

Arjun Prasad Paswan Vs. the State of Bihar

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Court : Patna

Decided On : Sep-11-2002

Judge : Braj Nandan Prasad Singh, J.

Acts : [Railway Property \(Unlawful Possession\), 1966](#) - Sections 3

Appeal No. : Criminal Revn. No. 605 of 2001

Appellant : Arjun Prasad Paswan

Respondent : The State of Bihar

Advocate for Def. : Din Bandhu Singh, A.P.P.

Advocate for Pet/Ap. : Ajay Kumar Thakur and Bimal Kumar

Disposition : Petition dismissed

Judgement :

Braj Nandan Prasad Singh, J.

1. Against concurrent finding recorded by both the Courts below, finding the petitioner guilty under Section 3(a) RP (UP) Act and sentencing him to suffer rigorous imprisonment for a term of four months, the petitioner has challenged the said finding in this revision.

2. The factual matrix, as appearing from the petition of complaint and also the narrations made by witnesses, are that on 14th May, 1988, Kameshwar Paswan (P.W. 1) at about 11-30 hours, in course of surprise raid, in the company of Md. Manzoor Ali, noticed petitioner carrying a bag on his shoulder, and shortly on apprehension, it was found that the object being carried by him was steam coal which is used in Railway Locomotives. It is alleged that on interrogation, since the petitioner failed to give satisfactory and valid reply for unauthorised possession of railway property, he was prosecuted under Section 3(a) RP (UP) Act, and enquiry into allegation was allegedly held by Deo Brata Singh A.S.I, who recorded statement of witnesses and also confessional statement of the petitioner.

3. The defence of the petitioner both before the Court below and also this Court had been that of total innocence.

4. After commencement of the trial, the prosecution examined altogether four witnesses who were Kameshwar Paswan P.W. 1 Sub-Inspector, Railway, Katihar, Sunil Kumar Saha P.W. 2, Himanshu Shekhar P.W. 3, S.N. Dutta P.W. 4 and Deo Brata Singh P.W. 5. Kameshwar Paswan P.W. 1 while reiterating his earliest statement attributed accusations against the petitioner about possession of 20 Kgs. of steam coal which is used in Railway Locomotive. Sunil Kumar Saha P.W. 2 states only about apprehension of the petitioner with coal. Himanshu Shekhar P.W. 3 stated about production of the petitioner with coal, by Kameshwar Paswan, S. N. Dutta P.W. 4 who happens to be Senior Fuel Inspector, on test, stated to have found coal in question to be steam coal, which is used in Railway Locomotive, and the last witness Deo Brata Singh who held enquiry, stated to have submitted enquiry report, there being prima facie case against the petitioner.

5. Against the concurrent finding recorded by the Courts below, it is sought to be urged that though coal in question was brought in Court the same was not exhibited, and that apart, that coal is easily available in the market and also that there is no conclusive evidence to suggest that the coal was allegedly seized from possession of the petitioner, in premises of Railway. Paucity of evidence was also taken to be a ground to annul the finding recorded by the Court below, and the last argument canvassed at bar was that since the prosecution was launched

against the petitioner in the year 1988 and he also remained in custody for about a month and has retired from service, these mitigating circumstances deserve consideration in awarding sentence, if the finding of guilt recorded by Courts below is upheld by this Court.

6. Regard being had to the concurrent finding of both the Courts below and the mitigating circumstances which are canvassed at bar, while upholding the finding of guilt, the petitioner is sentenced to the period already undergone by him and with this modification in sentence, the revision application is dismissed.

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