

23.03.2023
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SB
Ct. No.236

CRR 2385 of 2005

In the matter of : Ashutosh Biswas

Mr. Kauhik Chatterjee
Mr. Tirthankar Dey ... for the petitioner

Mr. N.P. Agarwala
Mr. P. Bose ... for the State

This criminal revision challenges the judgement and order passed by the learned Additional District and Sessions Judge, 3rd Fast Track Court, Sealdah in Criminal Appeal No. 30 of 2004 affirming the order of conviction passed by the learned Railway Judicial Magistrate, 4th Court, Sealdah in T.R. No. 27/02 with certain modifications. Instead of recording the order of conviction under Section 419 of the Indian Penal Code, learned Appellate Court found the appellant culpable for committing offence under Sections 170/171 of the Indian Penal Code.

Briefly stated that on 08.3.2000 at about 13.50 hrs. Shri Mukesh Agarwal in-charge of anti fraud squad, Sealdah along with R.P.F. personnel conducting the duty of ticket checking, noticed that in the vendor compartment of S.234 down train, in between Bidhannagar Railway station and Sealdah Railway station, a person was moving suspiciously in guise of a train ticket examiner. On being challenged he disclosed his identity as Ashutosh Biswas. On search a sum of Rs. 260/-, black coat containing railway metal pass bearing no. 579 and other papers were recovered. At the behest of Mr. Agarwal, Sealdah G.R.P.S.

Case No. 48 dated 08.3.2000 under Sections 419/420 of the Indian Penal Code was registered and after investigation prosecuting agency submitted charge sheet under Sections 419/420 of the Indian Penal Code.

To crown success, prosecution examined as many as six witnesses. Learned Trial Court after considering the evidence on record was pleased to hold the accused person guilty to the charge under Section 419 of the Indian Penal Code and convict Asutosh Biswas challenged the order of conviction by preferring Criminal Appeal No. 30 of 2004. Learned Appellate Court while refused to endorse the view of learned Trial Court regarding commission of offence within the meaning of Section 419 of the Indian Penal Code rightly, however, to its wisdom arrived at a decision that the appellant committed offence within the meaning of Sections 170/171 of the Indian Penal Code and sentenced him to suffer imprisonment for six months for committing offence under Section 170 and to pay a fine of Rs.500/- and three months for committing offence under Section 171 of the Indian Penal Code subject to the provision of Section 428 of the Code of Criminal Procedure.

Section 170 of the Indian Penal Code deals with the issue of Personating public servant and Section 171 of the Indian Penal Code takes care of a situation where wearing garb or carrying token used by public servant fraud is practiced upon.

Sections 170 and 171 of the Indian Penal Code enunciate that :-

“170. Personating a public servant.—Whoever pretends to hold any particular office as a public servant, knowing that he does not

hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

“171. Wearing garb or carrying token used by public servant with fraudulent intent.—Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.”

From the attending facts of the case, I find that learned Appellate Court came to a finding that prosecution witnesses while adducing evidence stated that the said convict was checking tickets in the train compartment and thus he made himself culpable for committing offence within the meaning of Sections 170/171 of the Indian Penal Code. But the testimony of P.W. 4 as quoted by the learned Appellate Court says that whenever as members of the special checking team they boarded the compartment the passengers stated that another T.T.E. just checked / examined their tickets and when the train reached at Bidhannagar Railway Station the witness P.W. 4 together with his team members boarded the rear side compartment earmarked for vendors and he found that one person was trying to get down from the running train. The man was challenged and according to P.W. 4 he produced identity card. Evidence of P.W. 4, however, does not support the content of F.I.R. Be that as it may, there is no evidence, however, to the effect that any of the witnesses found the man playing the role of ticket checker inside the train compartment. Mere wearing of black coat fitted with particular

badge or having a card cannot make one guilty within the meaning Sections 170 and 171 of the Indian Penal Code unless it is proved that he was playing the role of public servant or he used wearing coat or badge used by the railway ticket collectors for that purpose.

Mere possession of such materials in my humble opinion is not sufficient to make the petitioner suffer imprisonment. Learned Appellate Court underlined that the conduct of the convict was very very suspicious and that perhaps inspired learned Appellate Court to modify the order of conviction. However, in absence of any cogent evidence on materials particulars. I do not endorse the view of the learned Appellate Court. Consequently the order of conviction stands quashed.

The criminal revision, is thus, allowed.

With this observation, the criminal revision is disposed of.

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

(Siddhartha Roy Chowdhury, J.)