

(2005) 03 GAU CK 0020

In the Gauhati High Court

Case No : Criminal Revision (P) No. 517 of 2000

Union of India (UOI)

APPELLANT

Vs

Ramakant Bakti and Another

RESPONDENT

Date of Decision : 31-03-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 467, 468, 469, 470
Railway Property (Unlawful Possession) Act, 1966 — Section 3

Citation : (2005) GLT 350 Supp

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : J. Singh, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—Heard Mr. J. Singh, learned Counsel for the Union of India. None has appeared for the Respondents.

2. In this revision the Petitioner as Union of India has challenged the following two orders dated 28.6.2000 and 18.8.2000 passed by the Special Railway Magistrate (Judicial), Tinsukia.

3. The order, dated 28.6.2000 reads as follows:

ORDER

28/6/2000

Accused Ramakant Bakti is present. This date is fixed for submission of the prosecution report of this case. But prosecution report has not been submitted today. From 28.5.1999 to 28.6.2000 twenty chances have taken for submission of the prosecution report. Today the public prosecutor has submitted a petition as earlier occasions praying an another date for submission of the prosecution report. The E/O of the case has not submitted any petition today. The public prosecutor has not shown reasons of non-submission of prosecution report. The

defence lawyer Sri K.P. Agarwal has submitted that prosecution has availed more than one year period for submission of their P.R. But they have failed to submit the same. That the petition submitted by the public prosecutor bear no reasons of non-submission of the P.R. and hence the petition is liable to be rejected. The prosecution report has not been submitted though sufficient time was given to the prosecution for the same. The petition submitted by the prosecution bears no reasons of non-submission of the P.R. The accused is facing trouble in attending Court every fixed date for order to get trial. The prosecution has caused unreasonable delay in submission of the P.R. for long time the petition is rejected. The case is dropped for non-submission of the Prosecution Report and the accused is discharged.

4. It is submitted by the learned Counsel that thereafter the prosecution report was filed before the said Special Railway Magistrate in RPF/Oost/MXN 1 (5)99 and prayer was made for accepting the same but the said prayer was rejected by the trial Court vide order dated 18.8.2000 and hence the present revision.

5. The order, dated 18.8.2000 reads as follows:

18.8.2000

C.R. has been put up along with Ptn. No. Nil dated 15.8.2000 submitted by the Inspector, RPF Moriani (the E.O. of the case). He has prayed to re-open the case and accept the Prosecution Report. The case was dropped vide order dated 28.6.2000 for non-submission P.R. Hence this Court has no power to revive the same. The petition is not entertainable in this Court and hence rejected.

6. We have perused the provisions of the Railway Properties (Unlawful) Possession Act, 1966 and find that the Act nowhere provides for a time limit to file the prosecution report. Section 8 provides that after the enquiry is made, prosecution report is to be submitted to the Magistrate having jurisdiction.

7. Mr. Singh, has however, submitted that although the section of law under which the impugned order has been passed has not been mentioned, the trial Magistrate might have proceeded under sub-Clause (5) of Section 167, Code of Criminal Procedure.

8. The provisions under Sub-clause (5) is applicable to a summons case only whereas the offence is u/s 3(a) of the Railway Properties (Unlawful) Possession Act, which is a warrant case and the maximum punishment is for five years with a stipulation that the minimum punishment is to be one year. Thus the provisions of Section 167, Code of Criminal Procedure or for that matter the provisions of Chapter 36 i.e. Sections 467 to 478, Code of Criminal Procedure were also not attracted. In the present case we also find that the accused person in the case was enlarged on bail and as such he was required to appear after the submission of the prosecution report and the Court has no jurisdiction to discharge him on the ground of non-submission of the prosecution report. Further the prosecution report was subsequently filed and the Magistrate could have accepted the same

and proceeded in accordance with law.

9. In view of what has been stated above we find that the orders have been passed without jurisdiction and it has resulted in miscarriage of justice.

10. Accordingly the revision petition is allowed and the impugned orders dated 28.6.2000 and 18.8.2000 are set-aside. The Special Railway Magistrate, Tinsukia is directed to proceed in the matter in accordance with law.

11. Send down the records.