

CASE NO.:
Appeal (crl.) 145 of 2008

PETITIONER:
Om Prakash

RESPONDENT:
State of U.P.

DATE OF JUDGMENT: 22/01/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P.(Crl.) No.6188 of 2007)
DR. ARIJIT PASAYAT, J:
1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court dismissing the revision petition filed by the appellant under Section 397, read with Section 401 of the Code of Civil Procedure, 1973 (in short 'the Code').

3. Challenge in the revision was to the order passed by a learned Sessions Judge in Criminal Appeal No.2060 of 1990 by which the order of conviction and sentence, as recorded by the learned Additional CJM, was confirmed.

4. Background facts in a nutshell are as follows:

On getting information on 22.01.1990 that one Truck No.UP-93, 1665 of Minakshi Traders was being loaded at scrap yard of Jhansi with Cast Iron Grade-I illegally with the Cast Iron Grade-II, the inspector R.K. Rajput, along with Dy. Superintendent M.U. Farooki went to the spot and found a Truck No.UP-93-1665 near the Auction Hall which was loaded with Cast Iron Grade II. Superintendent Incharge called the Head Constable 878 Taradat Sati and DSK Lala Ram. They were asked to climb up the truck and take a look, and after examining, they reported that some Cast Iron Grade-I was loaded in the truck. At that point of time, the Contractor, the present appellant was also present near the Truck along with some persons. The Contractor called his labourers and unloaded the Cast Iron Grade-I from the truck. It was found that 22 carat Cast Iron Grade-I were without Tie Bars. Inside the truck approximately, 7 Tons of Cast Iron Grade-II were loaded. It was accepted that no Cast Iron Grade-I could have been loaded. Necessary examination was done and it was found that the railway property, i.e. Cast Iron Grade-I was unauthorizedly being transported. A complaint was lodged and after analysing the evidence on record, learned Additional Chief Judicial Magistrate, Jhansi found the appellant guilty under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 (in short 'the Railway Act') and sentenced him to undergo imprisonment for one year with fine of Rs.1,000/- with default stipulations.

5. As noted above, an appeal before the learned Sessions Judge, Jhansi did not bring any relief to the appellant and so also was the revision before the High Court.

6. Learned counsel for the appellant took the stand that the appellant was not the owner of the articles and he was only a labourer. It was also submitted that the appellant has already undergone sentence of more than eight months and since the sentence is only one year, the same may be reduced to the period already undergone by the appellant.

7. From the evidence on record, it was found that the presence of Cast Iron Grade-I has not been disputed. The stand presently taken is that somebody else was the auction purchaser and the appellant had no role to play. But at all stages, it appears that the appellant was present near the truck, he was described as the contractor and in his presence the analysis was done, and from the material available on record, it is also clear that he, as the contractor, was asked to unload the articles and he had called his labourers to unload the articles.

8. Therefore, the finding that he was in unlawful possession of Cast Iron Grade-I is a finding which does not warrant interference. Railway property, as defined in Section 2, clause (d) of the Act reads as follows:

\023Section 2(d) \023railway property\024 includes any goods, money or valuable security or animal, belonging to, or in the charge or possession of, a railway administration.\024

9. Section 3 deals with penalty for unlawful possession of railway property. The same reads as follows:

\0233. Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully 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) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine 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 two years and such fine shall not be less than two thousand rupees.\024

10. In State of Maharashtra vs. Vishwanath Tukaram (1979 (4) SCC 23), it was observed that the following ingredients are necessary to bring in application of Section 3:

- (i) The property in question should be railway property;
- (ii) It should be reasonably suspected of having been stolen or unlawfully obtained; and
- (iii) it should be found or proved that the accused was or had been in possession of that property.

11. In the instant case, all the ingredients have been established. So far as the sentence is concerned, for offence committed for the first time, a minimum punishment of one year has been prescribed. That being so, the courts below have rightly imposed sentence of one year.

12. Above being the position, there is no merit in this appeal which is, accordingly, dismissed.

JUDIS