

:: IN THE COURT OF SESSIONS JUDGE :: UDALGURI::

Present : Shri C. B. Gogoi
Sessions Judge,
Udalguri,

Criminal Revision No. 03/2019

Sri Girish Gogoi..... Revisionist.

—Versus—

State of Assam..... Respondent.

Appearance:--

For the Revisionist – Mr. Satyendra Nath Basak, Advocate

For the Respondent – Mr. Arabinda Basumatary, PP

Date of Argument : 07-03-2020

Date of Judgment : 07-03-2020

J U D G M E N T

1. This is an application U/S 397/399 Cr.P.C. assailing the order dated 26-07-19 passed by learned Addl. Chief Judicial Magistrate in connection with Tangla PS case No. 78/19 U/S 120(b)/379/411/406/407/420 IPC.

2. The case is at the stage of admission. However, after hearing the learned lawyer appearing for the revision petitioner as well as for the State, it is propose to dispose the revision petition at the admission stage itself.

3. For this purpose the original case record pending in the court of learned Addl. Chief Judicial Magistrate has been called today itself and gone through the record.

4. The learned senior counsel appearing for the revision petitioner at the first instance submitted that the revision petition has been filed within the

prescribed. Having gone through the record, it is found that, the impugned order was passed by the learned Addl. Chief Judicial Magistrate, Udalguri on 26/7/19 and the revision petition has been presented on 16-08-19 which is within prescribed period of limitation as per Article 115 (b)(ii) of Indian Limitation Act. Therefore, the revision petition is admitted for hearing.

5. The learned counsel for the revision petitioner also arduously contended that the impugned order dated 26-07-19 passed by learned Addl. Chief Judicial magistrate is prima facie illegal and incorrect in law as the said order was passed by the learned Addl. Chief Judicial Magistrate without taking into consideration the relevant provisions of Railway property (Unlawful possession) Act, 1966 which has overriding effect on Cr.P.C.

6. In the instant case, the case has been registered by Tangla police being Tangla PS case No. 78/19 U/S 120(b)/379/411/406/420 IPC on the basis of information lodged by one Karuna Bora, secretary general, Brihotor Asomiya Yuba Mancha, Udalguri but the subject matter of the FIR is the property of Indian Railways. Subsequent to the registration of the said case, the inspector RPF Rangapara, had made an application in the court of Learned Addl. Chief Judicial Magistrate, Udalguri on 18-07-2019 praying to handing over/ transfer of the Tangla PS case No. 78/19 U/S 120(b)/379/411/406/420 IPC to Railway RPF authority for taking up further investigation.

7. It is pleaded in the revision petition that the tanker in question which was the subject matter of the Tangla Police Station case referred to above has been carrying 12,000 litre Diesel oil issued from Indian Oil Corporation Ltd. (IOC) Betikuchi, Guwahati required to be delivered in the Guwahati Railway consumer depot, Guwahati on 5th July 2019 but instead of delivering the oil in the destination, the truck was diverted to Darrang district which was finally found unloading in the Indian Oil M/S DN Das oil depot illegally by the informant.

8. In the petition moved in the court of learned Addl. Chief Judicial Magistrate, it was pointed out that, since, the property in question belongs to Railway authority, the case need to be handed over to the RPF authority of Indian Railways but by the impugned order the learned Addl. Chief Judicial Magistrate, rejected the prayer observing that the Railway authority shall approach the appropriate authority seeking relief.

9. Being highly aggrieved and dissatisfied the present revision petition has been filed pleading the afore stated facts.

10. **Point for determination:**

Whether the impugned order dated 26-07-2019 passed by learned Addl. Chief Judicial Magistrate was incorrect, illegal or irregular requiring revision by this court?

Decision and reasons thereof:

11. Having heard the contentions of the learned lawyers appearing for both sides, this court carefully examined the facts of the case and also perused the impugned order. This court has also gone through the relevant provision of the Railways property (Unlawful possession) Act, 1966.

12. Section 7 of the Railways Act provides that, every person arrested for an offence punishable under this act shall, if the arrest was made by a person other than an officer of a force the accused be forwarded without delay to the nearest officer of the force.

13. Section 14 of the Act also provides that the provision of this act shall have effect not with standing anything inconsistency therewith contained in any other law for the timing and force.

14. On very perusal of the aforesaid two provision makes it crystal clear that, the learned Addl. Chief Judicial Magistrate ought to have allowed the petition moved by Inspector RPF Rangapara but the learned Addl. Chief

Judicial Magistrate failed to consider the relevant provision of law and passed the impugned order mechanically.

15. Since, the Railway property (Unlawful possession) Act, 1966 is a special legislation and as pointed out above, it has overriding effect notwithstanding anything inconsistent therewith over any other law. So, in the event of any conflict with any other law this special provision will prevail.

16. In the course of his arguments, the learned senior counsel has drawn the attention of this court to a recent Judgment of our Hon'ble Gauhati High Court delivered on 29-11-2019 in Criminal petition No. 1182/19 wherein the Hon'ble Gauhati High Court has been pleased to direct the Dibrugarh PS to hand over the Dibrugarh PS case No. 1497/19 to Railway police force within 15 days from the date of order.

17. The learned counsel contends that the fact of the said case also stands on similar footings with the facts of the present case. Therefore, this court can very well pass the order directing Tangla PS to hand over the Tangla PS case No. 78/19 U/S 120(b)/379/411/406/407/420 IPC to Inspector RPF Rangapara.

18. Having gone through the order of the Hon'ble Gauhati High Court and on perusal of the facts of the present case as well the relevant provisions of Railway Property (Unlawful Possession) Act this court, found force in the contention of the learned counsel.

19. In the backdrop of the above facts, this court is of the clear view that the impugned order dated 26-07-2019 passed by learned Addl. Chief Judicial Magistrate is prima facie incorrect requiring revision by this court. Section 397 Cr.P.C. empowers the Court of Sessions to correct the mistakes committed by Magistrate of concerned Court if the same is found incorrect and illegal. In the instant case, as it transpires from record, the learned Additional Chief Judicial Magistrate misconceived the provision of Section 7 and 14 of the Railway Property (Unlawful Possession) Act, 1966 as the learned

Addl. Chief Judicial Magistrate failed to appreciate the true meaning and purport of Section 7 and 14 which clearly empowers the court to direct handing over of the case if the said is found within the jurisdiction of railway authority to investigate, irrespective of the fact that case has been registered under Tangla PS. Since Section 14 of Railway Property (Unlawful Possession) Act has overriding effect over Cr.P.C. which vital aspect the learned Additional Chief Judicial Magistrate failed to appreciate while passing the impugned order. Therefore, the said order dated 26.7.2019 is clearly unsustainable in law and fact requiring interference by this court.

20. In the result, this court has no hesitation to say that the impugned order was incorrect in law and fact and accordingly set aside the impugned order with a direction to O/C Tangla PS to hand over the Tangla PS case No. 78/19 U/S 120(b)/379/411/406/407/420 IPC to Inspector, RPF Rangapara to take the case to its logical conclusion.

21. Judgment is signed, sealed and delivered on this 07th day of March, 2020 at Udalguri.

(C.B.Gogoi)
Sessions Judge,
Udalguri, Assam.

Dictated and corrected by me
and each page bears my signature.

(C.B.Gogoi)
Sessions Judge,
Udalguri, BTAD.