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Court : Rajasthan

Decided On : Sep-18-1989

Reported in : 1990(1)WLN660

Judge : N.C. Kochar. J.

Appeal No. : S.B. Cr. Revision Petition No. 315 of 1984

Appellant : Mool Singh

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

N.C. Kochar, J.

1. The petitioner was convicted Under Section 3 of the Railway Properties Unlawful Possession) Act, 1966 in criminal case No 663/1975 (468/1973 was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1,000/- in default of payment of fine to Under rigorous imprisonment for a further period of one and a half months vide judgment dated 27-3-1981 passed by the learned Judicial Magistrate (Railways), Ajmer. His appeal against the conviction and sentence was dismissed by the learned Sessions Judge, Ajmer on 21-11-1984. The prosecution story, in short, was as Under.

2. The petitioner was employed as a Rakshak in the Railway Protection Force. On 5-10-1973 he was on duty inside the Carriage and Wagon Work Shop at Ajmer. After finishing his duty he came out of the gate of the work shop at about 12.17 A.M. in the night and at that time he was holding his tiffin carrier in his hand. On suspicion PW-1 After Singh Sub-Inspector of the Railway Protection Force (the I.O) searched his tiffin carrier in presence of the witnesses and found that a piece of dynamo belt was lying in the upper tin of the tiffin carrier and burnt copper wire weighing about 500 gms. was lying in the lower tin of the tiffin carrier. The I.O. took the case property in possession, arrested the petitioner and recorded his statement Ex. P. 5. At the request of the I.O. PW-5 Gopal Kishan examined the case property on 9-10-1973 and vide report Ex. P.4 opined that the same belonged to the railways and was of the value of approximately Rs. 20/-. After completion of the investigation, the petitioner was prosecuted in the court of the learned Judicial Magistrate (Railways), Ajmer, who convicted and sentenced him as noted above His appeal having been dismissed by the learned Sessions Judge, Ajmer the petitioner has approached this Court by filing this revision petition Under Section 397 read with Section 401 Cr.PC.

3. I have heard the learned Counsel for the parties and have perused the record of the case.

4. Shri Garg has contended that the learned lower Courts, while holding that the case property recovered from the petitioner was railway property, have relied on the statement (Ex. P.5) of the petitioner, without the said statement having been put to the petitioner during his examination Under Section 313 Cr.PC. It has further contended that no evidence has been produced to prove that the seals on the case property remained intact till the case property was produced for examination before PW-5 Gopal Kishan on 9-10-1973. Shri Garg has also submitted that considering the paltry value of the property and the age of the petitioner, who is now more than 70 years, he be given the benefit of Section 95 IPC or of probation.

5. During the course of investigation the I.O. had recorded the statement of the petitioner and the said statement has been proved on record as Ex. P. 5. The said statement was admittedly not put to the petitioner who had no opportunity to

explain the same in his examination Under Section 313 Cr PC. The learned lower Courts have relied on the above said statement of the petitioner. In view of the decision of the Supreme Court in case 'Sharad v. State of Maharashtra ' : 1984 CriLJ1738 the said statement has to be completely excluded from consideration. From the record it is also found that in his statement the I.O. has deposed that after recovering the case property he had deposited it in the Malkhana and an entry about its depositing had been made in the Malkhana register, but no entry was made in the Malkhana register when the property was taken out for showing to PW-5 Gopal Kishan on 9-10-1973 or when it was redeposited in the Malkhana after resealing it. The seal admittedly remained with the I.O. Neither the Malkhana register has been produced nor has the Incharge, Malkhana been examined to prove that the seals on the property remained intact between the period of its recovery and its examination by PW-5 Gopal Kishan. In view of the decision in case 'State of Rajasthan v. Daulatram' : 1980 CriLJ929 , the case of the prosecution thus is doubtful and the petitioner is entitled to be acquitted.

6. In this view of the matter the contention that the petitioner be given the benefit of Section 95 IPC or of probation may not be dealt with.

7. Consequently. I accept this revision petition, set aside the conviction and sentence passed by The learned lowercourts and acquit the petitioner. The petitioner is on bail. He need not surrender to his bonds, which stand discharged.

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