AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 436 of 2004

- Amrit Rao, son of Shri Saigo Marathi, age 52 years, resident of quarter No.556/H Zone I, BMY Charoda, P.S. Charoda, District Durg (C.G.)

---- Applicant

Versus

- The State Of Chhattisgarh, through : The District Magistrate, Durg (C.G.)

---- Respondent

For Applicant	Ms Fouzia Mirza, Advocate.
For State	Shri Rajendra Tripathi, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

27/03/2018

1. The applicant would challenge the conviction and sentence concurrently rendered by the trial Court and the Appellate Court as well convicting him for committing offence under Sections 294 and 326 of IPC and under Section 145 of the Railways Act, 1989 (henceforth 'the Act, 1989').

2. The incident occurred at about 8 P.M. on 23.10.2002 when victim Rajesh Kumar Singh, resident of Quarter No.556/6, Zone-I, BMY Colony, had moved out of his house for bringing milk. The accused, who resides opposite to the quarter of the victim, was hurling abuses of his own in an inebriated condition. He asked the victim to move inside his house but again started hurling

abuses; went inside his house and came out with an iron rod and attacked the victim causing injuries over his right wrist (as stated in the FIR). The informant chased the accused, thereafter the applicant ran away from the place of occurrence.

3. The victim himself went to the hospital, where one Dr. C.K. Das referred him to the GRP vide Ex-P-10 mentioning that he has suffered injury over his right wrist. Dehatinalishi (Ex-P-2) was taken down at 21:30 hours and the victim was sent for medical examination, which was conducted by Dr. C.K. Das, who submitted his report vide Ex-P-6 finding injuries over left wrist, swelling plus deformity; lacerated wound over dorsal aspect of left hand in 2” inch above wrist joint - wound length 1” inch with bleeding. The nature of injury was kept reserved to be confirmed after X-ray. It is mentioned in this document that weapon is sharp cutting type. The patient was admitted in the Ward Railway Hospital, BMY after wounds dressing. His radiological examination was conducted by PW-6 Dr. Purushottam Khapre, who submitted his report vide Ex-P-11 finding commuted fracture over right radius shaft lower 1/3rd. The victim was thereafter referred for treatment to the Railway Hospital, Bilaspur where he was admitted on 31.10.2002 vide Ex-P-12 mentioning that he had suffered commuted fracture over right radius shaft lower 1/3rd.

4. In his deposition the victim has stated that he had suffered injury over the right wrist, however, the trial Magistrate noted that there is a sign of a rounded wound on the left wrist of the witness. In the last part of para 4, the victim would state that in the X-ray, he

was found to have sustained fracture over the left wrist. In para 5 again, he has stated to have sustained injury over the left hand. PW-5 Dr. Das would state in para 1 of his statement that he had swelling with deformity over his right hand, whereas his certificate clearly says that the patient had swelling with deformity of left wrist. In para-3, Dr. Das would state that on 02.11.2002, X-ray report of right wrist was placed before him, the perusal of which indicated that he had suffered fracture of left wrist.

5. A cumulative reading of the contents of FIR, medical report, X-ray report and the statements of PW-2 Rajesh Kumar Sing, PW-5 Dr. Das and PW-6 Dr. Purushottam Khapre lead us nowhere. While the FIR would say that the injury was caused on right hand. The injury report (Ex-P-6) would mention that the injury was on left hand. When the X-ray was conducted on 25.10.2002, the fracture was found on right wrist, but once again the victim would depose that he had suffered injuries on left hand. To further complicate the issue, Dr. Das would state that when the X-ray report of right wrist was submitted to him, he found fracture on left wrist. The investigation and the witnesses have messed up the whole prosecution case. It is not a case where the X-ray was done immediately after or on the date of incident itself. The incident occurred and the first medical report was written on 23.10.2002, whereas the X-ray was done on 25.10.2002, therefore, it would not be safe to convict the applicant for committing offence under Section 326 of IPC. When the prosecution itself is not sure or confirm as to the part of the body on which injury was caused, it would be extremely unsafe to sustain the conviction.

6. Offence under Section 145 of the Act,1989 is attracted when any person in Railway carriage or upon any part of a Railway - (a) is in a state of intoxication; or (b) commits any nuisance or act of indecency or uses abusive or obscene language; or (c) willfully or without excuse interferes with any amenity provided by the Railway Administration so as to affect the comfortable travel of any passenger, he may be removed from the Railway by any Railway servant and shall, in addition to the forfeiture of his pass or ticket, be punishable with imprisonment which may extend to 6 months and with fine which may extend to Rs.500/-. Thus, in order to bring the offence within the mischief of Section 145 above, the offending act must occur in any Railway carriage or any part of a Railway.

7. Admittedly, in the case at hand, the incident has not occurred in a Railway carriage but it has taken place in the residential colony of Railway area, therefore, the question which arises for consideration is whether the residential area in the Railway colony would be covered as 'any part of a Railway.'

8. The word 'Railway' has been defined under Section 2 (31) of the Act, 1989 in the following manner:

> "(31) "Railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes-
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> (a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;
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> (b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations staff dwellings and any other works constructed for the purpose of, or in connection with, railway;

(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration,

but does not include-

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park or any other place solely for the purpose of recreation"

9. The part of the definition which is nearest to bring the place of occurence being covered within the definition is sub-clause (a) which says that Railway would include all land within the fences or other boundary marks indicating the limits of the land appurtenant to the Railway. A residential quarter for the Railway employees is definitely not a land appurtenant to a Railway as is commonly understood. There is no evidence that the place in question was fenced or was covered with such boundary marks indicating the same to be land appurtenant to a Railway. Interestingly, the word 'Railway land' is separately defined under Section 2 (32A) to mean any land in which a Government

Railway has any right, title or interest. Thus, all Railway land would not be Railways but there may a Railway within a Railway land. The definition of Railway would thus not cover the residential quarter of railway staff or employees.

10. In taking the above view, I am fortified by the Judgments rendered by the Allahabad High Court in the matter of **Lodai or Lodi vs Emperor**[1] and by the Madras High Court in the matter of **Margam (Maegam) Aiyar vs S. J. Mercer**[2].

11. In the matter of **Margam (Maegam) Aiyar** (supra), the Division Bench of Madras High Court held thus in Paragraph 3 (Manupatra):

> "3. Section 122(2), Act IX of 1890 is in our opinion inapplicable. In authorises any railway servant to remove from the railway any person, who has entered upon it unlawfully and has refused to leave it on being requested to do so. Firstly we do not think that staff quarters are part of the railway. The material portion of the definition of a railway in section 3(4) is no doubt expressed widely. But neither staff quarters nor any building of a residential character is among those specified in it, and it is with reference to the specific portion of the clause that the later general portion " other works constructed for the purposes of or in connection with a railway" must be construed. Maxwell on Interpretation of Statutes, 3rd Edition, page 469. There is moreover positive reason against supposing that staff quarters are included in the definition in the fact that they are covered by expressions used and that a remedy for the mischief, against which section 122 is invoked is provided elsewhere in the Act. For in Section 7(1) the distinction between a railway and its staff quarters is drawn twice, once, when the administration is given powers to execute work for its railway and the accommodation connected therewith, and again, when in clause (1) a railways are, referred to separately from the houses mentioned in clause (1) d. And in section 138 a procedure is provided for summary recovery by the railway of property, moveable and immoveable, detained by its discharged or absent servants through the police; and this

1 AIR 1927 Allahabad 646
2 AIR 1914 Madras 196

> provision cannot be treated as merely concurrent with section 122 or intended solely for the benefit of the administration and not of the person in possession, since it insists on a notice in writing which section 122 does not require, and on an application to a Magistrate of the First Class."

12. In the matter of **Lodai or Lodhi** (supra), the Allahabad High Court held thus:

> "Two things are necessary to bring a man under that Section : (1) that the place of entry must be "railway" as defined in S. 3 (4) of the Act; and (2) the entry should have been unlawful in the inception. If the entry was not unlawful in the beginning neither part of S. 122 of the Act would apply.
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> From the judgment of the learned Magistrate it is clear that the place where the accused was found is occupied as quarters by the railway employees. In Margam Aiyar v. Mercer (1) it was found by a Division Bench of the Madras High Court that Staff quarters or any building of a residential character cannot be deemed to be part of a Railway.
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> Within the meaning of S. 3 (4) of the Act, and so a conviction under S. 122 of the Act was set aside against the accused in that case. The fact that the place happens to be between two lines makes no difference in this case as the lines, by themselves, are quite apart and there can be even private land between the lines."

13. In a later decision rendered by the Orissa High Court in the matter of **Samuel Tippee vs The State**[3], a question arose whether an office of Overseer engaged in construction work of Railway would be included in the definition of Railways as defined under Section 3 (4) (a) and (b) of the Act, 1989. Referring to the judgments rendered in the matters of **Lodai or Lodi** (supra) **and Margam (Maegam) Aiyar** (supra), it was argued that when Railway staff quarter is not covered within the definition of Railway, the office of Overseer engaged in the construction work of Railway would also not be covered within the definition. The Orissa High Court distinguished the earlier judgments, however, it

3 AIR 1963 Orissa 20

has not doubted the correctness and rather impliedly accepted the view that Railway staff quarter may not be included in the definition of Railways, but an office of an Overseer, which is overseeing the construction work of Railways, would be covered within the definition of Railway.

14. In view the foregoing discussions, the incident of creating nuisance in an inebriated condition having not taken place on any part of Railway area, the applicant cannot be held guilty for committing an offence under Section 145 of the Act, 1989. Accordingly, he is also acquitted of the charges under Section 145 of the Act, 1989.

15. Resultantly, the revision succeeds and is hereby allowed. The impugned judgment of conviction and sentence is set aside.

Sd/-

Judge
Prashant Kumar Mishra

Akhilesh