

(2025) 12 GAU CK 0022

Gauhati HC

Case No: Crl.Rev.P. Of 103 Of 2015

Ashok Jha

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision: Dec. 11, 2025

Acts Referred:

- Code of Criminal Procedure, 1973- Section 162, 313, 397, 401
- Railways Act, 1989- Section 143
- Evidence Act, 1872- Section 145

Hon'ble Judges: Susmita Phukan Khaund, J

Bench: Single Bench

Advocate: A.K.Gupta, S.C.Biswas

Final Decision: Allowed

Judgement

Susmita Phukan Khaund, J

1. Heard learned counsel Mr. A.K. Gupta for the petitioner Ashok Jha who has filed this application under Section 401 r/w Section 397 of the Code of Criminal Procedure, 1973, challenging the legality and propriety of the order dated 20.02.2015 passed by the learned Additional Sessions Judge -1 (FTC), Tinsukia in Criminal Appeal No.9 (2)/2012 dismissing the appeal by upholding the judgment and order 30.03.2012 passed in SRCR Case No. 36/2011 by the trial court, whereby the petitioner was convicted under Section 143 1 (b) of the Railways Act, 1989 (the Act of 1989 for short) and sentencing him to undergo simple imprisonment for two months and to pay a fine of Rs.3000/- with default stipulation.

2. Heard Mr. S.C. Biswas, learned Senior Special Counsel, Railways for the respondent Nos. 1 and 2.

3. The legality and propriety of the order impugned has been challenged and it is submitted that both the courts have committed gross illegality and the orders are

liable to be set aside. It is contended that the search and seizure was conducted in absence of independent witnesses, which is bad in law. The railway tickets were allegedly seized from the petitioner in absence of independent witnesses. The courts below were inclined towards the submission of the prosecution. It is contended that the prosecution failed to bring on record that the public present in the busy area were not willing to be witnesses to the seizure of the railway tickets. The railway tickets were booked in the name of Sri B Saikia of PRL Jorhat and Subhash Ch. Jha of Thana Road, Jorhat, which was ignored by the prosecution as well as by the courts. The extra-judicial confession was allegedly made in the presence of a police officer and which cannot be accepted as evidence. The courts have failed to appreciate that the petitioner had no previous criminal antecedent and he was entitled to be released on probation.

4. Per contra, the learned Senior Special Counsel for the Railways has submitted that there is no infirmity in the orders passed by the courts below as impugned by the petitioner. The petitioner was caught red handed while selling railway tickets illegally. The petitioner is liable to be punished under law and a lenient sentence was passed by the trial court.

5. The genesis of the case was that on 05.01.2011 at about 8.10 hours, when the Constable Ananda Doley was on duty at JTTN Station, he apprehended a suspected tout at Jorhat PRS and thereafter informed the matter to the complainant, namely Subhan Hazarika, ASI/RPF(OP)/JTTN. Thereafter, the complainant Subhan Hazarika, respondent No.2, rushed to the spot and nabbed the petitioner along with two computerized tickets, which were found in his possession. On being confronted, the petitioner could not give satisfactory reply on being in possession of those tickets. He was immediately arrested and those tickets were seized and the petitioner was produced before the IPF, MXN. The present case was registered as RPF/POST/MXN case No.2/2011 under Section 143 of the Railways Act. Investigation commenced and witnesses were examined, and finally, charge sheet was submitted.

6. During trial, four witnesses including the complainant were examined whereas the accused did not tender any evidence in defence. His statements were recorded under Section 313 CrPC and his plea was of total denial. The evidence of the constable Ananda Doley as PW-2 and the evidence of the informant as PW-1 clearly depicts that on 05.01.2011, at about 8 am, the petitioner was found selling two Tatkal Seva Railway Reservation tickets. On being confronted, he could not give satisfactory reply regarding the possession of the Railway tickets and PW-1 rushed to the spot and found the tickets in the possession of the petitioner. One ticket was for Dibrugarh to Delhi and another from Guwahati to Delhi and those tickets were seized. But there was no independent witness as not a single person amongst the public were willing to be witness to the seizure of the tickets. PRS staff, Siddhartha Baruah as PW-3 was present during the seizure of the railway tickets. He affixed his signature on the requisition forms.

6. In addition, PW-1 deposed that he arrested the petitioner and forwarded him to the RPF Post and he submitted a written complaint before the inspector, RPF/POST/MXN. The enquiry officer recorded his statement. PW-1 has proved the written complaint as Exhibit- 1 and his signature on the complaint as Exhibit 1 (1). He has proved the seizure lists as Exhibit Nos. 2 and 3 and his signature on the seizure list as Exhibit 2 (1) and 3 (1). He has identified Exhibit 2-(2) as the signature of the petitioner and he has identified the material Exhibit-1 and 2 as the PNR of the seized tickets and Material Exhibit Nos. 3 and 4 as the requisition forms of seized tickets. Both the witnesses, P.W.-1 and PW-2 were cross-examined, but no contradictions as per Section 145 of the Indian Evidence Act, 1872, qua Section 162 of the Code of Criminal Procedure could be elicited through the strenuous cross examinations of the witnesses. The evidence of PW-3 also corroborates with the evidence of PW-1 and -2. He was serving as head inquiry- cum- reservation clerk at the time of the incident. He has testified that on 05.01.2008 at about 8.30 hours, an RPF personnel apprehended the petitioner and the petitioner was produced before him. The petitioner was found in possession of two railway tickets by the RPF personnel. One ticket was from Dibrugarh to Delhi and the other was from Guwahati to Delhi. The tickets were not in the name of the petitioner, but in the name of some unknown individuals. Those tickets were seized and he has identified his signature as Exhibit-2 and 3 on the seizure list.

7. The enquiry officer, Vinit Kumar, deposed as PW-4, that on the day of the incident, the PW-1 lodged a written complaint i.e. Exhibit-1 and on the basis of the complaint, a case was registered vide RPF/POST/MXN Case No.2/2011 under Section 143 of the Railways Act against the petitioner, and he was endorsed to conduct the enquiry and submit prosecution report. He recorded the statements of the witnesses as well as the petitioner. He has also stated that during the inquiry, he could unearth antecedents of the petitioner who was involved in a similar case No.14/2010 under Section 143 of the Railways Act and on 13.12.2010, the petitioner was convicted and sentenced in the said case.

8. PW-4 further testified that he submitted the prosecution report under Section 143 of the Railway Act against the petitioner. He has identified the statement of the petitioner as Exhibit -4 and he has proved his signature on Exhibit- 4 as Exhibit -4 (1). He has identified the prosecution report as Exhibit- 5 and his signature on Exhibit -5 as Exhibit 5-(1). The witnesses were cross-examined in extenso, but no contradictions could be elicited through the cross-examination of the witnesses under Section 145 of the Evidence Act vis-a-vis Section 162 of the CrPC. On the uncontroverted evidence, the trial court arrived at a decision which warrants no interference and the learned appellate Court was correct in upholding the decision of the learned trial court vide order dated 20.02.2015 in Criminal Appeal No.9(2)/2012. No infirmity is discernible in the judgment and order dated 30.03.2012 passed in SRCR Case No.36/2011.

9. It is submitted that the petitioner is 35 years old and he has a family to tend to . He is the sole breadwinner of his family. He is a daily wage earner, and if he is forwarded to custody, he may suffer irreparable loss.

10. I have considered the submissions that much water has flowed under the bridge.

11. The impugned judgment of the trial court was passed in the year 2012, and the judgment of the appellate court was passed in the year 2015. Conviction under Section 143 (1) (b) of the Railways Act may extend to three years or fine of Rs. 10,000/-.

12. In the wake of the forgoing discussions, it is held that there is no illegality in the impugned order. Revision is partly allowed, and the judgment and order dated 20.02.2015 in Criminal Appeal No.9(2)/2012, and the order of conviction 30.03.2012, in SRCR No. 36/2011 is upheld, but the sentence is scaled down to fine only. Revision petition is partly allowed and the order is scaled down to the sentence of fine only. The order of sentence of imprisonment for two months is set aside. The petitioner is directed to pay Rs.10,000/- The petitioner is convicted under Section 143- 1 (b) of the Railways Act to a fine of Rs.10,000/-and in default of payment of fine to undergo RI for three months. The petitioner is directed to pay fine before the learned trial court within 02(two) months from the date of this order.

13. Send back the original records of SRCR No. 36/2011 and Criminal Appeal No.9(2)/2012 immediately.

14. No order as to costs.