

**IN THE COURT OF SPECIAL RAILWAY MAGISTRATE AT**  
**TINSUKIA, ASSAM**

**SR CR Case No. 1405/17**

Under section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966

*Union of India*

*Versus*

*Sri Haider Ali @ Nawa @ Nirahua*

Son of Md. Israful Ali @ Mohan Ali

Hijuguri 1 no. Gate

Near Masjidpatti

P.O., P.S. and District Tinsukia

Assam

----- *Accused Person*

***Present:***

Ms Pranjita Konwar, AJS

***Appeared:***

*For the prosecution:* Sri Y. K. Misra, Public Prosecutor.

*For the accused person:* Sri K. Borpujari, Advocate.

***Date of Evidence:*** 29-10-18, 09-11-18, 17-11-18, 20-11-18, 12-12-18,  
29-04-19, 22-05-19, 13-06-19, 04-07-19, 17-07-19,  
07-08-19, 06-12-19, 06-12-19, 24-12-19, 11-02-19  
and 22-05-19

***Date of Argument:*** 03-07-20 and 09-11-20

***Date of Judgment:*** 23-11-20

## **JUDGMENT**

1. The case of the prosecution was initiated on a written complaint being filed by Sri M. K. Singh, SIPF/NTSK that while conducting rounds at the NTSK yard complex, 3 persons were noticed extracting sugar bags by opening the door of one of the wagons loaded with sugar consignment.
2. The said complaint was received and registered as RPF/POST/NTSK Case No. 1 (2)/17 dated 04-02-17 under section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966 (herein after referred to as RP (UP) Act) and the case was endorsed for enquiry and report.
3. The enquiry on being concluded resulted in the Enquiry Officer (herein after referred to as EO) concerned to submit the prosecution report against the accused persons 1. Md. Altaf Hussain, 2. Sri Haider Ali @ Nawa @ Nirahua and 3. Phuchu under section 3(a) RP (UP) Act.

### Trial

4. In due course cognizance was taken of the alleged offence and summons was issued to the accused persons. The attendance of the accused person Phuchu could not be procured and the case against him was filed till his appearance or production. The case against the accused person Md. Altaf Hussain got disposed upon his plea of guilt being accepted by the Court. Formal charge in writing was framed and the particulars of offence under section 3(a) RP (UP) Act on being read and explained to the accused person Sri Haider Ali @ Nawa @ Nirahua, the said accused person pleaded not guilty and claimed to be tried.
5. In order to bring home the charge against the accused person, the prosecution examined 09 (nine) witnesses and the same witnesses were also cross examined by the defence side. After closure of prosecution evidence, the statement of the accused person Sri Haider Ali @ Nawa @ Nirahua under section 313 CrPC was recorded by putting to the accused person the incriminating materials found against him during prosecution evidence. The defence plea of the accused person was total denial and he also declined to adduce any evidence in their defence.

6. I have heard argument of the learned counsels of both the sides.

**POINT FOR DETERMINATION**

7. Whether the accused person, Sri Haider Ali @ Nawa @ Nirahua, on or about the 4<sup>th</sup> day of February, 2017 at NTSK yard complex under Tinsukia police station committed theft of bags of sugar from railway wagon no. NWR-40278 loaded with sugar consignment and thereby committed an offence punishable under section 3(a) RP (UP) Act?

**DISCUSSION, DECISION AND REASONS THEREOF**

8. In the light of definition of the law let me now appreciate the evidence to see whether the accused persons committed the offence punishable under sections 3(a) RP (UP) Act.

9. PWs 1, 2, 3 and 4 have all deposed that on 04-02-17 after midnight when they were on patrolling duty, they had seen three persons carrying bags of sugar from a wagon at the New Tinsukia railway station; one of the persons (accused person Altaf Hussain) was arrested while the other two (accused persons Nawa and Phuchu) fled away from the place of occurrence. PW 5 deposed that the accused person namely Nawa had told before him to SI Guddu Kumar that on 04-02-17 he along with two other accused persons entered the railway yard at New Tinsukia and they broke the lock of the loaded wagon and stole 7 bags of sugar from the said wagon. The accused person confessed his guilt and had also said that on seeing the RPF officials they tried to flee and he was caught by the RPF officials. PW 6, who was posted as Chief Goods Supervisor at the New Tinsukia Railway Station on the date of occurrence, deposed that on that day he along with PW 7 went to the place of occurrence to check the goods train that had arrived at the railway yard in New Tinsukia Railway Station and they saw that the seal of one of the wagons was broken. They along with the RPF officials unloaded the wagon which was carrying sugar bags and found that the wagon was carrying 1275 bags of sugar but only 1268 bags of sugar were found in the said wagon with a shortage of 7 bags. PW 7, who was posted as IC/CGS at New Tinsukia Railway Station, deposed that he was informed by PW 6 that the door of wagon no. NWR 40278 was found in a broken condition and that the door of the wagon

was unsealed. He along with RPF officials and staff visited the place of occurrence and the wagon was unloaded and recounted wherein it came to light that as per their record the wagon was carrying 1275 bags of sugar but at the time of counting only 1268 bags were found and there was a shortage of 7 bags of sugar in the said wagon and PW 6 had prepared the damage deficiency report. PW 7 further deposed that on 05-02-17, RPF officials had called him to the post to ascertain the quality of sugar seized by them and during inspection he found that the sugar is of the same quality. PW 8, who was at that time posted as a porter at New Tinsukia Railway Station, deposed that on the third or fourth February, 2017 at about 3.30 am the RPF officials went to the tower and issued a memo to the station master to issue protection seal to wagon no. 40278 NBR which was carrying sugar and accordingly on the basis of the direction of the station master he had issued protection seal to the said wagon in the presence of the RPF Officials. PW 9, who was posted as head constable at the New Tinsukia RPF Post on 04-02-17, deposed that on that day SI Guddu Kumar had recorded the statement of accused Altaf Hussain in his presence and the said accused person has stated before him that he along with two persons namely Haider Ali @ Nawa and Pauchu had stolen sugar bags from goods train at New Tinsukia Railway yard during the night hours.

10. All the PWs have also been cross examined by the defence side and the PWs also denied the suggestions put to them by the defence side.

11. Any property belonging to or in the charge or possession of a railway administration is included in the definition of railway property as provided under section 2 (d) of the RP (UP) Act. As far as consignments are concerned, the same comes to the possession of railway when the same is accepted for consignment and until delivered to the consignee. Now with regard to the sugar which was seized from the accused persons, it is seen from the railway receipt that a consignment with 1275 no. of articles was booked from Karad station to New Tinsukia station and the damage deficiency report shows that 1268 (7 less of 1275) bags of sugar were received at the New Tinsukia station; also exactly 7 nos. of bags of sugar were seized from the possession of accused person Altaf Hussain. The verification report shows that sample sugar and the seized sugar are both of same quality being remarked as ISS Grade

M-30/S-30 weight 50 kg in white colour plastic bag. Also PWs 1, 2, 3 and 4 have seen the accused persons remove the bags of sugar from the wagon at the New Tinsukia yard. Moreover it has not been disputed by the defence side that the property in question is in fact railway property. Hence it can be said that the bags of sugar which were part of the railway consignment, being in possession of the railway authority, are railway property.

12. From the evidence of the PWs it is seen that PWs 1, 2, 3 and 4 have seen the three accused persons remove / carry the bags of sugar from the wagon at the New Tinsukia yard and 7 bags of sugar were recovered from the possession of accused person Altaf Hussain. With regard to the seizure of the bags of sugar, it has been deposed by the PW 1 that no independent witnesses were present at the time of seizure; however PWs 3 and 4 have clarified in this regard that as the seizure was made at midnight, there were no independent witnesses to affix their signature at the seizure list and same is found to be satisfactory. PW 4 deposed that the accused person Altaf Hussain had stated before them the names of the other two accused persons; PWs 2 and 3 have deposed that the accused person Altaf Hussain had stated before them that the names of the other two accused persons, who had fled away from the place of occurrence, are Nawa and Puchu and same also finds corroboration in the statement of the accused person Altaf Hussain. Accused Altaf Hussain, whose plea of guilt has already been earlier accepted by this Court, had stated in his confessional statement that on 04-02-17 at about 01.30 am he along with accused persons Phuchu and Nawa @ Nirahua had entered the New Tinsukia railway yard to steal sugar bags from stable loaded wagon, they extracted 7 bags of sugar from the wagon by breaking its seal and when they saw the RPF personnel there, they tried to flee but he was caught while the other two accused persons succeeded in fleeing away. The statement of the accused person Altaf Hussain was recorded in the presence of PW 9 and PW 9 also deposed that the accused person had stated the names of the other two accused persons as Pusa and Nawa. Although PW 9 has deposed that no independent witness were present at the time of recording the confessional statement of the accused person Altaf Hussain, no dispute has been raised regarding the voluntariness of the confessional statement made by the accused person Altaf Hussain.

13. From the evidence of all the PWs it is seen that the evidence of the PWs has remained consistent throughout and the defence side, other than mere suggestions, has not been able to bring anything on record that would shake the credibility of the PWs.

### **DECISION**

14. The point for determination is decided in affirmative and against the accused person.

### **ORDER**

15. Upon full and complete appraisal of the evidence on the record and in view of decision reached on the point for determination chalked out in this case, I have no hesitation to hold that the evidence adduced by the prosecution abundantly proves beyond all reasonable doubt that the accused person Sri Haider Ali @ Nawa @ Nirahua is **found guilty for the offence under section 3(a) RP (UP) Act and he is convicted under section 3(a) RP (UP) Act.**

16. As the accused person is found guilty for committing offence under section 3(a) RP (UP) Act, I have considered as to whether the benefit of Probation of Offenders Act 1958 can be extended to the accused person. Considering the facts and circumstances of the case and also considering the nature of the offence, I do not deem it to be a befitting case to extend the benefit of the provisions of the Probation of Offenders Act, 1958 to the accused person.

17. Heard the convict on the point of sentence. The convict stated that he is the sole bread earner of his family and prayed for leniency.

18. I have heard the learned Counsels representing both sides. I have also considered the submission of both sides.

19. The convict Sri Haider Ali @ Nawa @ Nirahua is sentenced **to pay a fine of Rs. 2500.00 (Rupees Two Thousand and Five Hundred only)**

**and in default of which he shall undergo simple imprisonment for a period of one month.** In my view this sentence will be sufficient to meet the ends of justice.

20. Let a copy of judgement be furnished to the convict free of cost forthwith.

21. Materials seized during enquiry, if any, to be disposed of in due course of law and time.

22. Judgment is pronounced in open court by reading out the operative part of same.

23. Case is disposed on contest with regard to the accused person Sri Haider Ali @ Nawa @ Nirahua.

Given under my hand and seal of this court on the 23<sup>rd</sup> day of November, 2020.

**(PRANJITA KONWAR)**

Special Railway Magistrate

Tinsukia

**APPENDIX**

**Prosecution Witnesses:**

PW 1: Sri Hanif Ali  
PW 2: Sri Jintu Hazarika  
PW 3: Sri M. K. Singh  
PW 4: Sri Pawan Kumar  
PW 5: Sri Arbind Kumar  
PW 6: Sri Jogeswar Sonowal  
PW 7: Sri Dibyajyoti Sonowal  
PW 8: Sri Shankar Nandi  
PW 9: Sri Bidyadhar Baruah

**Prosecution Exhibits:**

Exhibit 1: Seizure list  
Exhibit 2: Property card label  
Exhibit 3: Complaint  
Exhibit 4: Sketch map  
Exhibit 5: Confessional statement of accused person Haider Ali @ Nawa @ Nirahua  
Exhibit 6: Joint verification report  
Exhibit 7: Tally book (proved in original)  
Exhibit 8: Damage deficiency message  
Exhibit 9: Seizure list  
Exhibit 10: Property card label  
Exhibit 11: Verification report  
Exhibit 12: Seizure cum zimmanama  
Exhibit 13: Goods delivery book (proved in original)  
Exhibit 14: Road challan book no. 3 dated 06-02-16 to 18-03-16  
Exhibit 15: Railway receipt (proved in original)  
Exhibit 16: Statement of Sri Shankar Nandi  
Exhibit 17: Confessional statement of accused person Sri Altaf Hussain  
Exhibit 18: Statement of Sri B. D. Baruah

**Defence Witnesses:**

None

**Defence Exhibits:**

None

**Court Witnesses:**

None

**Court Exhibits:**

None

**Material Exhibits:**

MAT Exhibit I: Sample of sugar

**(PRANJITA KONWAR)**  
Special Railway Magistrate  
Tinsukia