

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH:HON'BLE SHRI JUSTICE SANJAY K. AGRAWAL

Criminal Revision No.37 of 2004

Applicant : Sharad Gupta

VERSUS

Non-applicant : Union of India

**CRIMINAL REVISION UNDER SECTION 397 READ WITH SECTION
401 OF Cr.P.C.**

Present : Shri Vivek Tripathi and Shri Sunil Sahu,
counsel for the applicant.
None for non-applicant though served.

ORAL ORDER
(Passed on 16.09.2014)

1. The applicant-accused Sharad Gupta was charge-sheeted by the Railway Protection Force (for short, RPF) for commission of offence punishable under Section 143 of the Railways Act, 1989 (for short, the Act, 1989) on a charge that on 16.10.1988 he was found involved in purchase and sell of computerized railway tickets reserved for different destinations with a view to carry on such business.
2. The applicant herein abjured the guilt by stating that he has not committed any offence and he has been falsely been implicated in this case.

3. In order to bring home the offence, the prosecution examined three witnesses namely; RP Singh (PW-1, Head Constable, RPF), G.Singh (PW-2, Constable, RPF) and Prince A.K. (PW-3, Sub Inspector, RPF) and brought seizure memo (Ex. P/1 to P/3) along with articles on record. The accused did not bring any document on record, but his statement under Section 313 of the Code of Criminal Procedure (for short, Code) was recorded.

4. The jurisdictional Railway Magistrate on appreciation of record and having found the applicant guilty for unauthorized carrying on business of procuring and supplying railway tickets, convicted him for commission of offence under Section 143 of the Act, 1989, sentenced him for six month's R.I. The appeal preferred there-against by the applicant was also dismissed accepting the findings recorded by the Railway Magistrate.

5. Questioning the legality, validity and correctness of the impugned order affirming the conviction of applicant for commission of offence under Section 143 of the Act, 1989, instant revision has been filed by the accused-applicant.

6. Shri Vivek Tripathi and Shri Sunil Sahu, learned counsel appearing for the applicant would submit that

officer of Railway Protection Force (for short, RPF) is authorized under Section 8 of the Railway Property (Unlawful Possession) Act, 1966 (for short, the Act, 1966) to make an inquiry on information about commission of offence, but he is not authorized to file charge sheet under Section 173 of the Code and as such the cognizance taken and conviction recorded followed by sentence awarded duly affirmed by the appeal court deserves to be set aside.

7. Despite service of notice, no one appears for non-applicant.

8. The neat question falling for consideration before this court is as to whether the officer of RPF can file a charge sheet under Section 173(2) of Code for commission of offence under Section 143 of the Act, 1989 to the jurisdictional criminal court, and if the answer is in negative, then, what relief the applicant/accused is entitled for.

9. In order to consider the question so posed before this court, it would be proper to notice certain statutory provisions contained in the Act, 1989, as well as the Railway Protection Force Act, 1957 (for short, the Act, 1957).

9.1. The unamended Section 179 of the Act, 1989 provides as under-

"179. Arrest for offences under certain sections. (1) If any person commits any offence mentioned in sections 137, 141 to 147, 150 to 157, 160 to 162, 164,166,168 and 172 to 175, he may be arrested without warrant or other written authority, by any railway servant or police officer not below the rank of head constable.

(2) The railway servant or the police officer may call to his aid any other person to effect the arrest under sub-section (1).

(3) Any person so arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.(w.e.f. 01.07.2014)"

9.2 Section 34 of the Act, 1989, defines the Railway Servant as under:

"34."railway servant means any person employed by the Central Government or by a railway administration in connection with the service of a railway; [including member of Railway Protection Force appointed under clause (c) of sub-section (1) of section 2 of the Railway Protection Force Act, 1957 (23 of 1957)]."

9.3 Section 10 of the Act, 1957, provides as under-

"10.Officers and enrolled members of the Force to be deemed to be railway servants:The Director-General and every member of the Force shall for purposes be regarded as railway servants within the meaning of the Indian Railways Act, 1890 (9 of 1890) other than chapter VI-A thereof, and shall be entitled to exercise the powers conferred on railway servants by or under that Act."

9.4 Section 8 of Railway Property (Unlawful Possession) Act, 1966, gives power to the officers of such force to make an enquiry and provides as under-

"Section 8. Inquiry how to be made-(1) When any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7, he shall proceed to inquire into the charge against such person.

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer incharge of a police station may exercise and is subject to under the ¹[Code of Criminal Procedure 1898], when investigating a cognizable case:

(a) If the officer of the force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) If it appears to the officer of the Force that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of die case to his official superior."

10. Proviso contained in Section 8(1) of the Act, 1966 came to be considered by the Supreme Court in case of **State of UP v. Durga Prasad**¹ and it has been held that inquiry conducted by an officer of the RPF under Section 8(1) of the Act cannot be deemed to be an investigation for the purpose of Section 162 of Code and it has been held as under-

"11. In face of these provisions, the inquiry conducted by an officer of the Railway

¹AIR 1974 SC 2136

Protection Force under section 8(1) of the Act cannot be deemed to be an investigation for the purposes of section 162, Code of Criminal Procedure. The scheme of the Act is in important respects different from the scheme of the Code and there is intrinsic evidence in the Act to show that the provisions of the Code cannot proprio vigore apply to inquiries under section 8(1) of the Act. See, for example, two provisions of the Act which to a student of the Code must strike as a glaring contradiction in terms. Section 6 of the Act confers power on officers and members of the Force to arrest without an order from a Magistrate and without a warrant any person concerned in an offence under the Act or reasonably suspected of being so concerned. Applying the dictionary of the Code it should have followed from section 6 of the Act that an offence under the Act is cognizable. Section 4(f) of the code defines a cognizable offence as one for which a police officer can effect an arrest without warrant. The complementary part of this definition contained in section 4(n) of the Code defines a non-cognizable offence as one for which a police officer may not arrest without warrant. But section 5 of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure, an offence under the Act shall not be cognizable."

11. Thereafter, in **Balkishan A. Devidayal v. State of Maharashtra**, their Lordships of the Supreme Court it has been held that officer of Railway Protection Force conducting an inquiry under Section 8(1) of the Act, 1966, is not empowered with the powers of an officer-in-charge of a police station making an investigation and he has no power to initiate prosecution by filing a charge-sheet before the magistrate concerned under Section 173 of the Code and held 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 enquiry 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 Jyoti Savant's*, 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."

12. Thus, taking into consideration the relevant statutory provisions and following the law laid down by their Lordships of Supreme Court in the above noted cases, it is held that the officer of the Railway Protection Force is a Railway servant within the meaning of Section 34 of the Act, 1989, and has not been conferred with all the powers of the officer-in-charge of police station making an investigation under

chapter XIV of the Code and he has no power to initiate prosecution by filing a charge-sheet for offence punishable under Section 143 of the Act, 1989, before the jurisdictional magistrate under Section 173 of Code. He can initiate prosecution by filing criminal complaint under the provisions of the Code, and as such, the prosecution initiated by the officer of Railway Protection Force by filing charge-sheet under Section 173 of the Code in this case was clearly unauthorized and contrary to the express provisions of law and also law laid down by the Supreme Court in case of **Balkishan A. Devidaya** (Supra).

13. As a fallout and consequence of the above analysis, the applicant's conviction for commission of offence under Section 143 of the Act, 1989, followed by sentence as affirmed by appeal court is hereby set aside and the applicant is acquitted from the charge under Section 143 of Act, 1989. The bail bonds furnished by the applicant shall remain in operation for a period of six months in view of provisions contained in Section 437-A of the Code.

Judge

HEAD NOTE

Officer of Railway Protection Force is not entitled to initiate prosecution by filing charge-sheet under Section 173 of Cr.P.C. for offence punishable under Section 143 of the Railways Act, 1989.

रेल्वे सुरक्षा बल का अधिकारी भारतीय रेल अधिनियम, 1989, की धारा 143 के अपराध के लिए न्यायालय में चार्जशीट प्रस्तुत करने का अधिकारी नहीं है।

(Indrajeet Sahu)
Private Secretary