

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.972 of 2013

Bimbadhar Pradhan

.... Petitioner

Mr.B.B.Routray, Advocate

-versus-

State of Odisha

.... Opposite Party

Mr. S.K.Mishra,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
05.04.2022.

Order No.

09. 1. This matter is taken up through hybrid mode.

2. In this present revision, the Petitioner questions the correctness of judgment dated 24th August, 2013 passed by learned Addl. Sessions Judge, Angul in CrI. Appeal No.42 of 2005 whereby the said appeal was dismissed and the judgment and sentence dated 18th November, 2005 passed by learned S.D.J.M., Athamallik in 2(c)C.C. Case No.6/2000/Trial

No.499/2001 was confirmed. The Trial Court has convicted the Petitioner for the offence under Section 3(a) R.P. (U.P) Act, 1996 and sentenced him to undergo R.I. for two years and to pay fine of Rs.2000/-, in default, to undergo further R.I. for two years.

3. The prosecution case, in brief, is that the Officer-in-charge of RPF (Post Rairakhol) lodged F.I.R. on 7th September, 2000 regarding theft of 150 number of Pendrol Clips and other Railway property from the Railway Track. Upon receiving reliable information, the premises of a blacksmith of Village-Belunda, namely Sura Behera, was raided in course of which, it was found that he was in unlawful possession of railway articles like pendrol clips, angle piece, steel key, rail, etc in his workshop without any authority. On interrogation, the said Sura Behera is said to have confessed that the present Petitioner namely, Bimbadhar Pradhan, who is his co-villager, had supplied the materials to him. Basing on such F.I.R., investigation was taken up and charge sheet was submitted.

4. In course of trial, the prosecution examined seven witnesses while two witnesses were examined by the defence. Learned S.D.J.M., Athamallik after considering the evidence on record, having held the Petitioner guilty of the aforementioned offence, convicted and sentenced him as aforesaid.

Being aggrieved, the Petitioner preferred the aforementioned appeal, which was disposed by learned Addl.

Sessions Judge, Angul. After going through the evidence on record and considering the contentions advanced by both parties, learned lower appellate court was of the view that the trial court was justified in convicting the appellants and in so far as the sentence is concerned, it was held that the minimum prescribed sentence had been awarded. Holding thus, the learned appellate court did not find any reason to interfere with the judgment of the trial court. Being further aggrieved, the Petitioner has approached this Court in the present revision.

5. Heard Mr.B.B.Routray, learned counsel for the Petitioner, and Mr. S.K.Mishra, learned Addl. Standing Counsel for the State.

6. Mr. Routray has contended that the trial court committed manifest error in relying upon the prosecution evidence without considering the fact that 6 out of the 7 witnesses so examined were official witnesses and not a single independent witness was examined. It is further contended by Mr. Routray that the trial court as well as the lower appellate court have lost sight of the fact that the Petitioner was implicated entirely on the basis of the confessional statement of the co-accused, Sura Behera, which is inadmissible in law. Alternatively, it is contended that both the courts below should have extended the benefit of the P.O. Act having regard to the social background of the Petitioner, his age and absence of any criminal antecedents.

7. Per contra, Mr. S.K.Mishra has argued that there is no reason to doubt the version of the witnesses only because they are official witness, more so when it is not shown that they were inimically disposed towards the Petitioner. It is further argued that the Petitioner's complicity in the occurrence was otherwise proved from the fact of seizure of the Railway materials from his house. As regards the argument that courts below should have extended the benefit of P.O. Act to the Petitioner, Mr. Mishra submits that since minimum punishment was imposed, it is not necessary to extend the benefit of P.O. Act to the Petitioner.

8. As it appears, seven witnesses were examined out of whom, P.W.Nos.1 to 6 are official witnesses being staff of Railway Police Force P.W.7 appears to be an independent witnesses, but he was declared hostile. It further appears that the Petitioner's name was disclosed by the co-accused, Sura Behera, as being the supplier of Railway materials. Obviously, the so called confessional statement of the co-accused cannot be utilized against the Petitioner. But then, fact remains that in course of raid conducted on his house the railway materials were recovered, the possession of which he could not account for. Though, it is argued by Mr. Routray that the seizure list cannot be taken into consideration in the absence of any independent witness, yet the same is not an acceptable argument for the reason that the version of official witnesses cannot simply be thrown away unless there is some allegation

of malafide against them. In the instant case, ten pieces of Pendrol Clips and one rail piece were seized from the possession of the Petitioner vide seizure list marked Ext.2. The said seizure list was proved by P.W.1, who was an A.S.I. of RPF. Reading of the testimony shows that acting upon the tip-off received from the co-accused, Sura Behera, he and his team searched the house of the present Petitioner whereby the aforementioned articles were recovered. Nothing has been brought out in cross-examination of P.W.1 to disbelieve his testimony, except that the seizure was made in presence of the official witnesses.

9. Law is well settled that if the version of the official witnesses is clean, consistent, cogent and trustworthy and no malafide is proved against them, then a conviction can be recorded basing on their version. In the instant case, both the accused persons rode the witness box and deposed as D.Ws.1 and 2. They stated that they were asked to do railway work by the authorities but as they refused, the case was foisted against them falsely. A reading of the judgment passed by the learned trial court reveals that such a plea was taken only to be negatived on the ground that they have not examined any outsider to prove such fact. This Court also observes that in order to substantiate the defence plea, the foundation thereof must be laid during cross-examination of the prosecution witnesses. This Court finds that no suggestion whatsoever was given to any of the prosecution witnesses in this regard by the

defence. It is, therefore, obvious that the version of the defence witnesses is nothing but an afterthought intended to somehow cover up their own deeds.

10. On an independent assessment of the evidence on record, this Court also finds that the possession of the railway property by the Petitioner is proved as also the fact that no plausible explanation could be offered by him for such possession. All the official witnesses have clearly and consistently stated about the seizure of railway articles from the house of the Petitioner. Therefore, the trial court has committed no error in accepting the prosecution version as true. Similarly, the lower court has rightly confirmed the findings of the trial court.

11. In view of the foregoing narration, this Court also finds no reason to interfere with the impugned judgment. As regards the arguments put forth with regard to the sentence imposed, this Court observes that the Petitioner was aged about 40 years at the time of occurrence, i.e, in the year 2000. Nearly 22 years have passed by, which makes the Petitioner aged about 62 years at present.

From the lower court case record, it appears that the Petitioner was arrested and has spent a few days in custody during trial as also after his conviction. As has been clearly conceded by learned Addl. Standing Counsel, there is nothing

on record to suggest that the Petitioner was a habitual offender or that he had any criminal antecedents to his name.

12. Taking the above facts into consideration, therefore, this Court deems it proper to extend the benefit of the P.O. Act to the Petitioner instead of sending him to jail to serve the remaining part of the sentence at this distance of time.

13. In the result, the revision is allowed in part. The judgments passed by the lower appellate court as well as the trial court are hereby confirmed, but the sentence imposed by the trial court is modified to the extent that instead of serving R.I. of two years and paying fine, the Petitioner shall be released as per the provision of Section 4 of the P.O. Act. The Petitioner is directed to appear before the trial court on 2nd May, 2022 to receive further instructions. In the event of failure of the Petitioner to appear on the date fixed, necessary warrant shall be issued to commit him to the prison for serving the remaining part of the sentence as imposed by the trial court.

14. The CRLREV is disposed of accordingly.

AKB

(Sashikanta Mishra)
Judge

