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**(2003) 05 CAL CK 0030**

**Calcutta High Court**

**Case No:** C.R.R. No. 278 of 2003

Inspector-in-Charge, Railway  
Protection Force

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** May 23, 2003

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 451

**Citation:** (2003) CriLJ 3665

**Hon'ble Judges:** Pradip Kumar Biswas, J

**Bench:** Single Bench

**Advocate:** N.K. Chatterjee, Abhra Mukherjee, Lia Chatterjee and Bidisha Banerjee, for the Appellant; Sekhar Basu, Sudipto Moitra, Milon Mukherjee and Subhasish Pachal, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Pradip Kumar Biswas, J.

This is an application u/s 401 read with Section 482 of the Code of Criminal Procedure filed by the petitioner i.e., Inspector-in-Charge Railway Protection Force, Liluah Workshop Post at Liluah Workshop, Dist. Howrah seeking to set aside/ quash the order dated 7th February, 2003, passed by the learned S.D.J.M., Howrah in Liluah R.P.F. (W/S) Post Office Case No. 1(1)/2002 dated 15-1-2002 u/s 3(a) of Railway Property (Unlawful Possession) Act, 1966.

2. The short facts leading to the filing of this revisional application are as follows :--

On 15th January, 2002 one Motleb Molla was arrested at the Chowrasta of S.N. Banerjee Road, Liluah. P.S. Bally with two iron brake blocks belonging to Railways and the said Motleb Molla was arrested since he was not in lawful possession of the said railway properties.

3. On the basis, of the leading statements of Motleb Molla, a search was conducted at the shop-cum-godown of M/s. Iron Metal Trading Corporation of 20/2, Thakurdas Sureka Road, Malipanchgora, Howrah where huge amount of railway properties were found and at that relevant time those were being removed by two lorries and the lorry drivers namely. Laxmikanta Mondal and Sri Basudev Das along with one Sohan Lal Shaw, owner of the said godown were also arrested.
4. The said railway properties were seized and seizure memo was prepared and signed. Thereafter, the goods, which were heavy in nature, were kept in the Jimmanama of one Sri Ranjit Kumar Shaw, nephew of the godown owner.
5. It has been alleged further that Radheshyam Shaw alias Bachai Sahw, Nandlal Shaw and Sohanlal Shaw and Mohanlal Shaw were the godown owners and at the relevant time except Sohan Lal Shaw none was present there.
6. Subsequently, following the disclosure by Sri Sohan Lal Shaw further raid was conducted on 17th January, 2002 in the shop-cum-godown of M/s. Shaw Shearing at 29/ 3, G.G. Road, Howrah as pointed out by Sri Sohanlal Shaw and from there huge amount of railway properties were recovered and those were seized since lawful possession could not be proved.
7. Again, on the basis of the information search was conducted on 18th January, 2002, at M/s. R. S. Industries Ghosuri, Howrah and from there also railway properties of huge quantities were recovered and all those search and seizure and arrests were made after following the relevant provision of the enactment applicable in the instant case.
8. The petitioner started investigational inquiry as provided under law and obtained expert opinion about the said seized railway materials and as per the opinion of the experts given in certificates issued by such experts the seized goods are of railway specification, serviceable, not auctionable and not available in regular market, While the petitioner was trying to complete the investigation as expeditiously as possible the said Radheshyam Shaw, one of the accused persons moved this Hon"ble High Court invoking its power under Sections 401 and 482 of the Code of Criminal Procedure through one petition being C.R.R. No. 773 of 2002 praying inter alia stay of all further proceedings pending hearing of the said petition under which an interim stay was granted on the 27th March, 2002 by this Hon"ble Court. Due to the said order which is still pending, the petitioners were restrained from proceeding with the investigation which included getting of all the seized materials, examined by experts and the seized documents like stock register, sale release order, railway challans etc. were required to be verified with other relevant documents. Those examination and verification, necessary for speedy completion of investigation, was delayed due to the aforesaid stay order.
9. It has further been contended that the seized materials and the documents which are necessary materials to prove the case against the accused persons ought not to

be returned to the O.Ps. as in that case those may be melted or converted or may be sold to some other receivers of stolen properties and the same cannot be produced at the time of trial and the documents seized may be manipulated or altered so as to make those totally useless when trial commences.

10. Against the circumstances, explained above, the accused persons moved an application for return of the self same goods which were railway properties and which were seized from their unlawful possession and which were evidences in connection with the pending criminal case before the said learned Magistrate and those seized goods being all iron and steel materials including scrap are not at all perishable and those will not decay immediately.

11. It has further been alleged that against the said prayer for return of goods, petitioner filed objection and also contested the same at the time of hearing. The learned S.D.J.M., Howrah (Sadar) however by its order dated 7th February, 2003 allowed the said application for return of the seized iron and steel material and scrap goods in favour of the O.Ps.

12. Being aggrieved by and dissatisfied with the aforesaid order, the petitioner has come up with this prayer, praying inter alia, that the impugned order passed by the learned Magistrate is wholly without authority of law in the facts and circumstances of the case and the impugned order also cannot be allowed to be implemented as in that case all the exhibits of this case will be lost for ever and the prosecution will be deprived of the opportunity of proving its case at the trial and as such it will cause serious prejudice to the petitioner.

13. It has also been contended that the learned S.D.J.M, has failed to approach the case in its true perspective and with clear appreciation of the issues involved and/or clear understanding of the principle of the criminal law and as such the impugned order being not tenable in law is liable to be set aside.

14. The learned counsel appearing for the O.P. in opposing the aforesaid claim of the petitioner has contended that the properties so seized were procured by them lawfully and those properties would likely to be damaged and subjected to decay if kept open. So, he has contended that rightly the learned Magistrate has passed the order of return of those articles in favour of the opposite parties and there is nothing to interfere.

15. I have heard the respective submissions of the parties and perused also the relevant enquiry papers produced by the petitioner and also looked into the documents filed by the opposite parties before the lower Court praying for return of the properties involved in this case.

16. I have also looked into the impugned order passed by the learned Magistrate. True it is that from the materials available including the documents filed by the opposite parties, there is prima facie evidence of purchasing railway properties by

auction from the railway authorities directly and also from other authorised body corporates, who purchased those directly from the railways on auction. But there is nothing in the record itself to establish prima facie that the properties involved in this case were really auction-purchased by the opposite parties from the railways and from the other authorised body corporates, who purchased the same from the railways directly on auction. Rather from the scrutiny of the materials, as available from the case record of the R.P.F. Post Case, it appeared prima facie that the properties so far examined by the experts were found to be serviceable and not auctionable and the prosecution agency also could not complete the process of examination of all those seized materials due to the stay order passed by this Court and when the properties involved in this case appear to be iron steel and scrap materials not being subjected to the speedy decay or perishable goods, hardly there is any justification to pass the order for interim custody of those properties when there is serious controversy with regard to the entitlement for the delivery of the seized property.

17. Now, being confronted with such situation and in view of the further fact that the railway authority could not proceed with the investigation in connection of this case due to the stay order passed by this Court, I am of the clear opinion upon scrutiny of the materials available before this Court that the learned Magistrate was not justified to pass an order for interim custody of those properties in favour of the opposite parties by way of interim custody.

18. In that view of the fact, upon hearing the parties before me and upon ultimate analysis of the materials on record, I am of the clear view that the order impugned passed by the learned Magistrate favouring the opposite parties with the interim custody of the properties involved cannot at all stand and as such the same is set aside.

19. The impugned order, therefore, stands set aside.

20. The opposite parties, however, given liberty to approach the concerned Court praying for return of those properties depending upon the future progress of this case,

21. This revisional application is thus disposed of accordingly.