

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 1282 of 2016

1. Md. Reyazul
2. Safruddin @ Sarfuddin @ Sadhu
... .. Petitioners
- Versus -
The State of Jharkhand Opposite Party

CORAM: - HON'BLE MR. JUSTICE AMBUJ NATH

For the Petitioners : M/s. Rashmi Kumar, Advocate
For the State : M/s. Ashish Jha, A.P.P.

C.A.V. on 20.12.2023

Pronounced on 12.01.2024

Heard the parties.

The petitioners have filed this criminal revision application against the judgment dated 17.06. 2016, passed by Sri Anil Kumar Mishra, learned Additional Sessions Judge-XIV, Hazaribag in Criminal Appeal No. 80 of 2004, whereby and wherein the learned Additional Sessions Judge-XIV, Hazaribag dismissed the appeal of the petitioners and upheld the judgment of conviction and order of sentence dated 26.05.2004 passed by Sri M.C. Jha, learned Judicial Magistrate, First Class, Hazaribag in connection with G. R. Case No. 1451 of 1995, arising out of Sadar P.S. Case No. 304 of 1995, holding the petitioners guilty of offence under section 414 of the Indian Penal Code and thereby sentencing them to undergo rigorous imprisonment for two years. The period of imprisonment already undergone by the petitioners during the trial was ordered to be set off.

The prosecution case was instituted on the basis of self-statement of the informant S.I. Arvind Kumar Choudhary of Sadar police station Hazaribag alleging therein that on 29.08.1995 at about 02:00 A.M., he received confidential information that some miscreants were transporting catechu biscuits in a white ambassador car bearing registration number DD-B-9213. On the basis of this

information ambush was laid near Nagwa airport. The aforesaid vehicle was intercepted and about 2.40 quintals of catechu biscuits were found loaded on it. Both the petitioners were found travelling on the seized vehicle.

In order to prove its case, the prosecution has adduced both oral and documentary evidence. Both the learned trial court as well as the Learned appellate court have come to a concurrent finding regarding the guilt of the petitioners.

Learned senior counsel for the petitioners submitted that the learned trial court as well as the learned appellate court have wrongly come to a finding regarding the guilt of the petitioners. They have not considered the fact that the prosecution has failed to examine the seizure witnesses. It was also submitted that neither the seized car nor the seized catechu biscuits were produced in the court during the trial and in absence of any chemical examination report, it cannot be said that contraband so recovered was catechu biscuits. On these grounds, it was prayed that this revision application be allowed.

From the perusal of the oral testimony of the prosecution witnesses, it transpires that Arvind Kumar Choudhary P.W.5 is the informant of this case. He has supported the allegations as made out in the written report. He has stated that on 29.08.1995 at about 02:00 A.M., he received confidential information that illegal catechu biscuits were being transported in an ambassador car. He has identified the seizure list which has already been marked as Ext.-2. On the basis of this information, raiding party was constituted and the said vehicle was intercepted outside the Hazaribag town. Both the petitioners were apprehended while travelling on the said vehicle. On search of the ambassador car bearing registration number DD-B-9213, catechu biscuits were recovered. Seizure list was prepared at the spot. He has proved the seizure list which is Ext.-2. In his cross-examination he has stated that the catechu biscuits were kept in two different packets. The seized catechu biscuits were not weighed at the place of occurrence.

Raj Kishore Singh P.W.2 and Yogeshwar Tiwary P.W.3 and Bhuneshwar Singh P.W.4 were members of the raiding party. All these witnesses have supported that on 29.08.1995, on the basis of confidential information, ambush was laid near Nagwa airport and at about 07:00 A.M., vehicle bearing registration number DD-B-9213 was intercepted. Both the petitioners were apprehended from the said vehicle. The petitioner Md. Reyazul was driving the vehicle. The vehicle was seized in the presence of two independent witnesses and 2.40 quintals of catechu biscuits were recovered. Raj Kishore Singh P.W.2 has proved the seizure list which is Ext.-2. He has also proved the self-statement of the informant which is Ext.- 3. Raj Kishore Singh P.W.2 has claimed to identify the petitioners in the dock. Yogeshwar Tiwary P.W.3 has stated that he cannot identify the petitioners as the occurrence took place long time ago. Bhuneshwar Singh P.W.4 has claimed to have identified both the petitioners in the dock. He has stated that he cannot say as to how many catechu biscuits were seized.

From the perusal of the documentary evidence adduced by the prosecution, it transpires that from the seizure list Ext.-2 that 2.40 quintals of catechu biscuits were seized from a white ambassador car bearing registration number DD-B-9213. In the present case, witnesses Krishna Kant Mehta and Chintaman Mahato have signed and put their left thumb impression on the seizure list respectively.

It is true that the prosecution has not examined the seizure witnesses. Section 100 (5) of the Cr.P.C. provides that the search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the court as a witness of the search unless specially summoned by it.

From the aforesaid fact, it is evident that the search and seizure was made before independent witnesses. Witness

Krishna Kant Mehta had put his signature on the seizure list while witness Chintaman Mahato has put his left thumb impression on the seizure list. In order to prove the factum of recovery, it is sufficient for the prosecution to adduce the seizure list in evidence. Section 100(5) Cr.P.C. does not require the witnesses of search and seizure to attend the court as a witness unless specially summoned by the court. I do not find any irregularity on the ground that the seizure list witnesses did not appear in the court to record their evidence.

From the impugned judgment, it appears that the seized vehicle and the contraband were not produced in the court and the learned trial court has given a reason for non-production of these articles as the ambassador car bearing registration number DD-B-9213 and 2.40 quintals of catechu biscuit were confiscated in a confiscation proceeding as transpires from the letter number 668 dated 15.02.1996 which was kept on the record. Accordingly, the non-production of the vehicle and the seized contraband in the court during the trial has not affected the prosecution case.

From the aforesaid oral and documentary evidence, I come to a finding that the prosecution has been able to prove that on the date and time of occurrence, the petitioners were apprehended while traveling on ambassador car bearing registration number DD-B-9213 and 2.40 quintals of catechu biscuits were recovered from their possession. The learned trial court has rightly held them guilty for the offence under section 414 of the Indian Penal Code.

Accordingly, the judgment of conviction passed by the learned trial court holding the petitioners guilty of offence under section 414 of the Indian Penal Code is affirmed. The occurrence took place in the year 1995, about 28 years have elapsed since the date of occurrence. The petitioner Md. Reyazul is aged about seventy four years and the petitioner Safruddin @ Sarfuddin @ Sadhu is aged about seventy three years, there is nothing on the record to show that both the petitioners have been convicted in any other case. Accordingly, the order of sentence passed by the learned

trial court directing the petitioners to undergo rigorous imprisonment for two years for the offence under section 414 of the Indian Penal Code is set aside.

The petitioners are sentenced to undergo rigorous imprisonment for six months for the offence under Section 414 of the Indian Penal Code. The period already undergone by the petitioners during the trial and during the pendency of this revision application is set aside.

This Criminal Revision Application is partly allowed.

Pending I.A., if any, also stands disposed of.

(Ambuj Nath, J.)