

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 448 of 2012

Salim Khan, son of Late Sohrab Khan, resident of Loco Bazar,
Gomoh, P.O.- Gomoh, P.S.- Hariharpur, District Dhanbad

... .. Petitioner

-Versus-

State of Jharkhand

... .. Opposite Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Yogesh Modi, Amicus Curiae

For the State : Mr. Ravi Prakash, A.P.P.

Through Video Conferencing

13/09.08.2021

Heard Mr. Yogesh Modi, the learned amicus curiae
appearing on behalf of the petitioner.

2. Heard Mr. Ravi Prakash, the learned A.P.P. appearing on
behalf of the Opposite Party- State of Jharkhand.

3. The present criminal revision petition has been filed
against the judgement of confirmation dated 15.05.2012 passed
by the learned Additional Sessions Judge-I-cum-Special Judge,
Dhanbad in Criminal Appeal No. 118/2012. The trial court's
judgement is dated 29.02.2012 passed in R.P. Case No.
157/1993, T.R. No. 14 of 2012 by the learned Additional
Railway Magistrate, Dhanbad.

4. The learned trial court has convicted and sentenced the
petitioner vide judgement dated 29.02.2012 for Imprisonment of
two years and a fine of Rs. 10,000/- and in default of payment
of fine, imprisonment for another six months for offence under
Section 3(a) of *Railway Property (Unlawful Possession) Act,
1966 (hereinafter referred to as the aforesaid Act of 1966)*.

Submissions of learned amicus

5. The learned amicus appearing on behalf of the petitioner
submitted that the impugned judgements suffer from
perversity, inasmuch as, neither the complainant has been
examined, nor the complaint petition has been proved and the

petitioner has been convicted on the basis of the confessional statement of the petitioner and that of co-accused. He further submitted that apart from the confessional statements, there is no other material whatsoever to connect the petitioner with the alleged offence.

6. The learned amicus also submitted that so far as the confessional statement of the present petitioner is concerned, the same was marked as Exhibit- 2/8 and is dated 26.11.1993 and the seizure is on 16.11.1993 (Exhibit-1/1). The other seizure is dated 12.11.1993 (Exhibit-1) at Godown-cum-residence of co-accused Babulal Gupta and at that time also, the petitioner was nowhere in picture. He submitted that considering the dates of seizure, it cannot be said that the confession was leading to recovery, rather the confession of the petitioner was recorded after the seizure.

7. The learned amicus further submitted that on one hand, there is no recovery pursuant to confession and on the other hand, the confession by itself cannot be the sole basis of conviction of the petitioner as the same is hit by Section 25 of the Evidence Act. The learned amicus submitted that the officers of Railway Protection Force are also police officials as per Section 8 of the aforesaid Act and accordingly, the confession made before police official is hit by Section 25 of the Indian Evidence Act and is accordingly not admissible in evidence. The learned amicus relied upon the judgement passed by the *Hon'ble Madras High Court in the case of State versus Radhakrishnan and others, reported in (1993) Cr.L.J. 1457* and also the judgement passed by the *Hon'ble Orissa High Court in the case of State versus Prahallad Rath and others, reported in (2007) Cr.L.J. 1189* to submit that the petitioner cannot be convicted on the basis of the confessional statements. Lastly, the learned amicus also submitted that specific question with regard to the confessional statements was not put to the

petitioner under section 313 of Cr.P.C. and accordingly, his conviction cannot be sustained in the eyes of law.

8. The learned amicus submitted that there is no legal evidence on record to connect the petitioner with the crime and accordingly, the petitioner has been wrongly convicted by the learned courts below.

Arguments of the State

9. The learned A.P.P. appearing on behalf of the Opposite Party-State, on the other hand, while opposing the prayer of the petitioner submitted that there are concurrent findings recorded by the learned courts below after scrutinizing the evidences on record and accordingly, there is no scope for reappraisal of evidences and coming to a different finding in revisional jurisdiction. However, the learned A.P.P. does not dispute the fact that the petitioner was made accused on the basis of confessional statement of the co-accused and the confessional statement of the petitioner was recorded on 26.11.1993 and the seizure was firstly made on 12.11.1993 at Bokaro and thereafter, on 16.11.1993 at Kolkata. The learned counsel also relied upon the judgement passed by the Hon'ble Supreme Court reported in *AIR 1979 SC 1825 and AIR 2008 SC 1112* to submit that it has been held by the Hon'ble Supreme Court that in order to convict a person under Section 3 of the aforesaid Act of 1966, it is not necessary that the stolen goods belonging to Railways should be seized from physical possession of the accused and it is sufficient, if he had dealt with such stolen goods and the same had been in his possession at any time prior to its seizure. He also relied upon the judgement passed by the Hon'ble Supreme Court reported in *(1980) 4 SCC 600 (Balkishan A. Devidayal -vs- State of Maharashtra)* to submit that the officers of Railway Protection Force (RPF) are not "police officers" so as to attract the bar under Section 25 of the Evidence Act, 1872 and further submitted that the confession made by the

petitioner before the Inspector of RPF is admissible in evidence. He also submitted that non-examination of the complainant and consequently, the complaint has not been proved is not fatal to the case of the prosecution. The complaint was filed in official capacity and the prosecution witnesses have proved the case against the petitioner beyond all reasonable doubts. The learned counsel submitted that the judgements relied upon by the learned amicus do not apply to the facts and circumstances of this case. The learned counsel submitted that the entire circumstances and evidences as a whole were put to the petitioner while recording his statement under Section 313 of Cr.P.C and there is no irregularity or illegality in the impugned judgments calling of any interference in revisional jurisdiction.

Findings of this Court

10. As per the prosecution case, there were repeated theft of Railway Distributor valves and signal cables and efforts were being made by the officers and staff of Railway Protection Force to detect such theft and find out the criminals who were involved in the commission of such offence and also those who were purchasers/receivers of such stolen articles of Railways.

11. On 12.11.1993 at about 03.00 hours, in course of working out on source information about concealment and storing of huge quantity of railway material, a raid and search was conducted by the Inspector, Railway Protection Force with the help of officers of local police station in the home-cum-go-down of one Balulal Gupta situated in the District- Bokaro. Said Babulal Gupta fled away leaving his men who were said to be handling and running the go-down dealing with scrap materials and stolen railway property. During the search, 71 numbers of railway distributors valve spheres contained in 5 gunny bags, aluminum cables in 5 gunny bags weighing 125 Kgs. were found and one gunny bag containing pieces of plastic insulator of signal cable were recovered and seized.

12. Ram Pari Devi, Raju Kumar, Nathuni Singh, Ramesh Kumar Gupta, Dablu Kumar Gupta and Vimal Kumar Gupta jointly claimed ownership of godown and handling of broken railway property under the leadership of Babulal Gupta. They disclosed that the seized railway materials have been purchased by them from Salim Ansari, Mantu Keshri, Chhotu Ansari, Bharsa Hussain and Salim Khan @ Salim (petitioner). On the basis of the confessional statements of Nathuni Singh and Raj Kumar, further search was made on 16.11.1993 in the godown of Hare Ram Singh and Ram Deo Jaiswal located at Kolkata. During the raid, one bag of D.V. components weighing about 40 Kgs, 5 bags containing copper cable wire weighing 40 Kgs in each bag, 56 bags containing dust of railway coach battery cells (lead) and 3 bags containing vacuum parts of E.M.U. stolen Railway property worth Rs. 11 lakhs were recovered.

13. During the enquiry, all the witnesses supported the fact of the case. All the seized properties were examined by experts Sri Y.V. Rao, Sri A.N. Pal, Sri M.B. Verma and Sri S.P. Singh who all certified that the seized property belonged to railway.

14. On the basis of aforesaid, the complaint was lodged by the Railway Protection Force under Section 3(a) of the aforesaid Act of 1966 and cognizance was taken. Subsequently, charge was also framed under the said section.

15. In order to substantiate the prosecution case, altogether seven witnesses were produced. P.W. 1- Arun Kumar Gupta, P.W. 2- Shivendra Bhattacharya, P.W. 3- Rajendra Yadav @ Rajendra Singh, P.W. 4- Raj Kumar Sharma, P.W. 5- S.M. Hoodi Kabri, P.W. 6- J.P. Singh-expert witness and P.W. 7 - Mani Bhushan Verma-expert witness. Apart from the oral evidences of the aforesaid witnesses, the seizure list dated 12.11.1993 was exhibited as Exhibit- 1. The confessional statements of Nathuni Singh, Vimal Kr. Ram, Ram Pari Devi, Ramesh Kumar Gupta, Dablu Kumar Gupta and Raj Kumar were marked as Exhibits -

2 to 2/5 respectively. Seizure list dated 16.11.1993 was marked as Exhibit- 1/1 and the confessional statements of Hare Ram Singh and Ram Deo Jaiswal were marked as Exhibits- 2/6 and 2/7; confessional statements of Salim Khan (petitioner), Chhotu Ansari and Ram Babu Gupta were marked as Exhibits- 2/8, 2/9 and 2/10 respectively. The expert report in the writing and signature of Sri J.P. Singh was marked as Exhibit- 3. Expert report in writing and signature of Sri Mani Bhushan Verma was marked as Exhibit- 4.

16. P.W.-1 has fully supported the prosecution case and has stated that on 12.11.1993 in the midnight, he received information that Distributor valve and other property belonging to Railway has been stocked in the house of Babulal Gupta and is likely to be disposed of. Accordingly, he along with D.I.C. Adra, S. K. Bhattacharjee and other R.P.F. staffs proceeded to the residence of Babulal Gupta, but Babulal Gupta was not found. The godown was checked and about 71 numbers of various distributor valves in five sacks, aluminium cable wire and plastic cover of the aluminium cable were recovered. The said articles were seized and the statement of Nathuni Singh, Vimal Kumar Ram, Ram Pari Devi and Ramesh Kumar Gupta were recorded. On the basis of the confessional statement the co-accused, godown at Kolkata was also raided on 16.11.1993 from where huge railway property were seized. The co-accused persons stated that the aforesaid articles were being sold by Salim Khan (petitioner), Chhotu Ansari, Karim and Ram Deo Jaiswal. Seizure list was prepared at both the places of seizure and expert opinion was obtained. P.W. 2 - Sivendu Bhattacharjee, at the time of occurrence, was posted as Inspector C.I.V. Signal. He has supported the prosecution case by stating that Inspector Arun Kumar Gupta had come with search warrant and on the identification of accused Nathuni Singh and Raju Kumar, the raiding party had reached Kolkata

where the other two accused Ram Deo Jaiswal and Hare Ram were present. P.W. 4 and P.W-5 are the witnesses on the point of seizure at two places i.e. Bansgora and Kolkata and P.W. 6 and 7 are the expert witnesses who had examined the seized articles and have certified that the articles were railway property and are not available in the open market. Neither the seizure, nor identity of the seized articles as railway property are in dispute.

17. It is apparent from the records of the case that there are confessional statements of 11 accused including that of the petitioner (Exhibit-2/8). There were altogether 11 charge-sheeted accused persons, out of them, Ram Deo Jaiswal, Chhotu Ansari and Hare Ram Singh were declared absconder vide order dated 15.12.2008. Accused Ram Pari Devi died during the pendency of the case. It has also been recorded that six accused persons confessed their guilt before the court and pleaded guilty after their statements were recorded under section 313 of Cr.P.C. and were directed to deposit fine amount of Rs.10,000/- each. Thus, the petitioner was the sole accused who faced the trial.

18. After scrutinizing the materials on record the learned trial court convicted the petitioner under section 3(a) of the aforesaid Act of 1966. The learned appellate court also considered the evidences on record and did not find any error in conviction and sentence of the petitioner.

19. From the perusal of the judgements passed by the learned courts below, it appears that the petitioner was neither present at the time of raid conducted at Bansgora, Bokaro in the premises of Babulal Gupta, nor he was present at the time of raid conducted at Kolkata in the premises of Ram Deo Jaiswal. The petitioner has been named as accused on the basis of the confessional statements of Ram Pari Devi, Raju Kumar, Nathuni Singh, Ramesh Kumar Gupta, Dablu Kumar Gupta and Vimal

Kumar Ram who claimed to be owner of the godown at Bansgoda under the leadership of Babulal Gupta and that they have been purchasing the railway material from five persons including the petitioner. The raid at Kolkata was conducted on the basis of confessional statements of the aforesaid persons. The persons who were found in the godown at Kolkata and whose confessional statements were recorded were Hare Ram Singh and Ram Deo Jaiswal who had also made allegations against the petitioner. Apart from the aforesaid, the confessional statements of a number of co-accused of the petitioner, the petitioner had also confessed his guilt before the inspector, RPF (P.W-1) and his confessional statement dated 26.11.1993 was marked as exhibit 2/8 without any objection from the side of the defence. Confessional statement of Nathuni Singh is dated 12.11.1993, Vimal Kumar Ram is dated 12.11.1993, Ram Pari Devi is dated 12.11.1993. The confessional statement of Ramesh Kumar Gupta has been recorded on 12.11.1993, Dablu Kumar Gupta has been recorded on 12.11.1993, Raju Kumar has been also recorded on 12.11.1993, Ram Deo Jaiswal has been recorded on 16.11.1993, Hare Ram Singh has been recorded on 16.11.1993, Chhotu Ansari has been recorded on 28.11.1993 and Babulal Gupta has been recorded on 17.12.1993.

20. The present petitioner was ultimately convicted on the basis of confessional statements of the co-accused as well as his own confessional statement (Exhibit-2/8). It is not in dispute that the confessional statement of the petitioner was recorded post seizure of stolen goods of Railway at Bokaro and Kolkata. Admittedly, even the complaint petition was not exhibited before the learned court below as the complainant was not examined. However, it is not in dispute that the complainant had filed the case in his official capacity and the raids as well as recovery of the railway goods at two places have been duly

established on the basis of materials on record. The seizure has also been proved and the expert witnesses have also been examined.

21. This Court also finds that the petitioner had confessed his guilt on 26.11.1993 before the inspector of RPF and his confessional statement has been exhibited by P.W.-1 namely, Arun Kumar Gupta who has clearly stated that the confessional statement, upon confession of the petitioner, was written under his writing. This Court is of the considered view that in the facts and circumstances of the case, non-examination of the complainant, the complaint itself having not been exhibited before the learned Trial Court is not fatal to the prosecution case.

22. Learned amicus vehemently argued that there was no recovery from the possession of the petitioner and accordingly, the provision of Section 3(a) of Railway Property (Unlawful Possession) Act, 1966 is not attracted against the petitioner. The said argument is also devoid of any merit.

23. Section 3(a) of the Railway Property (Unlawful Possession) Act 1966 clearly mentions that whoever commits theft or dishonestly misappropriates or 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 under Section 3(a) of the aforesaid Act, 1966, if it is his first offence.

24. This Court is of the considered view that not only the person who has been physically found in possession of the stolen Railway Property, but also the person who is proved to have been in possession of any stolen Railway Property, both are covered by Section 3 of the aforesaid Act of 1966. As per the findings recorded by the learned courts below, it was the petitioner who used to commit theft of the Railway Property

and hand it over to the co-accused persons, from whose godown / premises, the Railway property was physically recovered and seized. In view of the aforesaid, merely because the Railway Property was not seized from the physical possession of the petitioner, does not take him out of the purview of Section 3 of the aforesaid Act, 1966. Accordingly, the Railway property having not been seized from the physical possession of the petitioner, is not fatal to the prosecution case and the learned Courts below have rightly convicted the petitioner for the offence under Section 3 of the aforesaid Act 1966.

25. The aforesaid view is supported by the judgement of the Hon'ble Supreme court reported in *AIR 1979 SC 1825 (The State of Maharashtra vs. Vishwanath Tukaram Umale and Others)* which has also been followed in the judgement reported in *AIR 2008 SC 1112 (Om Prakash vs. State of U.P.)*.

26. Learned amicus also submitted that the pointed question with respect of confessional statement was not put to the petitioner under Section 313 of the Cr.P.C. and accordingly, the conviction of the petitioner cannot be sustained. Upon going through the statement of the petitioner recorded under Section 313 of the Cr.P.C., this Court finds that specific question was put to the petitioner regarding the allegation and evidence indicating that he had committed theft of the Railway property and had supplied the same to the owners of the godown, from whose possession, it was recovered. Admittedly, the confessional statement of the petitioner was exhibited before the learned court below as Exhibit-2/8 without any objection from the side of the petitioner. Accordingly, this Court finds that the evidences were adequately put to the knowledge of the petitioner under Section 313 of Cr.P.C. by mentioning the allegation and evidence collected against him indicated that he was the person who was responsible to sell the Railway

property to the godown owners. The argument of the learned amicus on the point of recording of statement under section 313 Cr.P.C is devoid of any merits and hence rejected.

27. Learned counsel has also argued that the petitioner has been convicted merely on the basis of his confessional statement as well as the confessional statement of the co-accused persons. The learned counsel has argued that such confessional statement is hit by the provision of Section 25 of the Evidence Act and is inadmissible in evidence against the petitioner.

28. The complaint was filed before the learned Court below on 17.06.1994 and the confessional statement of the petitioner was recorded by the Inspector, RPF on 26.11.1993.

29. In the Judgment passed by the Hon'ble Supreme Court reported in (1980) 4 SCC 600, the applicability of the provision of Section 25 of the Evidence Act, when applied in relation to officer of RPF (Railway Protection Force) making enquiry under Section 8(1) of the aforesaid Act of 1966 has been considered. The Hon'ble Supreme Court held that an Officer of RPF conducting an enquiry under Section 8(1) of the aforesaid 1966 Act, having not been vested with all the powers of Officer-in-charge of a police station making investigation under Chapter XIV of the Code of Criminal Procedure and on several material aspects, the enquiry under 1966 Act differs from investigation under Criminal Procedure Code. It has been held in Paras-39 and 58 of the judgement as under:

"39. From the comparative study of the relevant provisions of the 1966 Act and the Code, it is abundantly clear that an officer of the RPF making an inquiry under Section 8(1) of the 1966 Act does not possess several important attributes of an officer in charge of a police station conducting an investigation under Chapter XIV of the Code. The character of the "inquiry" is different from that of an "investigation" under the Code. The official status and powers of an officer of the Force in the matter of inquiry under the 1966 Act differ in material aspects from those of a police officer conducting an investigation under the Code.

58. In the light of the above discussion, it is clear that an officer of the RPF conducting an inquiry under Section 8(1) of the 1966 Act has not been invested with all the powers of an officer in charge of a police station making an investigation under Chapter XIV of the Code. Particularly, he has no power to initiate prosecution by filing a charge-sheet before the Magistrate concerned under Section 173 of the Code, which has been held to be the clinching attribute of an investigating "police officer". Thus, judged by the test laid down in Badku Joti Savant, which has been consistently adopted in the subsequent decisions noticed above, Inspector Kakade of the RPF could not be deemed to be a "police officer" within the meaning of Section 25 of the Evidence Act, and therefore, any confessional or incriminating statement recorded by him in the course of an inquiry under Section 8(1) of the 1966 Act, cannot be excluded from evidence under the said section." (emphasis supplied)."

30. Considering the ratio of the aforesaid Judgment passed by the Hon'ble Supreme Court, the Inspector of Railway Protection Force, who had conducted the enquiry under Section 8(1) of the aforesaid Act of 1966 Act, was not a "police officer" within the meaning of Section 25 of the Evidence Act and therefore, any confessional or incriminating statement recorded by him in the course of an enquiry under Section 8(1) of the aforesaid Act of 1966 Act cannot be excluded from the evidence by referring to Section 25 of the Evidence Act.

31. Thus, the contention of the petitioner that the petitioner could not have been convicted on the basis of his confessional statement which was recorded before the inspector, RPF and that his statement was hit by Section 25 of Evidence Act, is rejected in view of the ratio of the aforesaid Judgment reported in (1980) 4 SCC 600.

32. Two judgements have been relied upon by the learned amicus, one passed by the Hon'ble Madras High Court in the case of *State versus Radhakrishnan and others* reported in (1993) Cr.L.J. 1457 and another passed by the Hon'ble Orissa High Court in the case of **State versus Prahallad Rath and Others** reported in (2007) Cr.L.J. 1189. Both these judgments

have been passed exercising appellate jurisdiction by the High Court in appeal filed by the State and both the cases arise out of case under Section 3(1) of aforesaid Act of 1966.

33. In the judgement passed by Hon'ble Madras High Court, the accused nos. 2 to 4 had given confessional statements to personnel belonging to RPF and on consideration of the materials placed, the learned Magistrate had convicted the accused no. 1 and did not find accused no. 2 to 4 guilty. The State was in appeal. The High Court found that the learned Magistrate had given reasons for acquittal of accused no. 2 to 4. The High Court also found that even the confessional statement of accused no. 2 to 4 was retracted and practically, the material evidence on record consisted of confessional statement of accused. In principle, the High Court was of the view that there is no doubt true that personnel belonging to RPF are not police officers and confession made before them is admissible in evidence. However, held that the confessional statement of accused no. 1 implicating accused no. 2 to 4 cannot be read as evidence against accused no. 2 to 4 and the same could be taken into consideration if there were other evidences on record. The High Court found that not only the accused no. 2 to 4 retracted from their confessional statements but even the seizure witnesses had turned hostile.

In the present case, there is confessional statement of petitioner before Inspector of RPF (P.W-1) coupled with confessional statement of not less than 6 co-accused who had admitted their guilt and pleaded guilty after their statements were recorded under Section 313 of Cr.P.C. and paid Rs.10,000/- as fine and ultimately, the petitioner was the sole accused who faced the trial. This Court finds that there is enough legal evidence on record to convict the petitioner and there is no ground for interference in revisional jurisdiction. The said judgement

passed by Hon'ble Madras High Court does not apply to the facts and circumstances of this case.

34. In the judgement passed by Hon'ble Orissa High Court, the State was in appeal against the order of acquittal passed by the Magistrate and upon appreciation of the materials on record, the Hon'ble High Court also found that the accused was rightly acquitted. In the last para of the judgement, the High Court recorded that the only evidence against the two accused was the confessional statement of the co-accused and as the confessional statement of the co-accused was found to be unreliable, the acquittal of the two co-accused was also upheld. In the present case, the confessional statement of the petitioner as well as the confessional statement of the co-accused disclosing involvement of the petitioner in the commission of the offence, both before the Inspector of RPF has been found to be reliable and not hit by Section 25 of the Evidence Act. Accordingly, the judgement passed by the Hon'ble Orissa High Court also does not apply on the facts and circumstances of the case.

35. This Court is of the considered view that the un-retracted and proved confessional statement of the petitioner recorded by the officer of RPF (P.W-1) (Exhibit-2/8) can by itself be the sole basis of conviction of the petitioner under Section 3 of the aforesaid Act of 1966 as the same is admissible in evidence and not hit by section 25 of the evidence Act. In the present case, this is coupled with the fact that the confessional statement of the petitioner was admitted in evidence without any objection from the side of the defence and the other co-accused had also confessed before the officer of RPF and their confessional statements were exhibited as Exhibit- 2 to 2/10, out of which six had admitted their guilt before the court and were released upon payment of fine of Rs.10,000/- each.

36. This Court is of the considered view that there is no illegality or perversity in the impugned judgements calling for any interference in revisional jurisdiction. This Court also finds the punishment imposed upon the petitioner as adequate and no interference is called for in his sentence also.

37. As a cumulative effect of the aforesaid findings, the present criminal revision petition is devoid of any merit, which is accordingly dismissed.

Appreciation for Amicus Curiae and Payment:

38. This Court observes that vide order dated 27.07.2021, Mr. Yogesh Modi, Advocate was appointed as Amicus Curiae in this case by this Court. This Court records its appreciation for the valuable assistance accorded by the learned Amicus Curiae in final disposal of this case. The Secretary, Jharkhand High Court Legal Services Committee is directed to ensure that the legal remuneration of the learned Amicus Curiae is duly paid to him within a period of 4 weeks upon submission of bills by him.

39. The office is directed to provide a copy of this order to Mr. Yogesh Modi, the learned Amicus Curiae and also to the Secretary, Jharkhand High Court Legal Services Committee.

40. The interim order stands vacated.

41. The bail bond furnished by the petitioner is cancelled.

42. Let the lower court records of the case be sent back to the court concerned.

43. Let this judgement be communicated to the learned court below through FAX / e-mail.

(Anubha Rawat Choudhary, J.)