

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL REVISION No.222 of 2017**

Arising Out of PS. Case No.-95 Year-1992 Thana- BHAGALPUR GRP CASE District-  
Bhagalpur

=====

Nageshwar Mandal Son of late Bhailal Mandal Resident of Chhoti Keshopur,  
P.S. Jamalpur, District- Munger.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

=====

**Appearance :**

For the Petitioner/s : Mr.Ajay Kumar Jha  
For the Respondent/s : Mr.Gauri Shankar Gupta

=====

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH  
ORAL ORDER**

5      25-02-2023                      This criminal revision application has been directed against order dated 04.03.2015 (corrected vide order dated 19.08.2016) passed by learned 4<sup>th</sup> Additional District and Sessions Judge, Bhagalpur in Cr. Appeal No. 81 of 2003 (corrected from 81 of 2013 to 81 of 2003 vide order dated 19.08.2016) confirming the order/judgment dated 30.08.2003 passed by learned Railway Judicial Magistrate, Bhagalpur in R.P.F. Case No. 95 of 1992, Trial No. 32 of 2003 whereby learned Magistrate has convicted the petitioner under Section 3(a) of R.P.(U.P.) Act, 1966 and sentenced him under Section 4 of the Probation of Offenders Act on execution of probtation bond of two years.

The prosecution case, in brief, is that on 29.09.1992,



two persons were seen carrying railway scrap on a bicycle and on chase, petitioner was caught, who disclosed that he was working as Khalasi Helper in the Erecting Shop of Jamalpur workshop. On search, huge quantity of scrap was recovered. The petitioner also disclosed the name of other person who fled away from the place of occurrence, as Jai Prakash Narayan @ Prakash Shora working as Karigar in the Jamalpur Workshop.

After investigation, chargesheet was submitted under Section 3(a) of R.P.(U.P) Act. Cognizance was taken. After framing of charge, witnesses were examined and petitioner was convicted under Section 3(a) of R.P.(U.P) Act, but granted benefit of Section 4 of the Probation of Offenders Act and released him on execution on probation bond for two years, vide order of the learned Magistrate dated 30.08.2003 and acquitted from other charges. Being aggrieved, the petitioner filed the appeal against the aforesaid order, which was heard by learned 4<sup>th</sup> Addl. Sessions Judge, Bhagalpur and same was rejected on 04.03.2015 and confirming the judgment and order dated passed by the Railway Judicial Magistrate, Bhagalpur.

Learned counsel for the petitioner submits that though, the period of two years has already elapsed, but if the conviction is allowed to be sustained, service of the petitioner,



as Khalasi Helper (T No 1804) in the Erecting Shop Jamalpur Workshop shall be adversely affected, which may have serious consequences.

Relying on a decision of the Supreme Court, in the case of **Rajbir vs. State of Haryana**, reported in **1985 (Supp) SCC 272**, learned counsel for the petitioner submits that certain observations may be made by this Court so that service of the petitioner may not be adversely affected.

Paragraphs 4 and 5 of the Supreme Court's decision in the case of **Rajbir** (*supra*) reads thus:

“4. From the judgment of the High Court, it appears that though the sentence imposed for the offence under Section 323 of the Code was six months, the appellant and the co-accused had already suffered over one year's imprisonment. Ordinarily, in a situation as here, there would be no need to interfere. Learned Counsel for the appellant has, however, pressed the appeal as the appellant is in Government service and if the conviction and sentence are maintained, he would lose his service. Both the parties to the assault were close relations. There is no material on the record to indicate that the appellant had any previous conviction. In the absence of such evidence, we treat the appellant as a first offender. He is entitled to be admitted to the benefits of



probation under Section 3 of the Probation of Offenders Act, 1958, taking into consideration the circumstances of the case, the nature of the offence and the character of the appellant. While maintaining his conviction, we direct that he shall be released on probation of good conduct under Section 4 of the Act. The Chief Judicial Magistrate, Bhiwani, before whom the appellant is directed to appear within four weeks from today shall release him after due admonition. We do not consider it necessary to direct him to enter into a bond in the facts of the case.

5. We are of the view that in the peculiar facts of the case, the conviction should not affect his service.”

On perusal of the materials available on record, I do not feel inclined to interfere with the findings of facts recorded by the Court below leading to conviction of the petitioner of the offence under Section 3 (a) of R.P.(U.P) Act. Moreover, in this case, period of two years has already elapsed.

However, taking a cue from the decision of the Supreme Court, in the case of **Rajbir** (*supra*), as noted above, it is observed, in the background of the genesis of the occurrence that the conviction of petitioner by the judgment and order of the Court below, impugned in the present revision application,



shall not adversely affect his service.

This criminal revision application stands disposed of  
with the observations, as above.

**(Prabhat Kumar Singh, J)**

Anay

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

