

Mohan Prasad Vs. State of Bihar

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Court : Jharkhand

Decided On : Nov-27-2000

Reported in : 2001(49)BLJR295; 2001CriLJ559

Judge : D.N. Prasad, J.

Acts : Railway Property Unlawful Possession Act, 1966 - Sections 3

Appeal No. : Crl. Revision No. 21 of 1997 (R)

Appellant : Mohan Prasad

Respondent : State of Bihar

Advocate for Def. : Shekher Sinha, Adv.

Advocate for Pet/Ap. : R.C. Khatri, Adv.

Disposition : Revision dismissed

Judgement :

D.N. Prasad, J.

1. This Criminal Revision is directed against the order passed by the 5th Additional Sessions Judge. Dhanbad in Criminal Appeal No. 17 of 1988 by which the learned Sessions Judge confirmed the judgment of conviction and sentence passed by Sub-Divisional Judicial Railway Magistrate, Dhanbad, by which the petitioner was

convicted under Section 3(a), RPUP Act and sentenced to undergo rigorous imprisonment for one year.

2. The brief case of the prosecution as stated that, one Shankar Prasad Barnwal was attempting to carrying iron material on a trekker. The RPF authority went to the spot and one person fled away on a motor-cycle whereas 2-3 persons remained on the spot. The RPF identified the motor-bike driver as Shankar Prasad Barnwal and the petitioner along with other Upendra was caught at the spot. Accordingly, seizure-list in respect of railway iron materials were prepared and the prosecution was launched.

3. The witnesses were examined after framing charge and the learned trial Court acquitted Shankar Prasad Barnwal as he did not find the evidence against him whereas the petitioner was found guilty and he was sentenced to undergo RI for one year.

4. Against the said judgment of trial Court, the petitioner preferred appeal before the Sessions Judge, which was dismissed by order dated 12.12.1996. On being aggrieved by the Judgment of trial Court and also of appellate Court, the petitioner preferred this revision on the ground that the learned Court below committed error in convicting the petitioner as actually nothing has been recovered from the possession of the petitioner and the petitioner being simply a khalashi of the trekker and he had no knowledge about the material loaded on the trekker. It is also claimed that other accused, who was the owner of the materials in question has already been acquitted by the trial Court and the case of the petitioner also stand on similar footing and as such the impugned judgment is fit to be set-aside.

5. At the very out-set, the learned counsel appearing on behalf of the petitioner fairly confined his argument in respect of sentence only. It is submitted that it is true that the railway material being iron was recovered and seized from the trekker but the petitioner was simply a khalashi and other accused who was actually the owner of the material has already been acquitted. It is also submitted that the petitioner remained in custody from 4.12.1981 to 12.1.1982 and again from 27.1.1997 to 18.2.1997 and has already suffered much.

6. Perused the lower Court records. Obviously, the iron material was recovered and seized from the trekker from which the petitioner was caught red-handed and there was no paper as regards to the said material. All the witnesses, PWs 1 to 5 are consistent in their evidence, and the seizure-list, Ext. 2 was also proved. It has come in evidence that PWs 2 and 5 had rushed to Chandrapura from RPF post Gomoh on telephonic message and the railway material was seized from the trekker as well as the petitioner Mohan Prasad was handed-over by the villagers.

7. There appears no doubt in arriving at conclusion that the said materials are not the railway materials, rather it is also established that the iron material seized from the trekker, belonged to railway property for which the petitioner had no authority.

8. Thus, I find that the prosecution has proved its case beyond all reasonable doubts and as such I find that the trial Court as well as the appellate Court has rightly convicted the petitioner for the offences charged, which does not require to be interfered.

9. So far as sentence is concerned, it is apparent that the petitioner remained in custody for more than two months. This case is also pending since 1981 and the petitioner has certainly suffered much and also remained in custody. In this way, I find that it is expedient in the interest of justice that the sentence already undergone will suffice for the ends of justice for the alleged offence.

10. Thus, the sentence passed by the Court below is, hereby, modified to the extent that the petitioner is sentenced to undergo for the period already undergone.

It appears that he has already availing the privilege of bail as per order, dated 14.2.1997 and as such he is discharged from the liability of the bail bonds.

11. With the above modification in sentence only, this Criminal Revision application is dismissed.

12. Revision dismissed.