

18.07.2025
Sl. No.1
AMR
Ct.No.655

CRA 444 of 1987

In the matter of : **Harbans Singh**

.... Appellant
Mr. Ashok Das

...for the Appellant

Mr. Avishek Sinha

...for the State

- 1.** This appeal is filed at the behest of the appellant/complainant challenging the impugned judgment and order of acquittal dated 30.03.87 passed by the learned Trial Court.
- 2.** By passing the impugned judgment, learned Trial Court disbelieved the case of the prosecution and acquitted the accused persons from the offence made in the charge sheet.
- 3.** The case has arisen on the basis of a complaint lodged by the defacto complainant stating interalia that on 29.01.1981 at about 2.25 A.M. in the night this complainant along with other RPF persons noticed that some miscreants were pilfering rice and wheat from Wagon No. S.C.C. 74550/263 and N.R.C. No. 19656/C, which were standing in the god-shed, line No. 1. They also noticed that 4 R.P.F. personnels of New Cooch Behar were committing criminal operation of pilfering those wagons. It has been alleged that six accused persons were committing criminal operation of pilfering those wagons. They were challenged and out

of them some accused persons fled away, but other two miscreants were caught red handed on the spot along with railway properties. The railway properties were seized under the seizure list in presence of the witnesses.

4. On the basis of a complaint, the case was started.

5. After completion of investigation, this case, against six persons, was started under section 3(a) of the R.P.F/(UP) Act.

6. In this case, ten witnesses were examined by the side of the prosecution and documents were marked as exhibits on behalf of it.

7. I have considered the rival submissions advanced by both the parties and perused the impugned judgment.

8. Learned Advocate for the appellants made submission by stating that the complainant was able to make out a case and P.W. 6 along with other witnesses supported the contentions made in the written complaint.

9. Per contra, learned advocate for the accused persons stated that there is nothing material in the record for which the impugned judgment and order passed by the learned Trial Court may be interfered with.

10. In this case, P.W. 6, the defacto complainant, narrated the entire incident, as stated in the written complaint. He stated that on the relevant date and time, six accused persons committed criminal offence by way of pilfering rice and wheat from the railway wagon. Pw 6 stated in his evidence that PW7 was all along with him but in his cross examination he stated that when

arrested the accused Haradhan Rakshit, Kanailal Sarkar then Rakshak, R.P.F. stood at that place. This witness further stated that when he asked Kanailal to bring Haradhan he did not find any other persons on the verandah of goods-shed. So, the evidence of PW6 does not get corroboration from evidence of PW7 regarding presence of 4 R.P.F. personnel.

11. PW5 also stated in the same line of PW7 and does not corroborate the evidence of PW6.

12. It is said that the railway properties were seized under preparation of the seizure list in presence of witnesses. P.W. 3 and P.W. 9, who are the independent witnesses to the seizure list, have not corroborated the factum of seizure.

13. P.W. 3 has stated in cross-examination that he did not see that things and from where it has found and he signed on the seizure list, as some of the Sepoys called him and asked him to sign. The other seizure witness i.e., P.W. 9 also stated in his cross-examination that he did not see that accused persons on the day of incident with loads like rice and wheat in their possession. This P.W. 9 has stated that on the next date, he was called at RPF office and was asked to sign on the paper and he did it. It further appears from the evidence of this witness that he could not say who brought this rice and wheat which he saw in the bag.

14. It is evident from the depositions of P.W.3 and P.W. 9, who are cited as independent witnesses to the seizure that they did not corroborate the alleged seizure as stated by the prosecution.

15. Moreover, from the materials on record, it appears that there is no label affixed on the sample of the seized rice and wheat and no signature of the witnesses were obtained on any label which creates story of the complainant, becomes doubtful.

16. In respect of other witnesses, they did not support the evidence of P.W. 6. There are apparent omissions and contradictions in the statements made by the witnesses. Moreover, the seizure in respect of this case has not proved by the side of the prosecution.

17. During pendency of this appeal, accused respondent nos. 1, 3 and 4 were expired and the instant appeal stood abated against them.

18. Considering the entire scenario and after scanning the entire evidences brought on record, I find there is nothing illegality or irregularity in the impugned judgment and order of acquittal. There is nothing material in the record for which the said judgment passed by the learned Trial Court may be interfered with.

19. Accordingly, the instant appeal be and the same is hereby dismissed affirming the impugned judgment and order of acquittal passed by the learned Trial Court dated 30.03.1987 in connection with N.G.R. Case No. 80/1982 under Section 3(a) of the Railway Property (Unlawful Possession) Act.

20. Thus, the criminal appeal is hereby dismissed.

21. Let a copy of this order along with TCR be sent down to the learned Trial Court immediately.

22. Urgent photostat certified copy of the order, if applied for, be given to the parties upon complying with all legal formalities.

(Prasenjit Biswas,J.)