

Sekh Gunny Vs. the State

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Court : Orissa

Decided On : Aug-17-1988

Reported in : 1989CriLJ1622

Judge : L. Rath, J.

Appellant : Sekh Gunny

Respondent : The State

Judgement :

ORDER

L. Rath, J.

1. The petitioner was convicted under Section 3(a), Railway Property (Unlawful Possession) Act, 1966 (for short, the Act) for illegal possession of about 40 kgs. of raw coal (Bengal coal) and sentenced to undergo R.I. for one month. The conviction was maintained in appeal but the sentence was converted to fine of Rs. 200/- in default to undergo R.I. for one month. The petitioner has moved this Court in revision for reversal of the conviction and the sentence.

2. The facts leading to the prosecution case are that on 18-8-79 at about 9.30 a.m. the petitioner was apprehended by P.Ws. 1 & 2, two Sub- Inspectors of R.P.F. inside the railway marshalling yard of Khurda Road railway station carrying about 30 kgs. of coal in a gunny bag in the carrier and 10 Kgs. of coal in another bag

hanging from the handle of the bicycle. The petitioner could not satisfactorily explain the possession of the coal and had also no authority to enter inside the marshalling yard even though he was a temporary substituted Token Porter of the railways then. He was brought to the R.P.F. station where the coal was seized by P.W. 1 under Ext. 2 and thereafter investigation was taken up by P. W. 5 who collected samples of the coal from the wagon in the marshalling yard and got the coal tested by P.W. 3 along with the sample collected on 3-9-79 and his opinion having been obtained, the prosecution report was submitted.

3. Mr. S.N. Satpathy, learned Counsel appearing for the petitioner in assailing the conviction has urged that the coal in question was never proved to be the railway property and also the element of reasonable suspicion having existed of such property having been stolen was never established to bring home the charge under Section 3(a) of the Act against the petitioner. It is his contention that the seizure of the coal was not effected at the spot where the petitioner was supposed to be apprehended but was made inside the R.P.F. station. The coal was never properly tested by the expert and P.W. 3 could not be called an expert and that only the bag containing 10 Kgs. of coal was produced before the court but no other bag alleged to have contained 30 Kgs. of coal was produced and that the seal of the M.O. produced was found to have been broken which circumstances, according to him, make the prosecution case liable to be thrown out as not acceptable.

4. The case of the prosecution has been sought to be established through the evidence of P.Ws. 1, 2, 3 and 5. While P.Ws. 1 and 2 are the officers of the R.P.F. who seized the coal, P.W. 3, as earlier observed, was the expert who examined the coal. It is the consistent evidence of P.Ws. 1 and 2 of discovering the petitioner while he was carrying the coal in his cycle in the manner earlier stated and to have seized the same under the seizure list, and of his having put the paper seal in the bags. P.W. 2 has completely corroborated P.W. 1. P.W. 5 has stated of having got the seized property examined by the Divisional Fuel Inspector (P.W. 3) as the expert witness along with the sample collected by him. Ext. 5 is the report of the expert which has been given after examination of the coal on chemical testing and from the report it transpires that both the amounts of coal and the sample collected

were the Bengal selected grade coal and that such type of coal is used in the locomotives and is not available in the open market for domestic use. In the evidence P.W. 3 also stated of having received the sample as also the seized coal under proper condition with seal and of the same having been sealed in his presence after his examination.

5. In view of such facts, the mere fact that the seizure was not effected at the spot but at the R.P.F. station falls into insignificance. The seals admittedly being paper seals, it is nothing unnatural that such seals were broken by the time the article was produced in the court. Doubtless, the 30 kgs. of coal seized was not produced before the court (the M.O.I.), a bag containing 10 kgs. of coal having been produced and the same having been proved to be the railway property removed from the wagon raises a presumption against the petitioner. It is now settled law that R.P.F. officers are not police officers, but even as regards police officers it was stated in : 1956 CriLJ426 (Aher Raja Khima v. State of Saurashtra) the presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds therefor. In : 1980 CriLJ564 (Hazari Lal v. The State (Delhi Admn.)). In a case arising under the Prevention of Corruption Act, the question raised about the credibility of the police witness was rejected observing that there is no rule of prudence which has crystallised into a rule of law, nor indeed any rule of prudence which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and that there should be insistence on corroboration. So far as the seizure is concerned, merely because the seizure witness has not been examined, the evidence of the investigating officer as also of P. Ws. 1 and 2 of recovery of the coal from the possession of the petitioner cannot be disbelieved, the authority for which is found in AIR 1978 SC 1511 : 1978 Cri LJ 1531 (Modan Singh v. State of Rajasthan). It is of course true that in the given facts and circumstances of a particular case, the evidence of police officers may not be found to be acceptable but such a position would be applicable as much to such officers as to any other witnesses.

6. Mr. J. Behera, learned Additional Standing Counsel appearing for the State, also wanted to rely upon Ext. 7, the confessional statement of the petitioner

recorded by P. W. 5 wherein he had admitted the offence but however such statement not available to be taken into consideration in view of the fact that in the examination under Section 364 of the old Cr. P.C. the statement was not put to the petitioner and his explanation thereto was not obtained.

7. Even if Ext. 7 is not available to be taken into consideration, yet on the basis of the evidence as discussed above I do not find myself persuaded to disturb the findings reached by both the courts below. Hence this revision is dismissed as having without any merit.

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