IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 1117 of 2017

Mahesh Prasad Sah, son of Late Amrit Sah, resident of Village-Ratanpur, P.O. & P.S.-Barharwa, District-Sahibganj

... ... **Petitioner**

Versus

The State of Jharkhand … … **Opp. Party**

With

Cr. Revision No. 1120 of 2017
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1. Mustafa Sk. @ Mustafa Seikh, son of Tajmuddin Seikh, resident of Village-Mansingh, Garali Udhwa, P.O. & P.S.-Rajmahal, District-Sahibganj
2. Jalamin Sk. @ Jalamin Seikh, son of Late Lalu Seikh, resident of Village-Pahargram, Udhwa, P.O. & P.S.-Radhanagar, District-Sahibganj

... ... **Petitioners**

Versus

The State of Jharkhand … … **Opp. Party**

P R E S E N T

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Petitioners : Mr. Swami Nath Prasad Rai, Advocate
For the State : Mr. Anup Pawan Topno, A.P.P.
[in Cr. Revision No. 1117 of 2017]
: Mr. Fahad Allam, A.P.P.
[in Cr. Revision No. 1120 of 2017]

C.A.V. on 20.08.2026 **Pronounced on 05/10/2026**

1. I have already heard the arguments of learned counsel for the petitioners and learned counsel for the State.

2. Instant criminal revisions are directed against the judgment dated 25.05.2017 passed by learned Principal Sessions Judge, Sahibganj, in Criminal Appeal No. 44 of 2014 & Criminal Appeal No. 45 of 2014, whereby and whereunder the learned Appellate Court has dismissed the appeal and affirmed the judgment of conviction and order of sentence dated 11.04.2014 passed by learned Railway Judicial Magistrate, 1st Class, Sahibganj in connection with R.P.S. Case No. 15 of 2009, corresponding to T.R. Case No. 34 of 2014,

whereby and whereunder the petitioners have been held guilty for the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 and the **petitioners, namely Mahesh Prasad Sah & Mustafa Sk. @ Mustafa Seikh** have been sentenced to undergo R.I. for one year each along with fine of Rs.5,000/- with default stipulation, whereas the **petitioner, Jalamin Sk. @ Jalamin Seikh** has been sentenced to undergo R.I. for two years along with fine of Rs.9,000/- with default stipulation.

Factual Matrix

3. Factual matrix giving rise to these revisions, as per complaint of the informant, S.I. Ram Pravesh Prasad, is that on 20.08.2009 at about 14:45 hours, he along with other RPF personnel, left Barharwa Post to conduct ambush watch in between Dighi Gate and Barharwa High School near Reliance Petrol Pump on NH-80. They reached there at 15:10 hours. A lorry bearing registration No.WB-57-9954 arrived at the spot and was stopped by the informant. The RPF personnel surrounded the lorry cabin, leaving no opportunity for escape. Sub-Inspector, RPF, climbed onto the lorry and found it loaded with scrap materials. Upon visual inspection, certain railway materials, such as signal gear, broken pieces of D.O. plates, etc. were found. As no labourers were available due to heavy rain, the loaded lorry was seized at the spot in presence of available witnesses, who were sitting under the lorry. The persons present in the driver's cabin disclosed their identities as Mahesh Prasad Sah, Raj Kumar Verma, Jalamin Sheikh and Mustafa Sheikh. They were brought to Barharwa RPF Post

along with the lorry. The lorry was unloaded with the help of labourers and the materials were segregated on the ground. A huge quantity of railway-related material and other iron scrap was found in the lorry, for which a seizure list was prepared. The apprehended persons could not satisfactorily explain the legitimacy of their possession of the seized articles. The driver of the lorry, Mahesh Prasad Sah stated that the seized material was loaded from shop-cum-godown of Jalamin Sk., situated at village-Pahargram, Udhwa. Jalamin Sk. stated that those materials were purchased from *feriwala* and possessed no documents establishing their lawful possession. Thereafter, all the materials were seized namely, cut pieces of signal rod, signal panel, signal motor cover and signal angles weighing about 700 kg; two Nos. of signal lever, angles of signal panel room weighing about 300 kg., broken pieces of D.O. plates and other materials weighing about 200 kg., cut pieces of ladders, cutter pin and other fittings of C & W weighing about 300 kg., five D.O. plates; pendrol clips 22 in number and other materials about four tons. The apprehended persons further stated before the informant that Jalamin Sk. was going to dispose of the seized materials to one Nutful Sk. at Jigri, New Farakka, District-Murshidabad.

On the basis of above complaint, RPF/Post/Barharwa Case No. 09 of 2009 was registered for the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 against the accused persons.

4. After completion of investigation, charge-sheet was submitted

against the accused persons for the aforesaid offence. After taking cognizance the charge was framed and read over and explained to the accused persons in Hindi, to which they pleaded not guilty and claimed to be tried.

5. In the course of trial, altogether nine witnesses were examined by the prosecution apart from documentary evidence.

(i) P.W.-1-Gautam Mandal

(ii) P.W.-2-Tapas Kumar Mandal

(iii) P.W.-3-Kunal Kumar

(iv) P.W.-4-Jhelum Das

(v) P.W.-5-Jai Prakash

(vi) P.W.-6-Subhash Paswan

(vii) P.W.-7-Ram Pravesh Prasad

(viii) P.W.-8-Dilip Kumar Das

(ix) P.W.-9-Sachhidanand Kumar

Apart from oral testimony of witnesses several documentary evidence as well as material exhibits have also been adduced by the prosecution.

6. On the other hand, one defence witness, namely Ajay Anand (D.W.-1) has also been examined by the defence. However, no documentary evidence has been adduced by the defence.

7. After conclusion of trial, the petitioners were convicted and sentenced as stated above, which was upheld by learned Appellate Court against which these criminal revisions have been assailed.

Submissions on behalf of the Petitioners: -

8. Learned counsel for the petitioners has submitted that the impugned judgment of conviction and order of sentence passed by the learned courts below are not in accordance with law and are liable to be set aside, as the learned courts below have failed to properly appreciate the defence version and the materials available on record and have convicted and sentenced the petitioners without properly appreciating the evidence and the materials available on record. It is further submitted that the prosecution witnesses have made material contradictions and inconsistencies in their statements and therefore, their evidence is neither reliable nor trustworthy. Moreover, the prosecution has failed to examine any independent witness, though the alleged place of occurrence is near Reliance Petrol Pump, where independent witnesses were available. Even the seizure-list witnesses examined are members of the police/raiding party, which casts serious doubt upon the prosecution case. Learned counsel has also submitted that the defence version has not been properly considered and the learned trial court failed to appreciate that the prosecution witnesses are not consistent with one another. It is further submitted that the petitioners, being young men, have been falsely implicated in the present case with an ulterior motive and were not properly examined under Section 313 of the Cr.P.C. regarding the material circumstances appearing against them. Hence, the impugned judgments are liable to be set aside, allowing these revisions.

Submissions on behalf of the State: -

9. On the other hand, learned counsels appearing on behalf of State have submitted that the prosecution has duly proved the recovery of a huge quantity of railway property from the lorry in which the petitioners were found present. The petitioners failed to produce any document or satisfactory explanation regarding lawful possession of the seized articles. It is further submitted that the minor contradictions in the evidence do not affect the core of the prosecution case and the evidence of the RPF officials is duly corroborated by the seizure lists and expert reports. Hence, the learned Courts below have rightly convicted the petitioners under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 and there being no perversity, illegality or infirmity in the impugned judgments, the present revision petitions are fit to be dismissed.

Analysis, discussions and reasons:-

10. I have gone through the judgment of trial court as well as appellate court and also considered the argument raised on behalf of both sides and perused the record of the case.

11. Before imparting my verdict, it is pertinent to apprise with the testimony of the witnesses examined during trial.

P.W.-1-Gautam Mandal, Constable RPF, Barharwa, has stated that on 20.08.2009, he along with R.P. Prasad, Kunal Kumar, D. K. Das and S. N. Kumar, all members of the RPF, went to a place between NH-80 and Dighi Gate, Barharwa, near Reliance Petrol Pump, at about 15.20 hours. They saw a lorry coming from the side of

Barharwa. It was stopped and searched. During the course of search, iron railway materials were found. Four persons were present in the lorry and were sitting in the cabin. The vehicle was seized and seizure-list was prepared by R.P. Prasad. He proved his signature on the seizure-list, which was marked as **Ext.-1**. The vehicle was brought to the RPF Post, Barharwa and labourers were called to unload the materials from the lorry. The materials included, *inter alia*, D.O. plates, Pendrol clips, signal rods, etc. The materials were seized. The apprehended persons identified themselves as Jalamin Seikh, Mustafa Seikh, Mahesh Prasad Sah and Raj Kumar Verma. Labels were put on the materials. The witness brought one piece of a D.O. plate, 22 Pendrol clips and pieces of signal rods. All these materials were marked as **Material Ext.-I**. He proved his signature on the labels of these materials, which was marked as **Ext.-2**.

In his cross-examination, he stated that Mahesh Prasad Sah was the driver of the vehicle, while Raj Kumar Verma was the helper of the vehicle. He further admitted that they did not check any vehicle other than the seized lorry. In paragraph 6 of his cross-examination, he stated that the seizure-list was prepared inside the lorry since it was raining. In paragraph 9 of his cross-examination, he admitted that he could not state the weight of the iron materials as it had not been weighed. He stated that 80% of the seized iron was railway property. He could not state the names of the labourers who unloaded the materials.

P.W.-2-Tapas Kumar Mandal has stated that on the requisition

of S. N. Kumar, IPF, CIB, he went to the RPF Post, Barharwa. He examined the materials kept on the truck. He found pieces of D.O. plates and other articles weighing about 200 kg. There were five intact D.O. plates and 22 Pendrol clips, which he examined. These materials were in serviceable condition and belonged to the Railway. They were not available in the open market. He gave his opinion as an expert. He proved his report, which was marked as **Ext.-3**. He also proved his signature on the labels affixed to the materials, which was marked as **Ext.-2/1**.

P.W.-3-Kunal Kumar has stated that he, along with other RPF personnel, went to a place near Reliance Petrol Pump located on NH-80 at about 15.20 hours. They saw a lorry, which was detained and searched. They inquired from the persons sitting in the cabin. Mahesh Prasad Sah was the driver, Raj Kumar Verma was the helper, and Jalamin and Mustafa were also inside the cabin. Upon being searched, the lorry was found to contain different types of D.O. plates, angle rods and other railway materials. At the time of the occurrence, it was raining. The seizure-list was prepared inside the cabin. The seizure-list was prepared by S.I. R. P. Prasad. He proved his signature on the seizure-list, which was marked as **Ext.-1/1**. The truck was brought to the RPF Post, Barharwa, and the materials were unloaded. A seizure-list of the unloaded materials was prepared. He proved his signature on the seizure-list relating to the materials unloaded from the truck, which was marked as **Ext.-4**. Labels were also put on the materials. He proved his signature on the labels, which was marked as **Ext.-2/2**.

He brought one cut piece of an angle to the Court. The material was marked as Material **Ext.-II**. He proved his signature on the label, which was marked as **Ext.-5**.

In his cross-examination, he has deposed that when they were preparing seizure list on the road at that time not a single vehicle passed by. The railway cabin was 20-30 paces away but we did not call any one to sign on the paper.

P.W.-4-Jhelum Das has stated that on 03.09.2009, he visited, the RPF Post, Barharwa, on the requisition of S. N. Kumar, Inspector, RPF, where he examined D.O. plates, angle, signal rods, etc. He has stated that the angle belonged to his department. It was Railway property used in the cabin. He proved his expert opinion dated 03.09.2009, which was marked as **Ext.-6**. The angle was brought before the Court. He proved his signature on the label, which was marked as **Ext.-5/1**.

In his cross-examination, he admitted that the articles which were came for inspection was labeled but this article has no label which was found at the time of inspection.

P.W.-5-Jai Prakash has stated that on 19.09.2009, on the requisition of Inspector S.N. Kumar, he visited the RPF Post, Barharwa. He examined signaling materials, namely, Lever Frame, signal rods, lever and four pieces of RDSO Reversed Cover Ladder. After examination, he found that these were Railway property and were not available in the open market. The Lever Frame was in serviceable condition. He proved his expert opinion, which was

marked as **Ext.-7**. The Lever Frame was produced by the prosecution and was marked as **Material Ext.-III**. He proved his signature on the labels relating to the Lever Frame (**Material Ext.-III**), which was marked as **Ext.-8**.

In his cross-examination, he admitted that he had examined Railway materials but had not been shown the materials along with the list. In paragraph 8 of his cross-examination, he admitted that the materials which he examined did not bear identification marks, although some of them did bear identification marks.

P.W.-6-Subhash Paswan has stated that he examined the materials at the RPF Post, Barharwa. He examined cutters, ladders, etc., which were the property of the Carriage and Wagon Department of the Railway. These materials were not available in the open market. He proved his opinion, which was marked as **Ext.-9**. The prosecution produced 10 pieces of cutters and 2 pin-nut-bolts. These materials were marked as **Material Ext.-IV**. He proved his signature on the labels, which was marked as **Ext.-10**.

In his cross-examination, he admitted that the materials which were sent for examination were labeled and he signed on it but the materials which are in the courts does not bear such label.

P.W.-7-Ram Pravesh Prasad has stated that on 03.08.2009, they conducted an ambush at NH-80 near Reliance Petrol Pump. During the ambush, at about 15.20 hours, they saw one truck. The truck was surrounded and searched. It was found loaded with Railway property. Four accused persons were sitting in the truck. They did not

produce any documents. They identified themselves as Jalamin Seikh, Mustafa Seikh, Raj Kumar Verma and Mahesh Prasad Sah. The truck was seized and a seizure-list was prepared. He proved the seizure-list, which was marked as **Ext.-1/2**. The truck and the accused persons were brought to the RPF Post, Barharwa. The materials were unloaded and were found to include signal rods, etc. A seizure-list of the materials was prepared. He proved the seizure-list, which was marked as **Ext.-4/1**. Thereafter, he filed a complaint. He proved the complaint, which was marked as **Ext.-11**. He proved his signature on the label of one piece of signal angle, which was marked as **Ext.-12**. The signal angle was produced by the prosecution and was marked as **Material Ext.-V**. The D.O. plates were marked as **Material Ext.-VI**. The signature on the labels of these materials was marked as **Ext.-13**. He proved his signature on the label of the signal lever, which was marked as **Ext.-14**, while the signal lever was marked as Material **Ext.-VII**. He proved his signature on the site plan, which was marked as **Ext.-15**.

In his cross-examination, in paragraph 15, he stated that Raj Kumar Verma was the helper, while Jalamin Seikh was the owner. Mustafa was the helper of Jalamin. Jalamin had identified himself as the owner.

P.W.-8-Dilip Kumar Das has stated that on 20.08.2009, they conducted an ambush at NH-80 near Barharwa High School. They seized one vehicle bearing Registration No. WB 57-9954, which was loaded with railway property. Four accused persons were in the lorry,

namely, Jalamin Seikh, Mustafa, Mahesh Prasad Sah and Raj Kumar Verma. The truck was searched by R. P. Prasad and a seizure-list was prepared by him. He proved his signature on the seizure-lists, which were marked as **Ext.-1/3** and **Ext.-4/2**, respectively.

P.W.-9-Sachhidanand Kumar has stated that, on receiving secret information, he along with other RPF personnel, went to NH-80 near Reliance Petrol Pump. They conducted an ambush there at about 15.20 hours. They saw a loaded vehicle coming from the side of Dighi, bearing Registration No. WB 57-9954. The vehicle was stopped, and four persons were sitting inside the truck. Upon being searched, railway materials were found loaded on the truck. The truck was brought to the RPF Post, Barharwa, where it was found loaded with D.O. plates, signal rods, broken pieces of D.O. plates, 22 Pendrol clips, etc. The seizure-list was prepared in the presence of the accused persons. He stated that he recorded the confessional statements of accused Jalamin Seikh, Mustafa, Mahesh Prasad Sah and Raj Kumar Verma. He proved the four confessional statements, which were marked as **Ext.-16, Ext.-16/1, Ext.-16/2** and **Ext.-16/3**, respectively. He proved the site plan, which was marked as **Ext.-15/1**. The seized materials were examined by experts. He proved the prosecution report, which was marked as **Ext.-17**.

On the other hand, **D.W.-1-Ajay Anand** is a businessman and the owner of the seized truck bearing Registration No. WB 57-9954. This witness was examined on behalf of accused Mahesh Prasad Sah (the driver of the truck) and Raj Kumar Verma (the helper of the

truck). He stated that Mahesh Prasad Sah was the driver of his vehicle, while Raj Kumar Verma was the helper and that they had been working with him for the last three years. He stated that the driver was returning after having unloaded the truck. On the way, one person contacted him and told him to carry the scrap materials. He informed the driver that if the materials were scrap, he should talk to him regarding the fare. The driver informed him that the materials were scrap and that the owner of the scrap materials would also travel with him. Thereupon, he directed the driver, after ensuring that the materials were scrap, to get the materials loaded. He stated that the materials were scrap iron and that he later came to know that the vehicle had been detained and a case had been lodged.

12. From the discussion of the evidence of the prosecution witnesses, it is undisputed that lorry bearing Registration No. WB-57-9954 was intercepted by the RPF and certain articles alleged to be railway property were recovered from it. However, mere recovery from the vehicle is not sufficient unless the prosecution establishes the conscious and unlawful possession of the accused.

13. In the present case, material discrepancies appear in the prosecution evidence regarding the date and circumstances of interception. The self-statement refers to 20.08.2009, whereas P.W.-7 stated the date of occurrence as 03.08.2009. The prosecution also did not examine any independent witness to the search and seizure, although the vehicle was intercepted near a public place. P.W.-1 admitted that the seizure-list was prepared inside the lorry due to rain.

14. There are further inconsistencies regarding the identity and role of the persons travelling in the vehicle. While P.W.-1 described Mahesh Prasad Sah as the driver and Raj Kumar Verma as the helper, P.W.-7 stated that Jalamin Seikh was the owner and Mustafa was his helper. The prosecution therefore failed to satisfactorily establish the precise role and control of each petitioner over the seized materials. Mere presence in the cabin cannot, by itself, establish conscious possession.

15. The evidence regarding identification of the seized articles is also not free from doubt. The departmental witnesses admitted that some materials had no labels or identification marks and that the materials were not always shown along with the relevant list. These deficiencies create doubt regarding the identity and continuity of the articles from the alleged seizure until their examination and production before the Court. P.W.-1 also admitted that the seized iron materials were not weighed and stated only that about 80% of the iron was railway property.

16. The alleged confessional statements, marked Ext.-16 series, were made before RPF officials and cannot, in the circumstances of the case, by themselves furnish a sufficient basis for conviction when the surrounding evidence suffers from material infirmities.

17. The defence evidence stated that the vehicle was carrying scrap material believed to be lawfully obtained. Even if the defence version is not conclusively established, the prosecution must independently prove its case beyond reasonable doubt and cannot rely upon the

weakness of the defence.

18. The statutory presumption under Section 3(a) can arise only after the prosecution establishes the foundational facts, including possession of the particular railway property by the accused. In the present case, the prosecution failed to establish beyond reasonable doubt the identity of the railway property, its linkage with the petitioners and their conscious possession or requisite knowledge regarding its unlawful nature.

19. Accordingly, the material discrepancies and deficiencies in the prosecution evidence create a reasonable doubt which must enure to the benefit of the petitioners. The findings of the Courts below, having proceeded principally on the basis of recovery from the lorry without establishing conscious possession, cannot be sustained.

20. In view of the above discussions and reasons, I find that the impugned judgments passed by the learned Trial Court as well as the learned Appellate Court are perverse, illegal and contrary to the weight of the evidence available on record. No incriminating circumstance has been proved and put to the petitioners for their explanation. Therefore, I find legal substance in the submissions advanced on behalf of the petitioners and merit in these revisions.

21. Accordingly, the impugned judgment of conviction and order of sentence of the petitioners passed by the learned trial court and upheld by the appellate court is hereby set aside and both the revisions are **allowed**.

22. Pending I.A.(s), if any, stands disposed of accordingly.

23. Petitioners are on bail, as such they are discharged from the liability of bail bonds and sureties are also discharged.

24. Let a copy of this order along with Trial Court Record be sent to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court
Dated 05/10/2026
Arpit/ ***N. A. F. R.***
Uploaded on 06/10/2026