

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 530 of 2009

Jadu Sao

.... ... **Petitioner**

Versus

The State of Jharkhand

... ... **Opposite Party**

CORAM: HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Petitioner

: Mr. P.K. Mukhopadhyay, Advocate

For the State

: Mr. Arup Kumar Dey, A.P.P.

JUDGEMENT / Dated: 12th February, 2024

Heard learned counsel appearing on behalf of the petitioner and the learned A.P.P. appearing on behalf of the State.

2. This criminal revision is directed against the judgement dated 05.05.2009 passed in Cr. Appeal No. 214 of 2004 passed by the Court of learned Sessions Judge, Dhanbad, whereby an appeal preferred by the accused / appellant, (petitioner herein) against the judgement of conviction and order of sentence dated 09.08.2004 passed by the Court of learned Judicial Magistrate, Railway, Dhanbad in R.P. Case No. 48 of 1991, has been dismissed by affirming the judgement of conviction and order of sentence of 3 years rigorous imprisonment passed against the accused petitioner for the offence under Section 3(a) Railway Property (Unlawful Possession) Act. 1966.

3. The gist of allegation as set out in the F.I.R. is that on the basis of confidential information a raid was conducted on 18.04.1991 in the house of the petitioner-Jadu Sao and it was found that two persons i.e. the petitioner-Jadu Sao and the co-accused Sadhu Sao were seen carrying iron materials from one room to another. On seeing the police party the petitioner Jadu Sao managed to escape and the petitioner Sadhu Sao was apprehended. On search, 8 tons of broken CST 9 plates, 45 numbers of new CST 9 plates, 200 numbers of two way keys, 150 numbers of railway pandrol clips, 20 numbers of railway brake blocks and 10 numbers of fish plates were recovered from their possession. Thereafter, Seizure list was prepared and a copy of the same was handed over to the co-accused Sadhu Sao who is the brother of the petitioner.

4. On the basis of the aforesaid allegations the case was registered and investigation of the case commenced. After completion of investigation the charge-sheet was submitted and charge was framed for the offence punishable under Section 3(a) Railway Property (Unlawful Possession) Act. 1966 and the trial of the

case commended. The learned Trial Court after conducting the full-fledged trial found the petitioner alongwith the co-accused Sadhu Sao guilty for the offence punishable under Section 3(a) Railway Property (Unlawful Possession) Act. 1966 and sentenced them to undergo three years rigorous imprisonment.

5. Further, it is found that the appellant and the co-accused had preferred the appeal vide Criminal Appeal No. 214 of 2004, where the Lower Appellate Court dismissed the appeal and confirmed the judgement of conviction and order of sentence passed by the learned Railway Judicial Magistrate, 1st Class, Dhanbad under which the petitioners were convicted for the offence under Section 3(a) Railway Property (Unlawful Possession) Act. 1966. Being aggrieved and dissatisfied with the judgement passed by the Lower Appellate Court, one of the petitioners has preferred this criminal revision.

6. It is submitted on behalf of the petitioner that the petitioner does not want to argue this case on the point of conviction and he is confining his arguments only on the point of sentence.

7. It is submitted on behalf of the petitioner that the incidence has taken place as far back as in the year 1991 i.e. about more than 32 years ago and this petitioner has been suffering the rigour of misery and hardship of the criminal prosecution for such a long period. Further, it has been pointed out that over a period of time the petitioner is at the fag end of his life as he has now attained the age of about more than 70 years over a period of time. Further, it is submitted that there is nothing in the record to show about the criminal history and this petitioner has already remained in jail for about more than two months and therefore, instead of awarding the sentence of imprisonment, sentence of fine may be imposed,

8. On the other hand, the learned A.P.P. appearing on behalf of the State opposed the contentions raised on behalf of the petitioner and submitted that a huge quantity of railway property including 8 tons of broken CST 9 plates, 45 numbers of new CST 9 plates, 200 numbers of two way keys, 150 numbers of railway pandrol clips, 20 numbers of railway brake blocks and 10 numbers of fish plates were recovered from the house of the petitioner and his brother Sadhu Sao who was caught from the spot alongwith the aforesaid incriminating articles and the railway properties and that is why both the Courts have found the petitioner guilty for the offence punishable under Section 3(a) Railway Property (Unlawful Possession) Act. 1966 and accordingly he has been sentenced and there is no legal point to interfere in the impugned judgement of conviction and order of sentence

passed by both the Courts below. However, learned A.P.P. did not controvert this fact that this petitioner over a period of time has become 70 years old and there is nothing on record to show about his criminal history and further it is also argued that since the petitioner does not want to argue this case on the point of conviction and he has confined his argument only on the point of sentence and therefore, the judgement of conviction for the offence under Section 3(a) Railway Property (Unlawful Possession) Act, 1966 may be upheld and on the point of sentence, a suitable order of modification of sentence may be passed.

9. Having heard the parties, perused the records of this case including the Lower Court Records.

10. It is found that the petitioner alongwith the co-accused Sadhu Sao was convicted for the offence under Section 3(a) Railway Property (Unlawful Possession) Act, 1966 and this petitioner was sentenced to undergo rigorous imprisonment for three years. It has further been submitted on behalf of the petitioner that his brother Sadhu Sao has expired during the pendency of this criminal proceeding. Further it is found that over a period of time this petitioner has also become very old and is now about 70 years old and there is nothing on record to show about his criminal history and the incidence has taken place as far back as in the year 1991 and thus it is found that this petitioner has been suffering from the trauma and misery of criminal prosecution for a long period of time since more than about 32 years.

11. In this view of matter, it is found that no useful purpose would be served to send this petitioner again in jail and since this petitioner does not want to argue this case on the point of conviction and therefore, this Court upholds the judgement of conviction passed by the learned Courts below against this petitioner for the offence punishable under Section 3(a) Railway Property (Unlawful Possession) Act, 1966. So far as sentence is concerned, it is found that the petitioner has already suffered much because of the delay in the disposal of this criminal case. This incidence has taken place as far back as in the year 1991 and over a period of time he has reached to the fag end of life i.e. more than 70 years of age. There is nothing on the record to show about the criminal history and therefore, in this view it is found that the purpose of justice would be metted if the petitioner is sentenced to imprisonment for a term of period already undergone by him and further he is sentenced to a fine of Rs.5,000/-(Rupees Five Thousand only). Since the petitioner is on bail and therefore, four months' time is allowed to

the petitioner to deposit the aforesaid fine and in default of payment of fine the petitioner is directed to undergo rigorous imprisonment for one year. The petitioner may deposit the fine amount through the *Nazarat* of the concerned Civil Court.

12. The learned Trial Court is directed to ensure that the said fine amount is deposited within the stipulated period of time and if the same is not deposited by the petitioner, then he will serve the sentence as awarded in case of default of payment of fine, by taking all necessary measures as per the provisions of law to ensure that the petitioner serves the sentence of imprisonment in case of default of payment of fine.

13. The petitioner may be allowed to deposit the said fine amount through the *Nazarat* of the concerned Civil Court. At the moment the petitioner deposits the fine amount, he shall be released forthwith on deposit of the said fine amount and he shall be released and / discharged from the liabilities of bail bonds accordingly.

14. Accordingly, this Criminal Revision is dismissed with modification in order of sentence, as above.

15. Let the Lower Court Records and a copy of this judgement be also transmitted to the learned Court below for its compliance in letter and spirit.