

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2664 of 2011

**Mankeshwar Shaw
-Vs-
The State of West Bengal**

For the Petitioner : Mr. Achin Jana
Mr. Suman Chakraborty
Mr. Prasenjit Ghosh

For the State : Mr. Avishek Sinha

Heard on : 15.09.2023, 30.11.2023, 15.12.2023

Judgment on : 12.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by the petitioner being aggrieved by and dissatisfied a judgment and order of conviction dated 19.07.11 passed by the Learned Additional Session's Judge, 2nd Court at Howrah in connection with Criminal Appeal 34/03, confirming the judgment of conviction and order of sentence dated 22.09.2003 passed by the Learned Judicial Magistrate, 3rd Court at Howrah in connection with the S.L. Case No. 121/98 arising out of R.P.F. 'G' Post/Santragachi Case No. 22/19 dated 14.08.1998, under Section 3(a) of the Railway Properties Unlawful Possession Act, 1996 whereby convicting the appellant for committing

offence under Section 3(a) of the Railway Properties Unlawful Possession Act, 1996 and thereby sentenced the petitioner to suffer simple imprisonment for 30 days and to pay a fine of Rs. 1200/- in default thereof to suffer further imprisonment for 20 days.

2. The prosecution case in nutshell was that Sri M.K. Singh posted as Sub-Inspector of railway police force 'G' post Santragachi, South Eastern Railway lodged a written complaint against Arun Prasad and the present appellant alleging inter alia that 'on 14.08.98 at about 3:00 hrs near bridge no. 13 in between Baltikuri and Bakranayabaz a raid was conducted by some Railway Police Force personnel and in the said raid one person was found moving suspiciously along with a gunny bag. The said person was arrested and a search was conducted upon him and 32 pen-droll clips were seized from his possession. The said articles were found to be the properties of Railway of India. Upon interrogation of the said person he reveled his name as Arun Prasad and he confessed his guilty. Moreover he also confessed that he had sold some of the stolen railway articles to one Mankeshwar Shaw. Accordingly the R.P.F. personnel raided the Go-down of Mankeshwar Shaw situated at Gangaram bridge, Dist – Howrah, wherefrom 38 pen-droll chips, 27 break locks and 10 M.S. Flat bearing plates, 15 steel keys and 25 fish bolts were seized. It was further alleged that all the above articles belong to the Railway of India and no proper document could be supplied by the petitioner in support of their lawful possession. Subsequently the appellant also confessed his guilt.'

3. On the basis of the aforesaid complaint the Railway Police Force initiated R.P.F. 'G' post/Santragachi Case No. 22/19 dated 14.08.1998 under Section 3(a) of Railway Properties Unlawful Possession Act, 1996 against Arun Prasad and present petitioner Mankeshwar Shaw and after completion of the investigation final form of complaint no. 25/99 dated 08.07.99 was submitted against them.
4. However as the said accused Arun Prasad subsequently absconded, hence the case was filed against the said accused on 14.01.2001 and the present petitioner was placed on trial before the Learned Third Judicial Magistrate, Howrah to answer the charges under Section 3(a) of the Railway Properties Unlawful Possession Act, 1996, in the S.L. Case No. 121/98 arising out of R.P.F. 'G' Post/Santragachi Case No. 22/19 dated 14.08.1998.
5. The prosecution in order to substantiate the charges leveled and to prove its case against the accused person, examined all together 7 witnesses exhibited certain documents.
6. Learned Advocate for the petitioner submitted that –
 - i. The F.I.R was lodged on 14/08/1998 by the Sri M.K Singh, Sub Inspector of Railway Police Force, 'G' Post Santragachi, Southern Eastern Railway, Howrah against i) Arun Prasad and ii) Mankeswar Shaw (present petitioner), under section 3(a) of the Railway Properties Unlawful Possession Act, 1966, on the following allegations:
 - a. On 14.08.98 at about 3.00 hrs near bridge no.13 in between Baltikuri and Bakranayabaz a raid was conducted by some

Railway police Force personnel and in the said raid one person was found moving suspiciously along with a gunny bag. The said person was arrested and a search was conducted upon him and 32 pen-droll clips were seized from his possession. The said articles were found to be the properties of Railway of India. Upon interrogation the person revealed his name as Arun Prasad and he confessed his guilty. Additionally Arun Prasad further confessed that he had sold some of the stolen Railway articles to one Mankeshwar saw (present petitioner). Accordingly the R.P.F personnel raided the go-down of Mankeshwar saw situated at Gangaram Bridge of Howrah, wherefrom 58 pen-droll chips, 27 break locks and 10 M.S Flat bearing plates, 15 steel keys and 25 fish bolts were seized. It was further alleged that all the above articles belong to the Railway of India and no proper document could be supplied by thee petitioner in support of their lawful possession. It was alleged that subsequently the petitioner had also confessed his guilt.

- ii. Both the accused persons were arrested and after completion of investigation the final form of complaint no 25/99 dated 08/07/1999 was submitted by the RPF against i) Arun Prasad and ii) Mankeswar Shaw (present petitioner), under section 3(a) of the Railway Properties Unlawful Possession Act, 1966.

- iii. However the principal accused Arun Prasad had subsequently absconded and never could be apprehended by the police. Accordingly the case was filed Arun Prasad and a split trial commenced only against Mankeswar Shaw (petitioner herein). Therefore the principal accused of the case, i.e. Arun Prasad based on whose testimony the present petitioner was arrested was never put on trial.
- iv. Upon completion of the trial by judgment of conviction and order of sentence dated- 22/09/2003, Smt. S. Roy The Learned Judicial Magistrate 3rd Court at Howrah in the S.L case No -12/98 arising out of out of R.P.F G post /Santragachi case no-22/19 dated 14/08/1998 was pleased to convict the present appellant for commission of offence under section 3(a) of The Railway Properties Unlawful Possession Act, 1966 and thereby sentenced the appellant to suffer simple imprisonment for 30 days and to pay a fine of Rs. 1200/- (Rupees one thousand two hundred only) and in default thereof to suffer further imprisonment for 20 days.
- v. Being aggrieved by and dissatisfied with the aforesaid judgment of conviction dated- 22/09/2003 the present petitioner preferred an appeal in the Court of Learned District and Session Judge, Howrah and the said Criminal Appeal no 34/2003 was finally adjudicated by Learned Court of 2nd Additional District Judge at Howrah.
- vi. The 2nd Court of Additional District Judge at Howrah, vide a Judgment and Order dated 19/07/11 was pleased to dismiss the said

criminal appeal on contest by upholding the Judgment of conviction and Order of sentence dated 22/05/2003 passed by The Learned Judicial Magistrate, 3rd Court at Howrah.

vii. Challenging the said order dated 22/05/2003 the petitioner has preferred the instant revision on the following amongst other grounds -

- a. The Search & Seizure made by the prosecution was full of doubts since mandate of section 10 of the RPUP Act was not followed. Moreover despite the place of raid being situated out of jurisdiction of the RPF police the search was conducted without following the mandate of Sections 165/166 of Cr.P.C, rendering the search and seizure to be illegal and inadmissible as per the decision this Hon'ble High Court rendered vide an order dated April 26, 2022 passed by Hon'ble Justice Biswajit Basu in Govt. Appeal No.6 of 1987, State of West Bengal v. Santosh Kumar Karmakar.
- b. The Prosecution has failed to prove that the properties allegedly seized from the petitioner were exclusively the property of Railway.
- c. The Learned Trial Court has given undue emphasis on the evidences of experts i.e. P.W-2 and P.W-5, while completely ignored the evidence of P.W-1 and P.W-3.
- d. The Learned Trial Court has failed to consider that the prosecution's expert witnesses, i.e. P.W-2 has categorically

admitted in his cross examination that the articles which he had examined did not bear any Railway mark and that he also had failed to explain that despite the absence of such railway mark on the articles how he arrived at the conclusion that the said seized articles were 'exclusively Railway Properties, in serviceable condition and not available in open market."

- e. The learned Trial Court has failed to consider that expert witnesses PW.-2 and P.W-5 did not provide any data or details of their examination (like the measurement and weight of the articles) or any reason as the basis for forming their opinions. Such report of experts containing mere assertion bereft of any reasoning is unacceptable as per the ruling of Ramesh Chandra Agarwal v. Regency Hospital Ltd. [(2009) 9 SCC 709-para 22]
- f. The Learned Trial Court while passing the impugned judgment of conviction and the Learned Court while upholding the conviction have failed to consider that the expert P.W-5 has categorically admitted in his cross examination that the seized items that he examined are manufactured in private factories and sold to the Railway, and the rejected items are available in open market and auction. He also failed to specify whether the said items were capable of fittings in the required places.

In this regard a practical view which has been laid down by the Hon'ble Gauhati High Court in the matter of Shri Latin Cnadra

Das & Anr. V. The State of Assam [1989 SCC OnLine Gau 165] may be referred in which the Hon'ble Court had observed-

Para-7

The definition of 'railway property' makes it clear that in order to claim any property a 'railway property' it must be proved that the property in question belonged to the Railway Administration or was in the charge or possession of the Railway Administration. It must be so at the relevant time. There are many properties belonging to the Railway Administration which are disposed of by it from time to time by public auction or by various other means, the same being either unserviceable or surplus. These are purchased by various persons and thereafter they enter into the main distribution system and reach various individual who may buy them from the market in the usual course for their personal use. Such goods may also even bear the Railway emblem or other markings. There are also cases where the Railway administration purchases goods from various private manufactures in course of supply rejects some goods supplied as sub-standard or unsatisfactory. These goods also are disposed by the manufacturers in the usual course in the market. These were instances where a property which might even bear some marks or sign to show that it were at one point of time 'railway property' or intended to be railway property was not railway

property at the relevant time. It was for the prosecution to prove by positive evidence that the property was railway property and that the accused person was found in possession of such property. The burden of proof that the property was railway property did not shift to the accused. Once this burden is discharged, the prosecution is further required to prove that it could be "reasonably suspected to have been stolen or unlawfully obtained. The expression "reasonably suspected" is very significant. Suspicion implies a belief or opinion based upon the facts or circumstances which do not amount to proof. "Reasonably" means in a reasonable manner or consistently with reason. Thus, the prosecution must have some facts or circumstances before it on the basis of which it could, acting in a reasonable manner, believe that the person concerned found in possession of such 'railway property' might have stolen or unlawfully obtained the same. Such reasonable suspicion has to be proved before the Court by the prosecution. Only thereafter the onus shifts on the accused to prove that the railway property came into his possession lawfully. Section 3 of the said Act does not require in all cases the accused persons to come forward and adduce evidence as to how the property in question was obtained by him. It is in fact a defence made available to the accused once the prosecution succeeds in proving its case.

g. The Learned Trial Court failed to consider the evidence of the inquiry officer P.W-4 in its proper perspectives since the P.W-4- In cross examination has admitted that the prime accused Arun Prasad did not signed in his seizure list and that his presence cannot be ascertained from the seizure list;

In his cross examination he stated that the properties that were seized from present petitioner were not sealed and that no sample of seizure was collected;

He admitted that he did not make a departure diary prior to leaving the post for Raid.

He did not pray before the court for the issuance of a search warrant.

He admitted that he had not prepared any sketch map.

He admitted that it cannot be distinguished as to which articles were recovered in respect of first seizure (i.e. from Arun Prasad) and which of them in the second seizure (i.e. from the present petitioner)

h. The impugned judgment passed by the Learned Trial Court is liable to be set aside since the important alleged incriminating circumstances based on which the petitioner was convicted were not put to the accused for explanation during his examination under section 313 Cr.P.C.

The Statements of the P.Ws were not categorically put to the accused for eliciting his explanation;

The date and time of raiding his godown was not put to the accused;

Which articles and how many numbers of them were seized from his godown was not put to the accused;

The opinions of the experts i.e. the findings of P.W-2 and P.W-5 that the properties were exclusive Railway Properties were not put to the accused for explanation;

That P.W-4, i.e. the inquiry officer prior to raiding the godown had tried to get neighboring witnesses but they refused to become witnesses was not put to the accused.

It is now trite that Section 313 examination is not a mere formality but an insurmountable legislative mandate provided in the Code for protecting the accused's right to fair trial and to ensure that an individual's liberty is not curtailed without following the procedure established by law.

The important decisions are *Ranvir Yadav vs. State of Bihar* [(2009) 6 SCC 595]; *Shaikh Maqsood v. State of Maharashtra* [(2009) 6 SCC 583]; *Raj Kumar v. State (NCT of Delhi)* [2023 SCC OnLine SC 609]

It is submitted that during the sentence hearing the prosecution out of his own produced certain information regarding a prior offence committed by the petitioner. However no such evidence was

produced during trial and the accused was also not given any opportunity to rebut such accusation and accordingly such bald accusation cannot form a reasonable basis in pronouncing the sentence.

It is further submitted that the case was originated in the year 1998, and the instant revision has also been pending for 12 years since year 2011. The petitioner is presently about 64 years of age and therefore prays that his case may be considered with leniency. Under the above facts and circumstances it is most humbly prayed that the judgment of conviction and order of sentence dated 22/09/2023 by the Learned Judicial Magistrate 3rd Court at Howrah and the following judgment dated 19/07/2011 passed by the Learned Additional Sessions Judge 2nd Court at Howrah upholding the trial court's judgment and conviction may be set aside and the petitioner may be acquitted from all the charges.

7. Learned Advocate for the State submitted that there were material evidences to indict the petitioner who had been in possession of the Railway property without explanation and the submission of the Learned Advocate for the appellant that the stolen property had been unlawfully obtained from the possession on the basis of suspicion cannot be sustainable. The statement of the prosecution witnesses who were a part of the raiding party and seizure list witnesses cannot be challenged in the facts and circumstances of the case to be untrue and fabricated.

8. The Learned Advocate for the State further submitted that the expert report marked as Exhibit 3, 4 and 7 proved the stolen articles to be exclusively Railway properties. The seizure list witnesses along with the complainant corroborated the complaint case. Moreover, the Trial Judge had erred in sentencing the petitioner to suffer a simple imprisonment for 30 days and to pay a fine of Rs.1,200/- contrary to the provisions enumerated in Section 3A of the aforesaid Act where for the first offence the offender is to be sentenced with imprisonment for a term which may extent to 5 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 of Rs.1,000/-.
9. The Learned Advocate for the State further submitted that an offence committed under Section 3 of the aforesaid Act cannot be subjected to the provisions of the Probation of Offenders Act, 1958 since the Act in question has stipulated a penal provision for a minimum sentence. According to the Learned Advocate for the State, the prosecution had been successful in aptly proving its case and therefore the appeal should be dismissed.
10. The pivotal question to be determined arising out of judgment of a conviction and order of sentence as aforesaid is whether the property seized under the seizure list marked as Exhibit-1, 1/2 were exclusive railway properties. It is further crucial to find out as to whether such property can be obtained in open market and be utilized for a purpose distinct from its utilization in the Railways and its ancillary activities.

11. The seizure list mentioned as follows:

“32 (Thirty two) nos. of Pandrol Clips. (kept concealed in a gunny bag) to have been seized *“near Bridge no. 13 and KM no. 6/9 in between Bankranayabaz and Baltigiri railway station”* from Arun Prasad who had cast his LTI in the presence of seizure witness (1) B. P. Panday (A.S.I., R.P.F ‘G’ post –Santragachi) (2) M. N. Chaim (A.S.I., R.P.F ‘G’, post – Santragachi) seized by M.K. Singh (S.I., R.P.F ‘G’, post – Santragachi, S.E. Railway)”

12. The seizure list as aforesaid further stated that the circumstances of seizure mentioned as *“on dated 14.08.98, while myself along the O.C., officer and staff were on raid round in Section, Noticed a person at about 03:00 hrs near bridge no. 13 and KM no. 6/9 in between Baltigiri and Bankrananyabaz a suspicious manner with something gunny bag through the Railway line ... made a plan and apprehended the above noted place while trying to away. On asking to open the content gunny bag we noticed 32 Pendoral clips in the said gunny bag. He could not produce legal authority for the possessions of the said material are suspected to have been stolen or obtained from Railways. He further disclosed name and address as mentioned in column and accepted his involvement in commitment theft of the above noted material for the nearby track and hidden them in the nearby bushes. Today he was carrying the same his personnal gain and could have given to one of the receivers at Tikiapara Named Mankeshwar shaw of Janga para lane, Howrah (W.B.). I tried to call independent witness at the spot but no one turned up. The dead part of*

weight. Hence made seizure list and label in presence of available witness as mentioned in column 5.”

13. The document marked as seizure list 2, 2/1, 2/2, 2/3 stated that the property to have been seized namely (1) 58 nos. of Pendral Clips (2) 27 nos. of Brake Blocks (3) 10 nos. of Ms. Flat Bearing Plate (4) 50 nos. of Steel Keys (5) 25 nos. of Fish Plate Bolts on dated 14.08.98 from 08:00 to 08:30 hrs. from the scrap godown cum resident of Mankeshwar Shaw who had signed the seizure list in the presence of seizure witness (1) B. P. Panday (A.S.I., R.P.F ‘G’ post –Santragachi) (2) M. N. Chaim (A.S.I., R.P.F ‘G’, post – Santragachi) by seized M.K. Singh (S.I., R.P.F ‘G’, post – Santragachi, S.E. Railway)”

14. The document marked as exhibit – 3 denoted the report of one Sukanta Kumar Roy where in it has been stated that *“as per written requisition of S.I. Sri M.K. Singh of SRC (G) post I attended SRC (G) post and Sri M.K. Singh produced that following materials before me. Item – 27 nos. of Brake Blocks. I carefully examined the above materials and certify that the above seized case property are serviceable, exclusively railway property (mechanical fittings) and not available in open market. For future identification, I put my initial (SKR) with white paint on the case property and also put my initial on the label pasted on the above property”*

15. The document marked as exhibit – 4 state as follows:

“Took diary charge myself S.I. M.K. Singh returned to the post along with officer and staff under the supervision of O.C. Sri D.K. Chowdhury and have to report that on the leading statement of accused Arun prepared in D/E. No. 727

of 14.08.98 of subsequent raid was conducted at the godown cum residence of Mankeshwar Shaw aged 38 years. S/o – Bhagwan Shaw R/O House No. 31/14 Ganga Ram Bairagi lane, P.S.- Howrah, District- Howrah and we managed to apprehend Mankeshwar Shaw at his home residence cum godown and search the godown in presence of available witnesses. On search of the godown, the following materials were found (1) 58 nos. of Pendral Clips (2) 27 nos. of Brake Blocks (3) 10 nos. of Ms. Flat Bearing Plate (4) 50 nos. of Steel Keys (5) 25 nos. of Fish Plate Bolts. On asking he disclosed his name and address as mentioned above but on demand he could not produce any legal authority or document of the lawful possession of the said materials which were suspected to have been the Railway properties stolen or unlawful obtain. He rather confessed that he accepted the stolen Railway materials and disposed off on his own account for his own account for his personal gain. I then made seizure and label in presence of independent and available witness. He was then brought to the post with the seized and labelled materials. All the legal formalities were obtained his statement Das recorded which was confessional. Hence arrested them under Section 6 of R.P.(UP) Act 1966 and as per order of O/C, this post registered this post case No. 22/98 dated 14.8.98 under Section 3(a) of R.P(UP) Act 1966. Now we are engaged in office work and staff who accompanied us in raid are being spared after left off from duty. Paper works as in progress and accused persons are kept in post Hazat after keeping all norms W/C as before.”

16. The document marked as Exhibit 6 state as follows:

“The offence has been committed for the unlawful possession of the materials reasonably suspected to be stolen. Railway materials and label proved by expert to be exclusively the Railway property.

Further on date 14.8.98 at about 03:00 hours, we managed to apprehend in between Baltigiri and Bankrananyabaz after moving an ambush watch and source information and found 32 nos. pendrol clips, suspected Railway materials having no authority. He confessed and begged apology. On statement regarding disposal the house of another accused Mankeshwar Shaw as mentioned in 3(ii) was searched and managed to recover huge quantity of materials suspected to be stolen Railway materials mentioned in Sl. 4 from his house cum go-down on 14.8.98 at 8:00 hrs. Materials were seized and then examined by experts who opined the same to be exclusively the Railway property. Witnesses were also examined which corroborated of the case. Hence accused as mentioned in 3(i) has been charged for R.P.(U.P.) Act 1966 where as 3(ii) Mankeshwar Shaw has been charged under Section 3(b) of R.P.(U.P.) Act 1966 and earlier published by Hon’ble 6th Court that on 13.6.99 with fine of Rs.1,000/- which was cited by him vide receipt no. 206849. It is for your necessary action.” ... filed by M. K. Singh, (S.I., R.P.F ‘G’, post – Santragachi, S.E. Railway).

17. The document marked as Exhibit-7 being the expert opinion stated as follows:

“As per written requisition of O.C/RPF/SRC/G, I attended the office of O.C/RPF/SRC/G Post to certify the Railway materials said to have been

seized in connection with RPF/G Post, SRC Case No. 22/98 dated 14.08.1998 under Section 3(a) of R.P(UP) Act 1966.

S.I. M. K. Singh produced before me the following materials as mentioned below:

- (i) 32 nos. of P/clips in a gunny bag*
- (ii) 58 nos. of P/clips*
- (iii) 10 nos. of M.S. Flat Bearing Plate*
- (iv) 50 nos. of M.S. Keys*
- (v) 25 nos. of fish bolts*

After verification and careful examination of the above seized materials, it could be ascertained that the said articles are exclusively the Railway properties in serviceable condition not questionable and not available on open market.

I have signed the label affixed on some of the sample materials and on the label separately on the gunny bag containing P/clips. I marked 'C.G.D.' my initial in white point on some of the sample materials for my further identification."

18. From the statements of the aforesaid documents it had been aptly proved that seizure list article had been exclusively utilized in the Railways and could not be found in open market. The petitioner did not challenge his signature on the seizure list and also the exhibited document. The petitioner did not explain as to why the seized article was stacked in his godown which were recovered therefrom. Moreover he did not deny the

ownership/possession of the go-down. The petitioner cannot be absolved from being guilty R.P.(U.P) Act 1966. The Learned Advocate for the petitioner submitted that the petition be considered under the provision of The Probation of Offenders Act, 1958. However the said Act is not applicable to an offender under the R.P.(U.P.) Act.

19. In ***Nirmal Lal Gupta vs. State of Orissa***¹, the Hon'ble Supreme Court observed as follows:

“1. The appellant was found guilty of offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966. The said provision reads as follows:

*“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;*

¹ 1995 Supp 2 SCC 713

(b) for the second or a 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.”

2. *The trial Magistrate for recorded reasons ordered the release of the appellant on probation. On appeal to the Court of Session at the instance of the State Government of Orissa, the order of the trial Magistrate was reversed and it was viewed that since the penal provision provided for a minimum sentence, there was no occasion for the provisions of the Probation of Offenders Act, 1958 to be invoked. That view was taken by the Court of Session because of a judicial precedent of the High Court operating. As a result, the appellant was sentenced by the Court of Session to one year's rigorous imprisonment and payment of Rs 1000 as fine spelled out as the minimum prescribed under the law. The High Court on revision by the appellant confirmed the view of the Court of Session. That view is now being challenged before us.*

3. *It may be mentioned that at none of the appellate or revisional stages, or even here, has the conviction of the appellant been challenged. The controversy is on the point whether the appellant could plead for release on probation. The High Court has taken the*

view that when there is a minimum period of imprisonment prescribed that would not get substituted by an order of release on probation.

4. *Our attention may now be focussed on the provision of the section itself. As is evident, it has two clauses. Clause (a) operates to award punishment for the first offence. Clause (b) operates to award punishment for the second or subsequent offence. Both are worded differently. Whereas for clause (a) the maximum term of imprisonment which can be imposed can be upto 5 years, the minimum term of imprisonment imposable is upto one year, and there is a mandate that it shall not be for a period less than one year unless and until for some special and adequate reasons to be mentioned in the judgment of the court, a lesser period of imprisonment had been awarded. It is in this way that the sentence of imprisonment is compartmentalised. The other alternate punishment is imposition of fine. Whereas there is no maximum limit of the fine imposable, but which can in no event be excessive and unreasonable, there is, on the same analogy, a minimum of Rs 1000 fine imposable, unless and until for special and adequate reasons to be mentioned in the judgment of the court, the fine imposed was less than one thousand rupees. This too has its own compartment. Clause (a) gives a choice to the court to either award imprisonment or impose fine, or both. It is the choice of the court which determines*

whether imprisonment alone should be awarded or fine alone be imposed or both should be awarded. It is thus obvious that it is not obligatory on the court to always award imprisonment as a punishment. Once it is so understood it is difficult to comprehend that a minimum sentence alone thereunder is imposable to which the Probation of Offenders Act would not be applicable.

5. *The above result is also achieved when clause (a) is compared with clause (b). For the second or subsequent offence the court is obligated to award imprisonment for a term which may extend to five years and also impose fine. The awardable imprisonment however cannot be less than two years and such fine cannot be less than two thousand rupees, unless for special and adequate reasons, to be mentioned in the judgment of the court, the imprisonment of less than two years is imposed and a fine less than Rs 2000 is imposed. Here there is a compulsion to impose both kinds of sentences, unless the court exercises discretion to do away with imposing any punishment. The limited distinction in the two clauses is prominent.*

6. *Since we are confined to the applicability of clause (a) to the instant case, where awarding of imprisonment or imposition of fine, or both were not essential, we will steer the way by altering the sentence of the appellant, at this point of time, as was prayed before the High Court, to an imposition of fine to the tune of Rs 3000,*

setting aside the sentence of imprisonment, and ordering that such fine shall be deposited by the appellant within a period of three months, as otherwise he shall undergo simple imprisonment of three months in default. This obviates us to pronounce on the relevance of the Probation of Offenders Act to the situation.”

20. In the facts and circumstances of the case since the offence committed by the petitioner was found to be his first offence the Learned Trial Court should not have sentenced him for less than one year. The conviction of the petitioner is upheld with a modification in terms of payment of fine for Rs.1 lakh only setting aside the sentence of imprisonment.
21. The petitioner shall deposit the said amount of Rs.1 lakh within a period of 3 months failing which he shall undergo the period of sentence as directed to undergo by the Trial Court.
22. The revisional appeal is allowed in part.
23. In view of the above discussions, the instant criminal revisional application is dismissed.
24. There is no order as to costs.
25. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
26. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)