

(2012) 09 JH CK 0218
In the Jharkhand High Court
Case No : Criminal Revision No. 376 of 2001

Shailendra Prasad

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Railway Property (Unlawful Possession) Act, 1966 — Section 3(a)

Citation : (2012) 4 JLJR 577

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Ananda Sen, for the Appellant; Manoj Kumar Dash, Advocate and Mr. S. Mahata, Assistant Public Prosecutor For the State, for the Respondent

Final Decision : Allowed

Judgement

H.C. Mishra

1. Heard learned counsel for the petitioner and learned counsel for the State. The petitioner is aggrieved by the order dated 25.5.2001 passed by learned Railway Magistrate, Chakradharpur at Chaibasa in complaint case No. C-7/2 of 1995, whereby the application for discharge filed by the petitioner has been rejected by the Court below.

2. It appears that the petitioner was posted as Assistant Engineer (A.E.--1) at Tatanagar in the Railways. On 2.1.1995 some railway materials were recovered from a truck at the Parcel Office gate of Railway Station Tatanagar and subsequently, some other stolen railway materials, including 19 bags of cement, belonging to railways were recovered from the site store of a railway contractor viz., Subir Kumar Das of M/s Jyoti Constructions. It also appears that the apprehended accused persons had informed that those 19 bags of cement were forcibly kept inside his site store by another railway contractor Jitendra Tiwary on 30.12.1994, for which, they had reported the matter to Shri Shailendra Prasad, A.E.--1, Tatanagar i.e., the petitioner, on 31.12.1994. On the basis of the seizure,

Tata RPF Post Case No. 1/1995 was instituted for the offence u/s 3(a) of the R.P. (U.P.) Act, 1966, and after enquiry, complaint case No. C-7/2 of 1995 was instituted against the accused persons, including the petitioner, on the basis of the complaint filed by the Officer-in-charge of the RPF Post Tatanagar.

3. It is apparent from the complaint case, that only allegation against the petitioner is that the keeping of the said 19 bags of cement belonging to railways, in the site store of the railway contractor, from where they were recovered, was within the knowledge of this petitioner, being the A.E.-1, Tatanagar, and only on this allegation the petitioner was also made accused in this case for the offence u/s 3(a) of the R.P. (U.P.) Act, 1966.

4. The petitioner filed his application in the Court below for discharge, wherein the petitioner had taken the point that he was an appointee of the President of India and accordingly, sanction of the appropriate Government was required for prosecution of the petitioner. It appears from the impugned order that photostat copy of the letter dated 31.7.1996 issued by the Chief Security Commissioner, permitting and directing to lodge the complaint against the accused persons before the Court of Law was filed by the prosecution, claiming the same to be the Sanction Order. It was pointed out on behalf of the petitioner that the same was not the Sanction Order in accordance with law. However, the Court below held that since there was permission for lodging the complaint against the accused persons before the Court of Law, the same clearly amounted to sanction of prosecution against the petitioner also. It is apparent from the impugned order itself that no Sanction Order was filed in original the Court below and it was argued by the APP that he shall file the original at the time of evidence or during the course of arguments.

5. Learned counsel for the petitioner has challenged the impugned order passed by the Court below, as also the criminal prosecution of the petitioner on two grounds. Firstly, it is submitted that admittedly no recovery of any alleged stolen railway material was made from the possession of the petitioner. Learned counsel has drawn the attention of this Court towards Section 3(a) of the R.P. (U.P.) Act and submitted that "possession" of the alleged stolen railway property is a sine qua non for any prosecution for the offence u/s 3(a) of the R.P. (U.P.) Act. In the present case, admittedly there being no recovery from the possession of the petitioner, no offence can be made out u/s 3(a) of the R.P. (U.P.) Act against the petitioner.

6. Secondly, learned counsel for the petitioner has submitted that it is apparent from the impugned order that no sanction order was produced in the Court, rather it was argued that the same shall be produced before the Court at the time of evidence or at the time of hearing. Learned counsel submitted that the Court below had committed a grave error in law by treating the photostate copy of the letter dated 31.7.1996 issued by the Chief Security Commissioner granting permission for lodging the complaint against the accused persons before the Court of Law, to be amounting to the order of sanction against the petitioner. It

is submitted that in absence of proper sanction order issued by the competent authority, cognizance could not have been taken against the petitioner, being a public servant, not removal from his office save by or with sanction of the Central Government, as the petitioner was an appointee of the President of India and the offence, if any, related to the act in discharge of his official duty. As such, section 197 of the Criminal Procedure Code was a clear bar in taking cognizance for the offence against the petitioner. Learned counsel accordingly, submitted that even on this score, the impugned order cannot be sustained in the eyes of law.

7. Learned counsel for the State on the other hand has submitted that there is no illegality and/or irregularity in the impugned order worth interference in the revisional jurisdiction.

8. After having heard learned counsels for both the sides and upon going through the impugned order, I find that even the Court below was of the opinion that in the facts of this case, the sanction was required for the prosecution of the petitioner u/s 197 of the Cr. P.C. In that event. Court below could not have taken into consideration the photostate copy of the letter dated 31.7.1996 issued by the Chief Security Commissioner granting permission for lodging the complaint against all the accused persons before the Court of Law, rather the proper order of Sanction, issued by the Appropriate Government, ought to have been produced in the Court below prior to taking the cognizance. As such, the order taking cognizance against the petitioner, without any sanction by the appropriate Government, was clearly barred u/s 197 of the Cr. P.C. The impugned order thus, cannot be sustained in the eyes of law on this score.

9. I also find force in the submission of the learned counsel for the petitioner that in view of the fact that no recovery was made from the possession of the petitioner, the offence cannot be said to be made out against the petitioner u/s 3(a) of the R.P. (U.P.) Act. Section 3(a) of the R.P. (U.P.) Act, 1966, reads as follows:-

3. Penalty for unlawful possession of railway property --

Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawful obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable-

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees:

(b) -----

10. Thus, from the plain reading of the of this section, it is apparent that the possession of any railway property, which was reasonably suspected of having

been stolen or unlawfully obtained, has to be there with the person, to be prosecuted for the offence u/s 3(a) of the R.P. (U.P.) Act. In the present case, it is admitted case of the prosecution that no recovery was made from the possession of the petitioner, rather the recovery was made from the site store of the railway contractor S.K. Das and it was informed that the said property was forcibly kept in the site store by another railway contractor Jitendra Tiwary. It is thus, apparent that there being no allegation against the petitioner that the said railway property was recovered from the possession of the petitioner. I am of the considered view that no offence can be said to be made out against the petitioner for the offence u/s 3(a) of the R.P. (U.P.) Act. As such, even the prosecution of the petitioner for the offence u/s 3(a) of the R.P. (U.P.) Act is absolutely illegal and cannot be sustained in the eyes of law. In view of the aforementioned discussions, the criminal prosecution, so far as it relates to the petitioner only, in complaint case No. C-7/2 of 1995, pending in the Court to Railway Magistrate, Chakradharpur at Chaibasa, including the impugned order dated 25.5.2001 passed therein, are hereby quashed. This application is accordingly allowed. Let the lower court records be sent back forthwith.