

Chet Ram Vs. State

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Court : Allahabad

Decided On : Nov-13-1975

Reported in : 1976CriLJ585

Judge : H.N. Kapoor, J.

Appellant : Chet Ram

Respondent : State

Judgement :

ORDER

H.N. Kapoor, J.

1. Chetram has been convicted under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 and sentenced to one year's R. I. The order was confirmed in Criminal Appeal No. 476 of 1971 by the 1st Addl. Sessions Judge, Bareilly by his order dated 21-4-1972.

2. The prosecution case is that on 29-7-1969 Goods Train No. M. 4 DN., during its run, halted near West Cabin of railway station Rosa at about 8:45 p. m, Tribhuwan Datt Tiwari (P.W. 1) and Ram Surat Singh (P.W. 3) both Rakshaks of the R. P. F. started patrolling the train respectively on its northern and southern sides. Rakshak Tribhuwan Datt Tiwari noticed that three persons were busy in removing a mustard bag from Wagon No. NR 28170. He raised an alarm where upon Ram

Surat Singh, another Rakshak Girdhari Lai (P.W. 4) and a civil police constable Shah Alam (P.W. 5) arrived at the spot. They, all saw the three persons removing the bag. On seeing them, they left the bag on the northern side of the railway track and made a bid to run away. Two of them succeeded in escaping while the third, culprit who is the revisionist Chetcam, was apprehended at the spot. The bag containing mustard was found lying on the railway track which was taken in their possession by the Rakshaka. A recovery memo was prepared on the spot. A sum of Rs. 65/- was also mentioned as it was found tied in handkerchief on the person of the applicant which he tried to pass on to the Rakshaks for his release. The applicant was taken to the B.P.F. Rosa where a case against him was registered. He was duly prosecuted.

3. The applicant denied 'for' prosecution allegations and stated that he was brought from his house and was implicated falsely by the Rakshak with whom he had enmity. He examined Chokhey (D. W. 1), Tauley (D. W. 2) and Lakshmi Shanker (D. W. 3) in support of his defence. Bam Asrey Singh (P.W. 2) had admitted that he had given evidence against the applicant earlier at Shahjehanpur in a case under Section 379, Indian Penal Code.

4. The applicant had filed a certified copy of a judgment in which all the accused including the applicant were acquitted. Cooksey (D. W. 1) and Tauley (P.W. 8) had given evidence to the effect that, the applicant was arrested from his village. Both the lower courts appraised the entire evidence and had come to the conclusion that the prosecution case had been fully proved against the applicant. It is not possible to make a reappraisal of this evidence. It has not been pointed out that the courts below have committed any illegality in appraising the evidence.

5. In this revision a ground has been taken that the provisions of Section 3 of the Rajasthan Property (Unlawful Possession) Act of 1966 are violative of Article 14 of the Constitution of India. Sri M. A. Anairi, learned counsel for the applicant drew my attention to the Notification No. GSR 361(E) Ministry of Home Affairs; Government of India dated 27-8-1975 published in the Extraordinary Gazette of Uttar Pradesh dated 6-9-1975. By this Notification all proceedings pending in any Court for the enforcement of the rights conferred by Articles 14, 21 and 22 of the

Constituting are to remain issues pending for the period during which proclamations of Emergency 1 made under Clause (1) of Article 352 of the Constitution on December 5, 1971 and June 29, 1975 are both in force, I have heard Sri Ansari in, order to satisfy myself whether there was reworded in such a ground in which case the hearing of the revision had to be suspended. Sri Anand in all fairness, referred to three authorities of the Supreme Court in which the validity of some provisions of other Acts was challenged. But those provisions were held to be valid and not violative of Article 14 of the Constitution. In the case of *C.L. Emden v State of Uttar Pradesh*, AIR 1960 SC 543 : 1960 Cri 14 729 the provisions of Section 4(1) of the Prevention of Corruption Act, 1947 were challenged; Their Lordships of the Supreme Court observed as follows:

It is well established that Article 14 does not forbid reasonable classification for the purposes of legislation, but if it appears that the impugned legislation is based on a reasonable classification founded on intelligible differential and that the said differentia have a rational relation to the object sought to be achieved by it, its validity cannot be successfully challenged under Article 14 (vide *Ram Krishna Dalmia v. S.R. Tendolkar* : [1959] 1 SCR 279). In the present case there can be no doubt that the basis adopted by the Legislature in classifying one class of public servants who are brought within the mischief of Section 4 (1) is a perfectly rational basis. It is based on an intelligible differential and there can be no difficulty in distinguishing the class of persons covered by the impugned section from other classes of person who are accused of committing other offences.

Section 4 (1) of the Prevention of Corruption Act, 1947 reads as follows:

Where in any trial of an offence punishable under Section 161 or Section 165 or 165-A of the Indian Penal Code it is proved that a person has accepted or obtained or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification not being legal remuneration or 'any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain that gratification of that valuable thing, as that case may be as a motive or reward such as is mentioned in the Jaw Section 161 or as the case may be without consideration or a

consideration which he knows to be inadequate.

It is clear that that section also provided that the presumption would be against the accused unless the contrary is proved.

6. There is another case of *Babulal Amthaiat Metata v. Collector of Customs, Calcutta* : 1983ECR1657D(SC) in which the validity of Section 178-A of the Sea Customs Act (1878) was challenged as violative of Article 14 of the Constitution. Under Section 178-A of that Act, the burden; shifted to the person from whose possession the smuggled goods were seized to prove that the goods were not smuggled. That section too has been held to be valid and not violative of Article 14 of the Constitution, as has been based on reasonable classification.

7. The last case is of *A.S. Krishna v. State of Madras* : 1957 CriLJ409 . In that case the validity of the provisions of Section 4(2) (Madras Prohibition Act (10 of 1937)) was challenged as violative of Article 14 of the Constitution. According to Section 4 (2) of that Act, the burden shifted to the accused to show the contrary otherwise a presumption is raised against him in case he is found to be in possession of certain articles for manufacturing. Hquor or he allows certain acts to be done upon premises in his immediate possession and even if he consumes or buys any intoxicating drug. Their Lordships of the Supreme Court held that the provisions of Section 4 (2) of that Act were not violative of Article 14 of the Constitution on the same principle which has been laid down above. learned Counsel for the applicant has argued that the words 'it shall be presumed until the contrary is shown' do not envisage proof as in the present case. I do not agree with this contention of the learned Counsel as 'contrary' can be shown only by adducing some legal evidence. I am of the opinion that even on the basis of the authorities cited above, it can be said that the matter has been settled by the Supreme Court and the provisions of Section 3 of the 'Railway Property (Unlawful Possession) Act of 1966 are- not violative of Article 14 'of the Constitution as they are based on reasoned classification with respect to the property belonging to the railway or in charge or possession of the railway administration. Such a classification is necessary for safeguarding the railway property which even remains unguarded as the railway is to run through Jungles and7 lonely places

and it is not possible to keep guard for every wagon or every compartment. There is thus no force in the ground taken in this revision that the scans of Section 3 of the said Act are violative of Article 14 of the Constitution India and so I do not consider it necessary to suspend the hearing of the revision on that ground.

8. learned Counsel for the applicant then argued that it cannot be said that the applicant was actually in possession of the bag of mustard as he had not carried it with him and it was found to have been lying on the railway track. He has relied on certain passages from Salmon on Jurisprudence (11th Edition). At pages 321 and 323 'possession' has been defined as 'possession of a material object as continuing exercise of a claim to the exclusive use of it. It involves, therefore, two distinct elements one of which is mental or subjective and the other physical or objective'. It has been further elucidated as follows: 'a man does not possess a field because he is walking about in it, unless he has the intent to exclude other persons from the use of it.' In my opinion, it was sufficient that the applicant along with his companions removed the bag from the wagon which was obviously with the intention of entering sole dominion on it along with his companions and as such he had the corporeal possession of the goods at that time. He is held guilty for being in possession of the railway property at that time. It is immaterial that he left it on the track and then tried to run away. The prosecution case has thus been fully proved against the applicant and he was rightly convicted.

9. learned Counsel for the applicant lastly argued that the sentence is excessive, Section 3 of the said Act, however, provides that the minimum sentence is one year's R. I. which has been awarded to the applicant. No interference in sentence is, therefore, possible in revision.

10. In the result the revision is dismissed. The applicant is on bail. He shall surrender to his bail bonds and be taken into custody forthwith to serve out the sentence awarded to him.