

Virender Singh Vs. State

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Court : Delhi

Decided On : Jan-25-1991

Reported in : 43(1991)DLT546

Judge : S.C. Jain, J.

Acts : Rly. Property (Unlawful Possession) Act, 1966 - Sections 3; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313 and 360; [Probation of Offenders Act, 1958](#) - Sections 4

Appeal No. : Criminal Revision Appeal No. 36 of 1982

Appellant : Virender Singh

Respondent : State

Advocate for Pet/Ap. : B.B. Lal, Adv

Judgement :

S.C. Jain, J.

(1) The facts giving rise to this revision petition are that Shri Virender Singh (hereinafter referred to as the petitioner) was prosecuted under S. 3 of the Rly Property (unlawful possession) Act, 1966 and was convicted and sentenced to undergo R.I. for one year and also to pay a fine of Rs. 1,000.00 and in default to undergo further simple imprisonment for three months under Section 3 of the said

Act. His appeal before the Addl Sessions Judge was dismissed by order dated February 5, 1982.

(2) Aggrieved, this revision petition has been filed by the petitioner challenging the order of the Addl Sessions Judge.

(3) Both the courts below after perusing the evidence on record, the alleged confessional statement of the petitioner recorded by an officer of Railway Protection Force and other circumstances came to the conclusion that the petitioner on October 19, 1977 at about 9.00 p.m. at the mineral siding gate was found in possession of 37 pig iron slabs weighing 17 quintals which was a stolen railway property loaded in his truck No. Dlg 8200.

(4) The main thrust of the arguments of the learned counsel for the petitioner is that the possession of the petitioner which is the most important ingredient of Section 3 of the Act has not been established on record. According to him, both the courts below have erred in coming to a conclusion that the petitioner was driving the truck when detained with stolen property. This is against the record. The only witness to prove this fact is Public Witness 6 Jagdish Chander Gupta, who has stated that when he detained the truck, 3/4 persons ran away from the truck. He shouted and thereafter some people including the petitioner reached the spot. Mere fact that the petitioner was the owner of the truck does not prove that he was driving the truck with stolen railway property and as such was in possession of the same.

(5) He also challenged the confessional statement (Ex. PW4/C) allegedly made by the petitioner before an officer of Railway Protection Force on October 19 1977. According to him, it is completely against the evidence of PW6 Jagdish Chander Gupta. The petitioner denied the same when examined under Section 313 Cr. P.C. Retracted and uncorroborated confessional statement cannot be made the basis of conviction. He cited a decision of the Supreme Court in the case of Palanisamy and others v. State of Tamil Nada Air 1986 S.C. 593 in support of his contention. .

(6) The last submission made by the learned counsel for the petitioner is that the sentence is very severe and the petitioner should have been released on

probation instead of sending him to jail. According to him, despite the minimum sentence of imprisonment and fine provided for in section 3(a) of the Railway Property (unlawful possession) Act 1966, the provisions of Section 4(1) of the Probation of Offenders Act can be applied. Reliance has been placed on a decision of Madras High Court in the case of State v. Rathinavela and on another decision of our own High Court in the case of Dalip Singh v. State 1980 CC 46 (Del) in support of his contention. Clause (a) of Section 3 of the Act states that unless for adequate reasons to be recorded in the judgment, the court shall impose on the person convicted under Section 3 a sentence for a minimum period of one year with a fine of Rs. 1,000.00 . According to the learned counsel the petitioner is an old man of sixty years and is a first offender and he had to face protracted criminal proceedings, the matter relating to the year 1977, and therefore, adequate reasons exist entitling the petitioner to be released on probation of good conduct. He cited a decision of the Supreme Court in case Ghanshyam Dass v. M.C.D. : AIR 1975 SC845 in support of his contention that the accused who had to face protracted criminal proceedings was given the benefit of probation under Section 4 of the Probation of Offenders Act 1958.

(7) Regarding the confessional statement (Ex Public Witness 4/C) recorded by Shri V.N. Singh (Public Witness 4) an officer of the Rly Protection Force there is nothing on record even to indicate that any third degree method was applied in obtaining the confession from the petitioner or any impression was given to the petitioner that he could get rid of the charge by making the confession or any threat was given to the family members of the petitioner for their prosecution in any false case. Shri V.N. Singh (Public Witness 4) has proved the statement Ex. PW4/C having been written by him on the same date and time and it also bears the signatures of the petitioner. Not a single question was put to this witness suggesting that it was not a voluntary statement of the petitioner or that the petitioner never made any such statement or that his signatures were obtained on blank papers.

(8) It was for the first time on 28-4-81 i.e. after about 3-1/2 years, the petitioner in his statement under section 313 Cr. P.C. denied having made this confessional statement Ex. PW4/C though he had admitted his signatures on it. His

Explanation that his signatures were obtained on blank papers is not acceptable in view of the fact that earlier he never took up this stand. The Explanation seems to be afterthought. The fact remains that he made the statement Ex. PW4/C voluntarily before an officer of the Rly Protection Force on 19.10.77 on the date of incident, which is undisputedly admissible in evidence. The plea of the learned counsel for the petitioner that it runs counter to the statement of PW6 who stopped and checked the truck does not make it inadmissible in evidence. The Supreme Court in its decision *Bal Kishan A Devidayal v. State of Maharashtra*, : 1980 CriLJ1424 has laid down that confessional or incriminating statement recorded by such officer under Section 9 of 1966 Act in the course of the inquiry cannot be excluded from it. It is a voluntary statement made by the petitioner immediately after the incident which was not retracted till he was examined under Section 313 Cr. P.C. The statement (Ex. PW4/C) made by the petitioner cannot be said to run counter to the statement of Shri Jagdish Chand Gupta, PW6, who stopped and checked the truck. No doubt, he has not stated that he saw the accused driving the truck at that time but from his statement it is clear that when he stopped the truck at the gate three or four persons jumped off the truck and ran away. Undisputably, the petitioner was the owner of the truck, he had not kept any driver on the truck and he used to drive that truck and he was apprehended on the spot after sometime of the incident. His Explanation that he had parked his truck at the mineral siding as usual after finishing day's work at 8.45 p.m. and that his labourers Bhajan, Joginder, and Khilari used to sleep in the truck and that on that day he went to the canteen and after 30 to 40 minutes he heard noise 'Pakro Pakro' and when he came out, he saw that his truck had been detained at the gate and when he went near by he was falsely implicated in the case when he could not produce his labourers, is not believable. The circumstances, the evidence on record make the confessional statement of the petitioner a true voluntary statement made by the petitioner just after the incident and there is no reason to disbelieve the same.

(9) Both the courts below after appreciating the evidence have rightly convicted the petitioner for an offence punishable under Section 3 of the Rly Property (unlawful possession) Act 1966 and I find no justification in interfering with the judicious findings of the learned Addl Sessions Judge, and I affirm the same.

(10) On the point of sentence clause (a) of Section 3 of the Railway Property (unlawful possession) Act, 1966 states that unless for adequate reasons to be recorded in the judgment, the court shall impose on the person convicted under Section 3 a sentence for a minimum of one year with a fine of Rs. 1000.00 . The adequate reasons given by the learned counsel entitling the petitioner to be released on probation of good conduct are that he is about sixty years of age, he is a first offender and that he has faced a protracted litigation.

(11) Provisions of Section 360 Code of Criminal Procedure and Section 4 of the [Probation of Offenders Act, 1958](#) are not mandatory in nature. The exercise of the power there under is purely discretionary one even if under Section 361 of the Code of Criminal Procedure the court has to give reasons for not extending the benefit of Section 360 or the Probation of Offenders Act to the accused. Discretion ought not to be used lightly especially when accused is found guilty of offence for which minimum sentence is provided. It is not a rule of universal application that an accused who has faced protracted criminal proceedings should forthwith be released on probation of good conduct. Each case has to be judged on its own merits. Gravity of the offence, manner and circumstances under which the offence was committed and the character of the offender are some of the factors which should also be taken into consideration while ordering the release of the convict on probation of good conduct. The benefit of probation should not be granted to those matured persons who deliberately flout the law. If such persons were to be released on probation the very object with which the Act was enacted would be defeated.

(12) In this case, the petitioner who is experienced and matured person is the owner and driver of the truck from which 37 pig iron slabs weighing about 17 quintals, which was stolen property of the railway, were recovered. The commission of the offence was premeditated. The theft of the railway property is a loss to the nation and serious view should be taken in such like cases. It is not a case of petty theft by a class Iv employee of the railway department. Regarding the protracted criminal proceedings, which the petitioner has faced, I find from the record that the petitioner was on bail throughout and this fact the petitioner has himself admitted in his application No. CrI. Misc. 199/82 in CrI. Rev. 36 of 1982.

The petitioner cannot be said to a victim of undue delay in this case. It is a common knowledge that on account of heavy work load in almost all the courts and shortage of judicial officers manning the courts, some delay does take place in conducting the trials, but this by itself is not sufficient for seeking the benefit of probation in the absence of any prejudice having been caused to the accused. The courts below have rightly used their discretion in refusing to release the petitioner on probation of good conduct. There is no cause for interference with the order of the Addl Sessions Judge and this revision petition is, therefore, dismissed.

(13) The petitioner is on bail. He shall be taken into custody forthwith to serve out the sentence awarded to him.

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