
(1991) 04 AHC CK 0062
In the Allahabad High Court
Case No : Criminal Revision No. 1899 of 1990

Chhabinath

APPELLANT

Vs

State of U.P

RESPONDENT

Date of Decision : 01-04-1991

Acts Referred:

Railway Property (Unlawful Possession) Act, 1966 — Section 3

Citation : (1991) 04 AHC CK 0062

Hon'ble Judges : Palok Basu, J

Final Decision : Allowed

Judgement

Palok Basu, J.—This revision has been filed by Chhabinath and Kishori Yadav against their conviction under Section 3 of the RP, Act and the sentence of one year's R.I and a fine of Rs.500 passed by the Judicial Magistrate (N. R.) on 581989 and upheld by the IV AddlSessions Judge, Varanasi on 23111990 in appeal.

2. The short point argued by Sri CK Parekh, learned counsel for the applicants is that in the instant case the prosecution evidence falls short of proving that the alleged three bags of fertilisers belonged to the Railways and in this connection he has relied upon the statement of P. W. 4 and PW.6 who are respectively the alleged owner of the railway consignment and 1500 bags of fertilisers and the goods clerk had delivered the said consignment to one Lakshmi Transport Co.

3. No documentary evidence has been placed by the prosecution which will indicate that PW 4 Sr. V. V Sharma had in fact taken the delivery of 1047 bags of fertilizers and not 1500 bags thereofHe was admittedly making a statement in court after about three years of the taking of the delivery/It is impossible to believe that such a fact could be memorised and will remain in the mental impression of a witness for so long a periodIn the eye of law this required strick proof. If the delivery had already been made to the consignee the property will cease to be railway property. Therefore, it was the bounden duty of the prosecution to prove that the release of the consignment to the consignee had

been done in a lesser number because of some pilferage in the consignment. This required strict proof through the documents from the railways about the release of the lesser quantity of consignment to the consignee. This vital thing being absent, it cannot be said that, in fact, there was enough evidence that the alleged fertilizer bags belonged to the railways .

4. The other points argued are that while Kishori Yadav is said to be going along with Chhabinath, he was not arrested on the spot. The prosecution alleges that Chhabinath had run away. It is argued that he cannot be said to be in possession of the railway property. It was further argued that so far as Chhabinath is concerned, he was said to be carrying two bags of fertilizer on his cycle. The cycle was, however, not produced in court. It was further argued that no member of the public had been made witness of recovery and, therefore, it cannot be said that the prosecution case has been

5. We need not go into the aforesaid arguments because initially the prosecution has failed to prove the recovered property to be railway property and, therefore, it cannot be said that the prosecution case has been proved beyond reasonable doubt against the applicants.

6. The result of the aforesaid discussion is that this revision succeeds and is allowed. The conviction and sentences awarded to Chhabinath and Kishori Yadav are set aside. They are on bail. They need not surrender. Their bail bonds are discharged. Fine, if paid, shall be refunded to them.

Revision Allowed