

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2277 of 2003

With

CRAN 3/2025

Rafikul Alam and Anr.

Versus

The State of West Bengal and Anr.

For the Petitioners : Md. Ashraf Ali, Adv.

For the State : Ms. Anita Gour, Adv.
Mr. Anand Keshari, Adv.

Heard on : 05.08.2025

Judgment on : 05.08.2025

Ajay Kumar Gupta, J:

1. Affidavit of service, filed today in Court by the petitioners, is taken on record.

2. The Petitioners assailed impugned Judgment and Order dated 29.08.2003 passed by the Learned Additional Sessions Judge, Birbhum at Rampurhat in Criminal Appeal No. 28/2002, whereby the Learned Judge dismissed the application filed under section 5 of the Limitation Act for condonation of delay in filing the appeal against the Judgment and Order dated 17.08.2001 passed by the Learned Sub-Divisional Judicial Magistrate, Rampurhat in C.R. Case No. 516/1991 (T.R. No. 229/2003).

3. By the said order, the Learned Magistrate convicted the petitioners for an offence punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act and sentenced them to suffer rigorous imprisonment for one year each and to pay the fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for 3 months each.

4. The brief facts of the case are that on 22.10.1991 A.S.I. S.N. Chatterjee along with C/1887 H.N. Ojha, C/2596 Shamuel Murmu

and C/9297 Golam Akbar, under order of IPF/Rampurhat, conducted track patrolling on foot from Rajgram Railway Station towards Bansloi Bridge Railway Station to prevent and detect theft of railway properties specially track fittings. The patrolling party left Rajgram railway station at about 00.05 hrs on 22.10.1991 and reached at KM No. 136/10 at about 1.25 hrs and set up an ambush, the location being known for such incident.

5. In the course of their ambush at about 2.45 hrs. They noticed two persons coming from Rajgram railway station side through railway track with something heavy on their heads in suspicious manner who are surrounded and apprehended with one CST/9 plate each on their heads at MK No. 136/10-11 on the west side of U.P. railway line in between Rajgram and Bansloi bridge R/S.

6. The said accused persons failed to produce any authority or give any satisfactory reply for lawful possession of railway CST/9 plate but they disclosed that their identity as (1) Rafikul Alam s/o Javed Ali and (2) Abdul Jahural s/o Kurhan Sk both of village Horiara, P.S. Barhwarh, Dist.- Sahibganj. The said CST/9 plate were seized and labelled on the spot in presence of RPF witness by ASI S.N. Chatterjee as no independent witness was available at night

and both the accused persons were taken into custody. Later, accused persons, seized property with seizure list were produced before IPF, Rampurhat along with a written complaint, who in turn registered Case No. 7(10)91 dated 22.10.1991 u/s 3(a) RP(UP) Act, 1966 against both the accused persons.

7. The case was endorsed to S.I. S. Honsda by IPF Rampurhat for enquiry and report. E.O. visited place of occurrence, prepared a rough sketch map and seized railway properties were examined by Sri. M.C. Barman P.W. 1/3/Spl./Nalhati and enquiry officer obtained his expert opinion and also examine the witness. Finally, prosecution report against the accused persons' u/s. 3(a) of RP (UP) Act, 1966 was submitted to stand trial in Court. The Court convicted and sentenced the accused persons as aforesaid after scanning of the oral and documentary evidence.

8. Heard learned counsel for the petitioners as well as the State. Despite service, none appears on behalf of the opposite party no. 2 at the time of call. No accommodation is sought for.

9. Upon perusal of impugned order, this court finds that the petitioners have pleaded cause of delay of 1 year on the ground of

illness of the accused. Petitioners also annexed the medical certificates issued by the Doctors. However, learned Judge held no sufficient delay in filing appeal explained and rejected their application for condonation of delay filed under Section 5 of the Limitation Act, 1963.

10. It apparent from the records that the petitioners were convicted. The appeal against the conviction is a statutory right of the petitioners. The every application for condonation of delay always depend upon the facts and circumstances of each case of which the court would be required to exercise its judicial discretion in the matter. The application for condonation of delay should have been allowed not only in the interest of justice and also substantial justice. Substantial justice should be preferred over technical justice particularly when conviction pertaining to sentence of rigorous imprisonment and fine. Criminal appeal should be heard on merits.

11. In view of the above facts, the order of rejection dated 29.08.2003 passed by the learned Additional Judge is hereby set aside. The Criminal Appeal be restored to its original position with a further direction to hear out the appeal on merits after giving opportunity of hearing of all the parties and decide the same and

pass a reasoned order strictly in accordance with law as early as possible considering the age of the Criminal Appeal.

12. It is submitted that the accused was all along on bail. Therefore, the Petitioners/convicts shall be remained in the same bail bond till disposal of appeal, if there is no impediment, whatsoever.

13. With the above observations, **CRR 2277 of 2003** is, thus, **allowed.**

14. Consequently, **CRAN 3/2025** is, thus, disposed of.

15. Let the Judgment of this Court shall be communicated to the Learned Court below for information.

16. All parties shall act in terms of the copy of this Judgment downloaded from the official website of this court.

17. Urgent Photostat certified copy of this Judgment, if applied for, is to be supplied to the parties upon compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J)

Amalranjan