the petitioner to pay fine of Rs.2,000/-, in default, to suffer imprisonment for three months for the offence punishable under Section 3(a) of the RP(UP) Act.

Let a copy of this order be sent to the Court below along with the Lower Court Record.

The petitioner is directed to surrender before the Trial Court and pay fine within three weeks from the date of communication of this order to the Trial Court. In default, the petitioner shall suffer sentence as mentioned above.

The petitioner is at liberty to act on the server copy of the order.

[Bibek Chaudhuri, J.]

**Srimanta
A. R. (Court)**