

01.3.2023
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SB
Ct. No.236

CRR 1187 of 2003
In the matter of : Suren Prasad Gupta
with
CRR 512 of 2022
CRAN 1 of 2022
In the matter of : Tahidul Mirja & Anr.

CRR 1187 of 2003

Mr. Joydip Banerjee
Ms. Mousumi Banerjee ... for the petitioner

Mr. Bidyut Kumar Ray
Ms. Sima Biswas ... for the State

CRR 512 of 2022

Mr. Suman De ... for the petitioners

Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Dipankar Paramanick for the State

Mr. Arun Kumar Maity
Mr. Jasojeet Mukherjee ... for Union of India

Mr. Dipankar Dandapath ... for the Railway

This criminal revision challenges the judgement passed by the learned Additional Sessions Judge, Bankura in Criminal Appeal No. 29/2001 affirming thereby the order of conviction passed by the learned Chief Judicial Magistrate, Bankura under Section 3(a) R.P. (U.P.) Act in Complaint Case No. 351(C) of 1996.

Briefly stated that one Mr. S. B. Sen, Inspector / O.C. R.P.F. Bankura along with officer and staff were in ambush watch at railway level crossing gate, Bankura at G.M. No. 231 on 17.10.1996 from 00.30 hours to 1.10 hours in order to work out a source information. They found two persons carrying one trassel each on their cycle. Those two persons were intercepted and the trassels wrapped in a gunny bag were recovered from the possession of those two persons, who failed to justify their possession of apparently railway properties. They admitted that they purchased those materials from Suren Prasad Gupta, a railway employee. There was a theft report vide no.

ADA/LT-3/96/04 dated 15.10.1996 at K.M. No. 151/8-10. Accordingly, the Case No. 11/96 dated 17.10.96 was registered under Section 3 (a) R.P.(UP) Act against those two persons, and relying upon the statement made by those two accused persons, further raid was held at Salbani at about 11-00 hours on 17.10.96 and Suren Prasad Gupta, Cabinman, Salbani Railway Station was arrested. On interrogation Suren Prasad Gupta confessed his guilt and voluntarily produced two properties of signal rods measuring 18 ft. and 10 ft. from his railway quarter no. T/6 Unit No. II. He could not, however, produce any document to justify his possession. Prosecution report was submitted accordingly before the learned Chief Judicial Magistrate, Bankura and the complainant adduced evidence before charge. In all nine witnesses were examined including Mr. M.S. Bandyopadhyay, the expert, and his opinion was admitted into evidence as Exhibit No. 3. Based on evidence adduced by the witnesses, charge was framed against the three accused persons who pleaded their innocence and claimed to be tried.

In this case the prosecution was under obligation to prove that the properties recovered from the possession of the accused persons belonged to railways which is sine qua non. Exhibit 3 undoubtedly indicates that in the opinion of P.W. 3, the properties recovered were railway properties. But that expert was not cross-examined or in other words, prosecution failed to produce that witness to face the cross-examination.

Under such circumstances, the Appellate Court held that since before the charge no question was put to the Expert regarding the nature of the property, his opinion may be accepted and acted upon. But with all humility, I am of the view that such observation is utterly prejudicial to the interest of the accused person and contrary to the principle of fair trial and violative the principle of natural justice. Since the prosecution has failed to prove that the properties alleged to have been recovered from the possession of the

accused persons were the railway properties, the order of conviction cannot be maintained.

Mr. Maity, learned counsel representing the railway authorities strenuously argued that from the trend of cross-examination it can never be said that the accused persons at any point of time challenged the assertion made by the prosecution regarding recovery of the property.

Therefore, there is no reason for the Court to interfere with the concurrent findings of the Court below. At best, the same could be remanded for giving opportunity to the prosecution to produce P.W.3, the expert, to face the cross-examination.

The litigants, it is trite to say, have a right to have expeditious trial, and keeping in mind such right given to the litigants which pertains to right to life under Article 21 of the Constitution of India, I cannot inspire myself to be in agreement with Mr. Maity. In my humble opinion the impugned judgement suffers from serious infirmities, if not, perversity.

The impugned judgement is set aside. Consequently, extending benefit of doubt to the accused person I record an order of acquittal.

It is submitted by Mr. Suman De, learned counsel representing the petitioner in C.R.R 512 of 2022 that the convict Mirja Hasibul @ Hasimbul Mirja is in custody. He be released at once if he is not wanted in any other case.

With the aforesaid observations, the revisional applications are disposed of along with applications.

Let a copy of the order sheet along with lower court record be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)