

Surat Lal Vs. State of Bihar

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Court : Patna

Decided On : Jan-04-2002

Judge : S.N. Pathak, J.

Appeal No. : Criminal Revision No. 425 of 2000

Appellant : Surat Lal

Respondent : State of Bihar

Disposition : Revision Dismissed

Prior history : S.N. Pathak, J. 1. This revision is directed against the judgment dated 15-5-2000 passed by 1st Additional Sessions Judge, Samastipur, in Cr. Appeal No. 138/61 of 1991/1999 confirming the judgment of the trial Court dated 17-9-91 passed by Judicial Magistrate, 1st Class (Railway Magistrate), Samastipur, in RPF case No. 42/81, Trial No, 472/91. The revisionist was convicted for an offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966. 2. It has been submitted by the r

Judgement :

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confirming the judgment of the trial Court dated 17-9-91 passed by Judicial Magistrate, 1st Class (Railway Magistrate), Samastipur, in RPF case No. 42/81, Trial No, 472/91. The revisionist was convicted for an offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966.

2. It has been submitted by the revisionist's lawyer that admittedly certain railway properties were recovered from his railway quarter, but the properties were entrusted to him for being used in replacement of the railway lines at Ghoghardiha railway station. He was mate of the labourers and so he was expected to be in possession of those articles, which were entrusted to him by P.W.I, at the relevant time. Some P.Ws. admitted that there was no store at the railway station, Ghoghardiha and as he was entrusted with the property as mate of the labourers. P.W. 6 admitted at paragraph 4 that during the relevant period work of replacement of railway lines was going on in the section concerned.

3. So, the property recovered from the quarter of the accused-revisionist was well admitted. The only question was whether he lawfully entrusted with this property or whether he had come in possession of those properties unlawfully. In this connection, there was no paper produced by the accused to show this entrustment. In his examination under Section 313 Cr. P.C. the revisionist said that he was in lawful possession of this property. But he failed to produce any paper or examine any witness to support this entrustment by the P.W.I., who, according to the evidence of the P.Ws., distributes these articles to the mate for being used in the construction of the railway lines or railway tracks, etc. When P.W.I, was examined in Court he said at paragraph 10 of his evidence that on the date of occurrence at Ghoghardiha railway station there was store which was under the guard of his Choukidars, P.W. 6 also said at paragraph 4 that there was store to keep the railway goods in the concerned section by the side of the residence of Gopal. Ganga Ram and Yusuf were the choukidars of the stores. This store was situated at 40-50' south of the railway quarter of the accused. From the aforesaid statement of P.W. 4 and 6 it was apparent that there was some store whether well secured or unsecured at the railway station, Ghoghardiha, or at the proper railway station where work was being carried on under the guards of two choukidars. So, in such a situation, the recovery of the railway property from the quarter of the

accused had to be properly explained and this explanation would come from the evidence that the revisionist was entrusted with the property to be used in the construction concerned in the section concerned. The statement of P.W. 4, B.N. Das, at paragraph 10 has been interpreted by the accused-revisionist's lawyer to the effect that P.W. 4 was suppressing the paper on the basis of which he had entrusted the seized articles to the accused. But the question is whether the bold statement of P.W. 4 that he was unable to produce (at the date of deposition), the paper regarding that store cannot be interpreted to mean that he was unable to produce the paper on the basis of which the seized article was entrusted to the accused. This statement has figured after the statement that at the relevant time there was store at the railway station, Ghoghardiha, under the guard of Choukidars. This statement would mean that he had no paper to suggest that the store existing at the relevant date was still existing. Such statement cannot be stretched too far to interpret that the entrustment paper was not in possession of P.W. I. when he was deposing. The accused in his statement under Section 313 Cr. P.C. failed to say that he was entrusted with the property, in question, as material to use the same in the replacement of the railway lines. If at all this was the defence and it was a fact, the accused should have prayed to the Court to direct the senior railway authorities of the division concerned to produce the papers concerned of entrustment, if at all it was in existence either in possession of P.W.I. or in possession of any other railway official. No such step was taken by the accused. In the aforesaid circumstances, chance of the seized articles being retained by the accused-revisionist without any lawful authority was very much there. Under the circumstances of this case, I do not think that the findings recorded by the trial Court and the same confirmed by the appellate Court that the accused was found in unlawful possession of railway property can be interfered with in this revision, scope of which is limited. The revision cannot be used as an appeal nor can benefit of doubt be a valid legal ground for interfering with the findings of the Courts below.

4. I am of the opinion that there is no necessity to interfere with the findings of the two Courts below so far as the order of conviction is concerned. So far as the sentence is concerned, it has been submitted that the accused-revisionist has faced trauma of litigation for the last 19 years and he deserves benefit of Probation

of Offenders. Act as provided under Section 360, Cr. P.C. But, the question is whether under the circumstances of this case the accused-revisionist has deserved this benefit. To give this benefit general circumstances have to be taken into consideration. It is a matter of common knowledge that railway employees whoever they may be, misused and misappropriate railway property whenever they have an opportunity to do the same. Huge quantity of railway property (21 items) was recovered from the possession of the accused-revisionist. So, I do not think that he deserves the benefit of Probation of Offenders Act simply on this ground. So, I do not think that the order of sentence can also be revised.

5. In the result, this revision is dismissed.

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