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**(1999) 10 PAT CK 0039**  
**In the Patna High Court**  
**Case No : Civil Revision No. 660/94**

Rameshwar Prasad Rai @ Rameshwar Rai APPELLANT  
Vs  
State RESPONDENT

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**Date of Decision :** 12-10-1999

**Acts Referred:**

Evidence Act, 1872 — Section 27  
Penal Code, 1860 (IPC) — Section 320, 379  
Railway Property (Unlawful Possession) Act, 1966 — Section 3

**Citation :** (2000) 1 BLJR 207

**Hon'ble Judges :** P.K. Deb, J

**Bench :** Single Bench

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## Judgement

P.K. Deb, J.—This revision petition has been preferred against the Judgment and Order dated 11-7-94 passed by the Sessions Judge, Deoghar, in Cri. Appeal No. 10/94 whereby the Judgment of conviction and order of sentence passed by the Railway Judicial Magistrate, Madhupur, in G.O.C.R. Case No. 8/91/T.R. No. 128/94 convicting the petitioner u/s 3(a) of the Railway Property (Unlawful Possession) Act, 1966 and sentencing him to rigorous imprisonment for two years have been confirmed

2. From the order dated 12-9-94 passed by this Court, it appears that revision petition was admitted for the limited purpose of hearing on sentence alone, although there is no specific order to that effect. In compliance of the order dated 12-9-94, an affidavit has been filed on behalf of the petitioner showing the period for which he remained in custody and also as to imposition or realisation of fine. When there was no specific order regarding admission of the revision petition on the point of sentence alone, the learned Counsel for the petitioner argued on merit of this case and one point has been raised to the effect that on the same occurrence two proceedings were initiated against the petitioner, one u/s 379 of the I.P.C. in the regular Court while another u/s 3(a) R.P. (U.P.) Act. It is further submitted that in the case u/s 379, I.P.C. the petitioner had already been acquitted by the regular Court. It is the submission that on the same occurrence

two proceedings cannot be initiated as there is bar u/s 320 of the I.P.C.

3. I do not agree with the submission as stated above. When search was being made by the I.O. for railway property, other properties which do not belong to the railway had also been found in possession of the petitioner and as such two proceedings were there. Acquittal in 379 cases does not take away the case against the petitioner for unlawful possession of the railway property u/s 3(a) R.P. (U.P.) Act. This point was also dealt with by the Court below. The acquittal in the proceeding u/s 379, I.P.C. cannot have any meaning in proceeding with the present case. There was confession by the petitioner before the authorities and under R.P. (U.P.) Act, such confession is admissible in law. Besides that there was overwhelming evidence from the side of the prosecution regarding unlawful possession of the petitioner, as those were found from inside the boundary of his house and also on his own showing some more railway properties could be found which evidence is admissible u/s 27 of the Evidence Act.

4. Thus, the conviction arrived at does not suffer from any illegality or impropriety. The conviction arrived at against the accused-petitioner is based on firm evidence and there is nothing to interfere with it.

5. But regarding sentence, it appears that the petitioner remained in custody for about 50 days. The sentence of imprisonment imposed by the trial Court has been upheld by the appellate Court. The petitioner has remained in custody for about 50 days and in the meantime he has suffered the rigors of criminal proceeding for about a decade. No fruitful purpose would be served if the petitioner is again sent to prison and as such the rest of the imprisonment as imposed towards sentence is replaced by payment of fine of Rs. 4,000/- which shall be paid by the petitioner in 2 instalments of half and half. The 1st instalment shall be deposited within a month next from this date before the trial Court and balance of Rs. 2,000/- within 2 months next thereafter.

6. It is made clear that, if there is default in payment of fine in the way as given above, the petitioner shall suffer simple imprisonment for one month more. The petitioner is discharged from bail-bond.