

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

Present: Ms Pranjita Konwar, AJS

Date of Judgment: 31-05-22

SR CR Case No. 331/22

RPF/POST/MXN Case No. 62/22

Under section 144 (1) Railways Act, 1989

COMPLAINANT: Union of India.

REPRESENTED BY: Sri Y. K. Misra, Public Prosecutor.

ACCUSED PERSON:

1. Sri Gullu Balmiki
Son of Late Ramu Balmiki
Mariani Natunmati Ward no. 4
P.S. Mariani
District Jorhat
Assam----- *Accused Person No. 1*

REPRESENTED BY: Sri K. Borpujari and Smti N. Dutta,
Advocate.

Date of Offence: 17-03-22

Date of FIR: 17-03-22

Date of Prosecution Report: 17-03-22

Date of Commencement of Evidence: 11-05-22

Date on which Judgment is reserved: 31-05-22

Date of Judgment: 31-05-22

Date of the Sentencing Order: 31-05-22

Accused Details

Rank of the Accused	A1
Name of the Accused	Sri Gullu Balmiki
Date of Arrest	17-03-22
Date of Release on Bail	17-03-22
Offences charged with	Under section 144 (1) Railways Act, 1989
Whether Acquitted or Convicted	Convicted
Sentence imposed	Fine of Rs. 200.00 (Rupees Two Hundred only) and in default of which he shall undergo simple imprisonment for a period of 1 (one) month.
Period of detention undergone during trial	None

JUDGMENT

1. The case of the prosecution was initiated on a written complaint being filed by Simanta Goswami ASI/RPF/MXN that while conducting a drive against offenders in railway, it was noticed that one person was hawking without any authorisation and the person was apprehended as he could not produce any legal authority for hawking in train.
2. The said complaint was received and registered as RPF/POST/MXN Case No. 62/22 dated 17-03-22 under section 144 (1) of the Railways Act, 1989 (herein after referred to as the 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 person Sri Gullu Balmiki under section 144 (1) of the Act.

Trial

4. In pursuant to the Court process, cognizance was taken against the accused Sri Gullu Balmiki and summons were issued to the accused person. After appearance of the accused person, the particulars of offence under section 144 (1) of the Act on being read over and explained to the accused person, the accused person pleaded not guilty and claimed to be tried.
5. The prosecution side adduced evidence of 1 (one) witness. After closure of prosecution evidence, the statement of the accused person under section 313 CrPC was recorded by putting to the accused person the incriminating materials found against him during prosecution evidence. The accused person admitted as true all that which has been deposed against him and he also declined to adduce any evidence in his defence.
6. I have heard argument of the learned counsels of both the sides.

POINT FOR DETERMINATION

7. Whether the accused person, Sri Gullu Balmiki, on or about the 17th day of March, 2022 was hawking in train number 15968 DN without any licence granted by the railway

administration in this behalf and thereby committed an offence punishable under section 144 (1) of the 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 person committed the offence punishable under sections 144 (1) of the Act.

9. PW 1 could recognise the accused person and deposed that on 17-03-22 the accused person was found hawking in train number 15968 DN without any valid licence in this regard. The accused person was taken into custody, the articles were seized and a case was also registered on a complaint being filed against him. PW 1 had submitted Prosecution Report against the accused person under section 144 (1) of the Act.

10. The defence side did not rebut the assertions made by the PW in his deposition and also declined to cross examine the PW.

11. From the evidence of the PW it is seen that the evidence of the PW has remained consistent throughout and in the absence of cross examination or denial by the defence side, the allegation of the prosecution side remains unrebutted and reliable. Hence a strong inference can be drawn towards the guilt of the accused person and the prosecution side can be said to have succeeded to bring home the charge punishable under section 144 (1) of the Act against the accused person.

DECISION

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

ORDER

13. 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 Gullu Balmiki is **found guilty for the offence under section 144 (1) of the Railways Act, 1989 and he is convicted under section 144 (1) of the Railways Act, 1989.**

14. As the accused person is found guilty for committing offence under section 144 (1) The 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, 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.

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

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

17. Considering the financial status of the convict, the convict Sri Gullu Balmiki is sentenced **to pay a fine of Rs. 200.00 (Rupees Two Hundred only) and in default of which he shall undergo simple imprisonment for a period of 1 (one) month.** In my view this sentence will be sufficient to meet the ends of justice.

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

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

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

21. Case is disposed on contest.

Given under my hand and seal of this court on the 31st day of May, 2022.

(PRANJITA KONWAR)
Special Railway Magistrate
Tinsukia

APPENDIX

Prosecution Witnesses:

RANK	NAME	NATURE OF EVIDENCE
PW 1	Sri Kanak Rajkhowa	Official witness

Prosecution Exhibits:

Sr. No.	Exhibit number	Description
1	Exhibit P1/PW 1	Arrest cum seizure list
2	Exhibit P2/PW 1	Complaint
3	Exhibit P3/PW 1	Prosecution report

Defence Witnesses:

None

Defence Exhibits:

None

Court Witnesses:

None

Court Exhibits:

None

Material Exhibits:

None

(PRANJITA KONWAR)
Special Railway Magistrate
Tinsukia