

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Cr. Rev. No. 554 of 2012**

1. Yogendra Saw S/o Late Nathuni Saw
2. Raju Saw S/o Late Raj Kumar Saw  
Both residents of Village– Mihijam, Hill Road,  
P.O. + P.S.– Mihijam, District– Jamtara... .. Petitioners  
-Versus-  
The State of Jharkhand ... ..Opp. Party

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**CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

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For the Petitioners : Mr. Amrendra Kumar, Advocate  
For the State : Ms. Mahua Palit, A.P.P.

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**Through Video Conferencing**

**12/24.01.2022**

Heard Mr. Amrendra Kumar, learned counsel appearing on behalf of the petitioners.

2. Heard Ms. Mahua Palit, learned A.P.P. appearing on behalf of the Opposite Party-State.

3. The present criminal revision application has been filed for setting aside the Judgment dated 23.06.2012 passed by the learned 1st Additional Sessions Judge, Deoghar in Criminal Appeal No. 14/2011 whereby and whereunder the learned appellate court confirmed the Judgment of conviction and the order of sentence dated 26.02.2011 passed by the learned Railway Judicial Magistrate, 1st Class, Madhupur in GOCR Case No.207 of 2006 / Tr. No.112 of 2011 and dismissed the criminal appeal preferred by the petitioners.

4. The learned trial court had convicted the petitioners under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 and had sentenced them to undergo Simple Imprisonment for one year and the period undergone in jail custody was directed to be set off.

**Submissions on behalf of the Petitioners**

5. Learned counsel for the petitioners submitted that the present offence is the first offence of the petitioners and they have been sentenced under Section 3(a) of the Railway Properties (Unlawful Possession) Act, 1966 to undergo simple imprisonment for one year. He submitted that Petitioner No.1 has remained in custody at the stage of trial from 18.08.2006 to 05.10.2006 and thereafter, at the revisional stage from 04.08.2012 to 19.09.2012 i.e. for a total period of 04

months and 04 days. He also submitted that as per the affidavit filed by the State, one more case is registered against the Petitioner No.1 under the R.P. (U.P.) Act, 1966, though it is of the year 2016. He further submitted that the Petitioner No.2 had initially absconded during the stage of trial and had surrendered on 01.08.2007 and was enlarged on bail on 24.08.2007 and during pendency of the present criminal revision before this Court, he remained in custody from 04.08.2012 to 19.09.2012 and accordingly, he has remained in custody for a total period of 02 months 10 days and as per the affidavit filed by the State, no other case is pending against Petitioner No.2.

6. Learned counsel further submitted that the main point involved in the present case is that the necessary search warrant under Section 10 of the Railway Properties (Unlawful Possession) Act, 1966 was not taken and accordingly, the conviction of the petitioners cannot be sustained in the eyes of law. He referred to the judgment passed by the Hon'ble Calcutta High Court in the case of *Sakti Steel Traders –Vs- Ashoke Chakraborty (1993) Cr.L.J. 969* and also the judgment passed by the Hon'ble Supreme Court in the case of *State of U.P. –Vs- Durga Prasad [AIR 1974 SC 2136]*.

#### **Arguments on behalf of the Opposite Party-State**

7. Learned counsel for the Opposite Party-State opposed the prayer and submitted that there are concurrent findings recorded by the learned courts below and no interference is called for in revisional jurisdiction. Learned counsel further submitted that the recovered stolen property was assessed to be valued at Rs.5,800/-.

#### **Findings of this Court**

8. The prosecution case, in brief, is that on 18.08.2006 at about 02.15 P.M., the officers and members of RPF Post alongwith police force under the leadership of the In-charge, Police Inspector of the police station post with one independent witness namely, Sukumar Mahto conducted a raid in the house-cum-godown of the Petitioner No.1 situated near the post office at Mihijam Hill Road where the petitioners were found doing some work relating to articles. After seeing the police, the Petitioner No.2 fled away, but the Petitioner No.1 was apprehended. On search of the godown-cum-house, (1) One

No. HPSV lamp fitting without lamp and 6 Kg. broken pieces of HPSV lamp of aluminium, (2) About 2½ feet 100 pair PIJF telephone cable - one piece, (3) About 2' x 2½' insulated of 100 pair telephone cable - 15 Nos., (4) Cut pieces of removed wire from insulation of PIJF telephone cable - about ½ Kg. and (5) Burnt copper wire weighing about 6 Kg., valued Rs.5,800/- approximately were recovered. On query, the Petitioner No.1 neither produced any valid paper for the recovered articles, nor gave any satisfactory answer. The Petitioner No.1 disclosed the name of the Petitioner No.2 who had fled away from there. Thereafter, the recovered articles were seized and a seizure list was prepared. Accordingly, F.I. Sheet was drawn and the case was registered as RPF/Township Post/CLW/Chittranjan Case No.08/2006 dated 18.08.2006 under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 (hereinafter referred to as the R.P. (U.P.) Act, 1966).

**9.** During enquiry, the seized articles were found to be stolen property of the Railways and accordingly, prosecution report was submitted against the petitioners under the same section and cognizance of the offence was taken against the petitioners by the learned Railway Judicial Magistrate, 1st Class, Madhupur. On 22.05.2010, charge under the same section was framed against the petitioners which was read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

**10.** In course of trial, the prosecution examined altogether eight witnesses. P.W.-1 is Santanu Das, Section Engineer, Electrical, Chittranjan, P.W.-2 is Onkar Nath Singh, S.I., TS Post, CLW, P.W.-3 is M. Bairagi, Junior Engineer-II, Telephone Exchange, CLW, P.W.-4 is Dharmendra Kumar Pandey, S.I., TS Post, CLW, P.W.-5 is Babua Chattopdhyay, Section Engineer, Telecom, CLW, P.W.-6 is Raj Kumar Singh, S.I., RPF MS Post, CLW, P.W.-7 is Amit Kumar Ghosh, Constable RPF, CIB and P.W.-8 is Sukumar Mahto, Mosquito Man Public Health Department, Railway.

**11.** P.W.-2 is the Complainant of the case and P.W.-6 is the Enquiry Officer of the case. P.W.-1 and P.W.-3 are the expert witnesses who exhibited their expert reports dated 12.10.2006 and 18.09.2006 as Exhibit-1 and Exhibit-4 respectively and they also

identified the seized articles produced in court which were marked as Material Exhibits-I, II and III respectively. P.W.-2, P.W.-4 and P.W.-7 are RPF personnel who were the members of the raiding party and are also the seizure list witnesses. P.W.-8 is also a seizure list witness. P.W.-5 is the witness of joint inspection report dated 15.08.2006 regarding theft of the seized materials. The prosecution also exhibited the seizure list as Exhibit-2, signatures of P.W.-4, P.W.-7 and P.W.-8 on the seizure list as Exhibits- 2/1, 2/2 and 2/3 respectively, Complaint as Exhibit-3, Joint Inspection Report as Exhibit-5, confessional statement of the Petitioner No.1 as Exhibit-6, Site Plan of the Place of Occurrence as Exhibit- 7, Theft/Loss Report as Exhibit-8, Electric Bill of the house of the Petitioner No.1 as Exhibit-9, Prosecution Report as Exhibit-10 and statement of P.W.-8 as Exhibit-11.

**12.** P.W.-1 deposed that on 12.10.2006, he was posted at S.P. (North), CLW, Chittranjan and on that day, on requisition of S.I. R.K. Singh, he went at RPF/Township Post and examined HPSV fittings without lamp and broken piece of HPSV and on examination, he found that the materials were used in CLW area for street lighting and after examination, he prepared an expert opinion report. He proved the expert opinion report as Exhibit-1. He also identified his signature on the label over the aforesaid articles produced in court and exhibited the articles as Material Exhibit-I.

**13.** P.W.-2 is the Complainant of the case. He deposed that at the time of occurrence, he was posted as Sub-Inspector at T.S. Post, CLW. On receiving information, he alongwith officer and staff and RPF Post, CIB and local police made a raid at 02.40 P.M. in the house of the Petitioner No.1 and caught him on the spot and the Petitioner No.2 fled away from there. Thereafter, telephone and electric wire of railway were recovered from the possession of the petitioners. The petitioners did not produce any valid paper for the recovered articles which were seized and a seizure list was prepared. He proved the seizure list as Exhibit-2 and identified his signature on the label over the HPSV lamp fittings produced in court which were earlier marked as Material Exhibit-I and exhibited the written complaint as Exhibit-3.

**14.** P.W.-3 stated that on 18.09.2006, on requisition of S.I. R.K. Singh, he went to RPF Post and examined 100 pair cable of 2½'

length in one piece and second cable 2- 2 ½ feet cable- 15 in numbers, cut wire without insulation ½ Kg. in weight and burnt 6 Kg. cable wire and found that all the articles are property of the railway. He exhibited the written expert opinion as Exhibit-4 and also exhibited the aforesaid articles produced in court as Material Exhibits-II and III.

**15.** P.W.-4 deposed that he was a member of the raiding party and at the time of occurrence, he went with CIB and other police officer at the place of occurrence and saw the occurrence and stated about the occurrence like the Complainant (P.W.-2).

**16.** P.W.-5 deposed that on the date of occurrence, theft of telephone cable of 51 meters was committed from Ambedkar Road and he went at that place with RPF and Junior Engineer and prepared a joint inspection note. He exhibited the joint inspection note as Exhibit-5.

**17.** P.W.-6 is the Enquiry Officer of the case. He deposed that he received the charge of enquiry of the case from the In-charge, Inspector, Sushil Kumar of Township Post and in course of enquiry, he recorded the statement of the Petitioner No.1. He exhibited the confessional statement of the Petitioner No.1 as Exhibit-6. He visited the place of occurrence and prepared the map. He proved the map as Exhibit-7. He also recorded the statements of the witnesses and submitted the prosecution report. He further proved the Exhibits- 8, 9 and 10.

**18.** P.W.-7 was a member of the raiding party. He stated about the occurrence like the Complainant (P.W.-2).

**19.** P.W.-8 has been declared hostile by the prosecution, but he admitted his signature on the seizure list and denied any recovery of materials before him and further admitted his signature on the label of the Material Exhibit-II.

**20.** On 05.02.2011, the statements of the petitioners were recorded under Sections 313 of Cr.P.C. wherein they denied the incriminating evidences put to them and claimed to be innocent. The petitioners did not adduce any evidence in their defence.

**21.** The learned trial court considered the evidences and materials on record and recorded its findings in Para-9 that P.Ws.- 2, 4 and 7, who are the RPF personnel and were the members of the raiding party,

the Complainant and are the witnesses of the seizure list also, have consistently supported the prosecution case regarding the raid conducted on 18.08.2006 in the house of the Petitioner No.1 and making his spot arrest alongwith recovery of seized iron materials as per the seizure list. They have identified both the petitioners in court. They have further stated that the seized materials are exclusively railway property and the petitioner have failed to produce any valid document before them. The learned trial court further recorded the P.W.-1 and P.W.-3 are the expert witnesses who have clearly stated that they have examined the recovered and seized materials on call of the RPF at the post and found the same as exclusively railway properties used in railway CLW area and are not available in open market and proved their reports as Exhibits- 1 and 4. P.W.-5 has proved the joint inspection report as Exhibit-5 which was made by him and P.W.-6, who is the Enquiry Officer, has corroborated the prosecution case and the statements of the prosecution witnesses and has established the place of occurrence of the case as the house compound of the Petitioner No.1 through the Site Plan, Exhibit-7. He also proved the confessional statement of the Petitioner No.1 as Exhibit-6, Theft report regarding missing of the recovered articles as Exhibit-8, Electric Bill as Exhibit-9, Prosecution Report as Exhibit-10 and the statement of P.W.-8 recorded by him as Exhibit-11. The learned trial court further recorded that P.W.-8 has been declared hostile by the prosecution as he denied any recovery of materials before him, but he has admitted his signatures on the seizure list and on the label of the Material Exhibit-II. The learned trial court found that all the above prosecution witnesses have identified the seized materials as railway property which are Material Exhibits- I, II and III respectively and they have also identified their signatures on the labels of the same. The learned trial court concluded that the petitioners were found in possession of the railway iron materials without any lawful authority which has not been rebutted by them by any reliable evidence which conclusively proves the case against them. On the basis of the aforesaid findings, the learned trial court convicted the petitioners under Section 3(a) of the R.P. (U.P.) Act, 1966 and sentenced them to undergo Simple Imprisonment for one year.

22. The learned appellate court also considered the evidences and materials on record and recorded its findings in Para-16 that P.Ws.- 1, 2, 3, 4, 5, 6 and 7 have fully supported the prosecution case who were either members of the raiding party or are experts and there is nothing to show that these witnesses have any grievance against the petitioners to give false statements against them and therefore, their statements are reliable. The learned appellate court further recorded that as per Exhibit-2, (1) HPSV lamp fittings without lamp and 6 Kg. broken pieces of HPSV lamp of aluminium, (2) About 2½ feet 100 pair PIJF telephone cable - one piece, (3) About 2' x 2½' insulated of 100 pair telephone cable - 15 Nos., (4) Cut pieces of removed wire from insulation of PIJF telephone cable - about ½ Kg. and (5) Burnt copper wire weighing about 6 Kg. were recovered from the house-cum-godown of the petitioners at the time of the occurrence. P.Ws.- 2, 4 and 7 who were members of the raiding party, have proved that during the raid, the aforesaid articles were recovered from the house-cum-godown of the Petitioner No.1 and at the time of the occurrence, both the petitioners were present in the aforesaid house and the aforesaid articles were kept by the petitioner without any valid paper and the same were seized and a seizure list was prepared. P.W.-1 and P.W.-3 are the experts who have proved the Exhibits- 1 and 4 and established that the seized articles were railway property. P.W.-5 proved that prior to the occurrence, theft of 51 meters telephone cable was committed from Ambedkar Road in CLW which is a workshop of railway. Exhibit-6 is the statement of the Petitioner No.1 which goes to prove that at the time of the occurrence, he and the Petitioner No.2 were dealing with the stolen property of the railway which was recovered from his godown-cum-shop by the police and he was arrested on the spot and the Petitioner No.2 was present at the time of the raid, but he fled away from there. Exhibit-8 is the theft report which goes to show that the aforesaid articles were stolen from CLW which belong to the railway. Exhibit-7 is the electric bill which goes to prove that the godown-cum-shop belongs to the Petitioner No.1 and he is the owner of the aforesaid house. The learned appellate court in Para-17 further recorded that at the time of the occurrence, the petitioners were found in possession of the aforesaid articles and there is no evidence on

behalf of the petitioners to disprove that the aforesaid recovered and seized articles from their possession, are not railway property. The learned appellate court refused to interfere with the Judgment passed by the learned trial court and dismissed the criminal appeal.

**23.** After hearing the counsel for the parties and going through the materials on record, this Court finds that P.Ws.- 2, 4 and 7 were the members of the raiding party, they have proved their signatures on the seizure list and they have fully supported the prosecution case and they have also identified both the petitioners in court. P.W.-1 and P.W.-3 are the expert witnesses who have proved their expert reports and they have established that the seized articles were railway property and they have also identified the seized articles produced in court.

**24.** In the judgment passed by Hon'ble Kolkata High Court in the case of *Sakti Steel Traders Vs. Ashoke Chakraborty (supra)*, an appeal was filed before the High Court against an order dismissing the application to release the property seized from the godown at Howrah on the basis of search warrant issued by a Magistrate at Serampore who did not have the territorial jurisdiction to issue search warrant in terms of Railway Property (Unlawful Possession) Act, 1966. In the said case, upon interception of a vehicle certain railway property was seized and thereafter, a complaint was lodged alleging that the seized goods were stolen railway property and consequently, a case was registered at Serampore. After registration of the case, an application was made before the Sub-Divisional Judicial Magistrate, Serampore for issuance of search warrant for search of godown of the appellant at Howrah. The validity of the search at Howrah was challenged on the ground that Judicial Magistrate, Serampore had no jurisdiction to issue search warrant in respect of the godown of the appellant located in another district i.e., Howrah.

The Hon'ble High Court compared Section 10 of Railway Property (Unlawful Possession) Act, 1966 with Section 94 of the Code of Criminal Procedure and also considered the overriding effect of Section 14 of the Act of 1966 and was of the view that there is fundamental difference between Section 10 of the Act of 1966 and Section 94 of Code of Criminal Procedure, in as much as, Section 94



does not prescribe any territorial limitations, so far as jurisdiction of the Magistrate is concerned, but Section 10 of the Act of 1966 provides that the search warrant has to be issued by the Magistrate having jurisdiction over the area in which that place is situated. By referring to Section 14 of the Act of 1966, the Hon'ble High Court held that the search warrant for searching godown within Howrah was required to be issued by the Magistrate at Howrah and the search warrant issued by Serampore court is of no consequence. Consequently, direction was issued to release of the articles seized from the godown with a further direction that while returning the seized articles, for the purposes of inquiry or trial, it shall be open to keep some of the articles seized and also observed that the list of articles shall be filed before the court of competent jurisdiction with an undertaking that the same shall be returned to the appellant, if it is held that they are not stolen railway property. The Hon'ble Kolkata High Court clearly observed that in the said appeal they were not concerned as to whether the railways can, in a trial, lead evidence on the basis of search and seizure made pursuant to invalid search warrant against the accused persons and for the present, the Hon'ble Court was concerned as to whether the article seized on the basis of invalid search warrant have to be restored to the appellant from whose custody they were seized. In the aforesaid judgement, only the legality and validity of search on the basis of illegal search warrant was under consideration and it was also observed that if the seized articles pursuant to such illegal search warrant was found to be railway property, the same need not be returned to the appellant.

25. The Hon'ble Calcutta High Court in another case reported in *1999 SCC Online Cal 301 (Gopal Prasad Show Vs. State of West Bengal)* considered the issue in a Criminal Revision arising out of conviction under Section 3(a) of the Act of 1966 where on the basis of statement of accused, the officers of RPF post alongwith officers of local police station conducted a raid in the godown which led to recovery of stolen railway property and the conviction was *inter alia* challenged on the ground that search and seizure of Railway Property can only be made under Section 10 of the Act of 1966 which prevails over the Code of Criminal Procedure and in absence of duly issued

search warrant, the search and seizure was itself vitiated. The judgement passed in the case of *Sakti Steel Traders (supra)* was relied upon by the accused and the Hon'ble Calcutta High Court observed that Section 8(2) of the Act of 1966 was not brought to the notice of the court while deciding the case.

**26.** The Hon'ble Calcutta High Court in para 4 to 9 of the judgement of *Gopal Prasad Show (supra)* held as under:-

*“4. Mr. Soumen Ghosh, learned Advocate appearing for the petitioner submits that the search and seizure under the R.P. (U.P) Act can only be made under Section 10, which will prevail over the Code of Criminal Procedure, and there is no other provision for the search and seizure. He further submits that the Sub-Inspector of Railway Protection Force had no competence or authority to seize and as such the same is void ab initio and is a nullity. Mr. Ghosh relies on a Division Bench Judgement of this court reported in 1993 Cal. Cr. L.R. (Cal) 175, wherein it was held that whenever a search of any premises is to be made in connection with deposit or sale of railway property in respect of which there is reason to believe that they are stolen or unlawfully obtained, then the search warrant must be issued in accordance with the requirement of section 10 of the R.P. (U.P.) Act.*

*5. The R.P.F. Officers starts an enquiry under Section 8 (1) of R.P. (U.P) Act when any person has been arrested under section 6 by an officer of the Force or he has been arrested by any other member of the force under Section 7 and is forwarded to the R.P.F. officer. Such arrest can be made by either of them when any person has committed or is reasonably suspected to have committed the offence under Sections 3 and 4 of the R.P. (U.P.) Act.*

*6. Section 165 of the Code of Criminal Procedure provides the circumstances in which the officer-in-charge of a police station or the investigating officer not below the rank of Sub-Inspector can conduct the house search without a search warrant during the investigation of any case. This section has been made applicable to the R.P.F. officers also during an enquiry under the R.P. (U.P) Act by virtue of section 8 (2) of the said Act. The officer of the Force can also conduct a house search during an enquiry under the Act without a search warrant under certain conditions laid down under Section 165 Cr. P.C. It is very important to note here that section 10 of the R.P. (U.P) Act empowers the R.P.F. Officer, to conduct a house search when he is not enquiring into any case. In the present case, as it appears from the enquiry report (complaint) submitted by the R.P.F. Officer, the search was conducted in course of enquiry into the case and as such the question of obtaining a search warrant before conducting the search does not arise. So, in my opinion the search and seizure conducted by*

*the R.P.F. officers were very much within their legal competence and there is no illegality in the same.*

7. *I have carefully gone through the judgment referred to above and I am of the opinion that the said judgment does not have any manner of application in the instant case because of the reasons referred to above and that the provision of section 8 (2) of the R.P. (U.P) Act was not brought to the notice of the Hon'ble Court in its true perspective.*

8. *Section 10 of the R.P (U.P) Act enables an officer of the Railway Protection Force to conduct a search and recover railway property from any premises of other person prior to registration and enquiry of the case under the R.P. (U.P) Act.*

9. *Mr. Ghosh, the learned Advocate, also relies on an unreported judgement of this court which is annexed to this revisional application as Annexure 'B'. In the said judgement a proceeding under the R.P. (U.P.) Act was quashed by the Hon'ble Single judge of this Court on the ground that search was not conducted in compliance with the provision of section 10 of the Act. I have gone through the said judgement and I find that the said revisional application was decided ex parte in absence of the Railways and the provision of section 10 and section 8 (2) of the R.P. (U.P) Act was not placed before the Hon'ble Single Judge in its true perspective. So, in my opinion the said judgement does not have any application in the present case."*

27. Similar view has been taken by the subsequent judgements of Hon'ble Calcutta High Court as follows:-

a. In the judgement passed by Hon'ble Calcutta High Court in the case of ***Lochon Sahu @ Shiolochan Shau Vs. State*** reported in **2001 SCC OnLine Cal 614**, it was held as under:

*"12. Now, looking into the provisions of section 165 of the Code of Criminal Procedure, it appears that the Officer-in-Charge of the Police Station or any Investigating Officer not below the rank of Sub-Inspector can conduct the house search without a search warrant during the investigation of any case. This section has been made applicable to the R.P.F. Officers also during an enquiry under the R.P. (U.P.) Act by virtue of section 8(2) of the said Act. Therefore, the officer of the force can also conduct a house search during an enquiry under the Act without a search warrant under certain conditions as laid down under section 165 of the Cr. P.C.*

*13. Therefore, in making the reasonable interpretation of section 10 of the R.P. (U.P.) Act in the above light, it appears to me that the aforesaid section 10 of the R.P. (U.P.) Act empowers the R.P.F. Officer to conduct a house search, when he is not enquiring into any case, after obtaining prior permission of the Magistrate of the area as envisaged in section 10 of the R.P. (U.P.) Act."*

b. The Hon'ble Calcutta High Court in the case of ***Bhabani Mukherjee Vs. State of West Bengal*** reported in ***2008 SCC OnLine Cal 94*** held as under:

*“Section 8(2) of the Act has vested the officer of the force with all the powers of a police officer while investigating into an offence. By necessary implication the powers contained in Chapter XII of the Cr. PC would also be available to the officer of the force where he can take search under sections 165 and 166 of the Cr. PC. Section 165 of the Cr. PC empowers the police officer to make a search without warrant subject, of course, to certain safeguards. Search must be necessary for investigation, reasonable grounds must exist for believing that the thing required will be found in a place, there would be undue delay in getting the thing done in any other way. In the petition before the Magistrate, it was averred by the officer of the RPF that there was no sufficient time to obtain search warrant from the Magistrate which is why search was conducted to prevent further disposal of stolen railway properties. Therefore, non-compliance with the provision of section 10 does not make the search or seizure illegal. In *H.N. Rishubad v. State*, AIR 1955 SC 195, the law has been laid down by the Supreme Court to the effect that the irregularity in search would not affect the merit of the case unless prejudice is caused to the accused.”*

**28.** The aforesaid judgment passed in the case of ***Sakti Steel Traders (supra)*** has no applicability to the facts and circumstances of this case. The goods recovered from the godown which are involved in the present case were found to be railway property and the petitioners have been convicted for recovery of such railway property upon search conducted by the raiding party. In the present case, the search was conducted during investigation after theft report was already instituted vide Ext. 8 dated 15.08.2006 and the raid was conducted by the RPF officers along with the officers of the local police station. This Court is of the view that as per the provisions of Section 165 of Cr.P.C., the Officer-in-Charge of the Police Station or any Investigating Officer not below the rank of Sub-Inspector can conduct the house search without a search warrant during the investigation of any case. This section has been made applicable to the R.P.F. Officers also during an enquiry under the R.P. (U.P.) Act by virtue of Section 8(2) of the Railway Property (Unlawful Possession) Act. Therefore, the officer of the force can also conduct a house

search during an enquiry under the Act without a search warrant under certain conditions as laid down under Section 165 of the Cr. P.C. Therefore, in making the reasonable interpretation of Section 10 of the R.P. (U.P.) Act, this Court is of the view that Section 10 of the R.P. (U.P.) Act empowers the R.P.F. Officer to conduct a house search, when he is not enquiring into any case, after obtaining prior permission of the Magistrate of the area as envisaged in Section 10 of the R.P. (U.P.) Act. From the available materials in the present case, it is apparent that the search in the present case was conducted in course of an enquiry/investigation into a case and was preceded by a theft report also i.e. exhibit-8 and consequently, the question of obtaining any search warrant before conducting the search does not and cannot arise at all. In the judgement passed in the case of *Sakti Steel Traders (supra)*, as observed by Hon'ble Calcutta High Court *in 1999 SCC Online Cal 301 (Gopal Prasad Show Vs. State of West Bengal)*, Section 8 (2) of the Act of 1966 was not brought to the notice of the court while deciding the case of *Sakti Steel Traders (supra)*. It is also important to note that Section 6 of the Act of 1966 enables any superior officer or a member of the force to arrest any person without a warrant of arrest and without an order from a magistrate who has been concerned in an offence punishable under the Act of 1966 or against whom a reasonable suspicion exists of his having been so concerned.

**29.** This Court is in complete agreement with the aforesaid views expressed by Hon'ble Calcutta High Court in the case of *Gopal Prasad Show(supra)* and accordingly the judgement relied upon by the petitioners in the case of *Sakti Steel Traders (supra)* does not help the petitioners in any manner whatsoever and does not apply to the facts and circumstances of this case. In the present case also, the search was conducted during course of investigation of a case and was preceded by a theft report (exhibit-8) and accordingly, no search warrant, as contemplated under Section 10 of the Act of 1966 was required.

**30.** The learned counsel for the petitioners has also referred to the judgement passed by the Hon'ble Supreme court in the case of *State of U.P. v. Durga Prasad, Reported in AIR 1974 Supreme Court 2136*

to submit that it has been held that in view of the overriding provisions contained in Section 14 of the Act of 1966, the Act of 1966 must prevail over the Code of Criminal procedure.

**31.** This Court finds that in the judgement passed by the Hon'ble Supreme Court, the issue was whether the inquiry conducted by an officer of the Railway Protection Force under Section 8 (1) of the Act can be deemed to be an investigation for the purposes of Section 162, Code of Criminal Procedure. In this background, it was held that the scheme of the Act of 1966 is in important respects different from the scheme of the Code of Criminal Procedure and it was held that in view of the provisions contained in Section 14 of the Act, the Act must prevail over the Code and accordingly, it was held that an officer conducting an inquiry under Section 8 (1) of the Act does not possess all the attributes of an officer-in-charge of a Police station investigating a case under Chapter XIV of the Code and that he possesses but a part of those attributes limited to the purpose of holding the inquiry. It has also been held that the inquiry officers cannot be equated generally with police officers and hence statements made during the inquiry under Section 8 (1) of the Act of 1966 are not a par with statements made during the course of an investigation and consequently, it could not be said that in taking signatures of witnesses on the statements made by them, the inquiry officer had committed a flagrant violation of Section 162 of the Code.

**32.** This Court is of the considered view that the ratio of the judgement passed in the case of *Durga Prasad (supra)* has no bearing in the present case. It is not in dispute that by virtue of Section 14 of the Act of 1966, the provisions of the Act have overriding effect but having accepted the view taken in the above quoted paragraphs from the case of *Gopal Prasad Show (supra)*, this Court is of the considered view that there has been no violation of any of the provision of the aforesaid Act of 1966 while conducting search and seizure of the railway property involved in the present case which was conducted during course of investigation of a case and was preceded by a theft report (exhibit-8).

**33.** As per the findings recorded by the learned courts below, at the time of the occurrence, both the petitioners were found in possession

of the seized articles in the house-cum-godown of the Petitioner No.1 and both the petitioners were found dealing with the recovered articles which were found to be railway property in course of enquiry and accordingly, the learned courts below have convicted the petitioners under Section 3(a) of the R.P. (U.P.) Act, 1966.

**34.** This Court finds that both the learned courts below have recorded concurrent findings and have passed well-reasoned judgments. This Court finds no illegality or perversity or material irregularity in the impugned judgments calling for any interference in revisional jurisdiction. This Court also finds that the learned courts below have already taken a lenient view while sentencing the petitioners for one year only which is proper and adequate and does not call for any interference.

**35.** In view of the aforesaid findings, the conviction and sentence of the petitioners for the offence under Section 3(a) of the R.P. (U.P.) Act, 1966 is upheld and the present criminal revision application is hereby **dismissed**.

**36.** The interim order, if any, stands vacated.

**37.** The bail bonds furnished by the petitioners are cancelled.

**38.** Pending interlocutory application, if any, stands closed.

**39.** Let the lower court records be sent back to the court concerned.

**40.** Let a copy of this judgment be communicated to the learned court below through FAX / e-mail.

**(Anubha Rawat Choudhary, J.)**