

**Ram Nihora Singh Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Sep-11-2013

**Appellant :** Ram Nihora Singh

**Respondent :** State of Bihar

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Revision No.57 of 2003

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Ram Nihora Singh, son of Late Jugeshwar Singh, resident of village-Dhurichak, P.S.Bihta, District-Patna. .... Petitioner/s Versus State Of Bihar .... Respondent/s

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Appearance : For the Petitioner/s : M/S. Nagendra Kumar Singh & Ashok Kumar Singh, Advs. For the Respondent/s : Mr. None.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI CAV

JUDGMENT

Date:

11. -09-2013 While admitting instant Cr.Revision on 31.01.2003, it was held that this application will be heard only on the question of sentence. Petitioner was held guilty for an offence punishable under Section 3 RP(U.P) Act by the trial court of

S.D.J.M., Patna in R.P.F.(Danapur)P.S.Case No.3(4)88 and found its concurrence in Cr.Appeal No.237 of 1989 by vide judgment dated 28.09.2002 including the quantum of sentence so inflicted upon the petitioner as R.I. for one year by Additional Sessions Judge-XI, Patna. The learned counsel for the petitioner relying upon 2002(1) PLJR 70 has submitted that the Honble Court had considered the plea of the petitioner in that very case by modifying the quantum of sentence as the period already undergone, hence it is a fit case, where in similar preference is solicited. The learned Additional P.P. opposed the same and contended that the case so relied upon by the learned counsel for the petitioner 2 relates that an offence punishable under Sections 380, 457 of the IPC wherein there happens to be no minimum sentence prescribed. As such, the aforesaid citation is not going to support the plea of the petitioner. To appreciate rival contention, it looks appropriate to incorporate Section 3 of the R.P.(UP) Act 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; (b) xxx xxx xxx After going through the relevant Section, it is apparent that the maximum sentence so prescribed with regard to the status of first offender extends to five years or the fine or with both however containing minimum sentence which shall not be less than one year as well as fine which shall not be less than Rs.1,000/-. However, such minimum sentence is also found to be subject to relaxation and for that, special reason has to be assigned by the Court. From the successive judgments, it is evident that one piece of dynamo belt, one piece of hose pipe and one piece of Chamber hose pipe were seized from a Khalian on 27.04.1988 having in open place belonging to petitioner. During course of statement recorded under 3 Section 313 of the Cr.P.C. on 12.07.1989 his age was estimated by the court as 55 years. That means to say on the date of occurrence, he would have been aged about 54 years. 25 years have already expired. Coming to this place and on account

thereof, he must have achieved the age of 80 years. It is also evident from the Lower Court record that he was taken into custody on 28.04.1988 and was released on 31.05.1988. At the revisional stage petitioner had surrendered on 16.12.2002 and was granted bail by this Court on 31.01.2003. In the aforesaid background, quantum of sentence so inflicted and affirmed by the successive courts below needs reconsideration and virtually that happens to be reason behind while admitting the revision only on the point of sentence. Hence, maintaining the conviction of petitioner under Section 3 of the RP(U.P) Act, the sentence so inflicted by the successive courts below is modified to the effect that his period of incarceration already undergone, as stated above, shall be treated to be his sentence. With the aforesaid modification in sentence, instant petition is disposed of. Petitioner is on bail, hence is discharged from its liability. Patna High Court, (Aditya Kumar Trivedi, J) Dated 11th September,2013, Brajesh Kumar/AFR.

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