



**IN THE HIGH COURT AT CALCUTTA**

CRIMINAL REVISIONAL JURISDICTION

[CIRCUIT BENCH AT PORT BLAIR]

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**PRESENT: HON'BLE JUSTICE APURBA SINHA RAY**

**CRR/2/2026**

*T. R. Rakesh Kumar ... Revisionist*

*Versus*

*The State ... Respondent*

For the petitioner : Mr. D. Ilango

For the State : Mr. Sumit Kumar Karmakar

Heard on : 28.01.2026

Judgment on : 03.02.2026

**APURBA SINHA RAY, J.**

1. This revisional application has been filed against the judgment and order dated 19.12.2025 of the Appellate Court of the Learned Sessions Judge, Port Blair in Criminal Appeal No. 7 of 2025 affirming the judgment and order dated 17.02.2025 passed by the Learned Judicial Magistrate First Class-I at Port Blair in G. R. Case No. 120/2019 convicting the petitioner for an offence under Section 3 (1) of the Prevention of Damage to Public Property Act and release him on admonition by invoking the provision of Section 3 of Probation of Offenders Act read with Section 360 of Code of Criminal Procedure.



2. The Learned Counsel for the revisionist Mr. D. Ilango has submitted that although the FIR was lodged on 24.06.2019 alleging the incident occurred on 23.06.2019, the petitioner was arrested on 20.10.2020 i.e. more than 01 year 04 months of the F.I.R. He has also submitted that no Test Identification Parade was carried out. The FIR did not disclose the name of the petitioner. The formal FIR shows that the complaint was made against one unknown person.

3. Mr. Ilango, Learned Counsel has also pointed out that Section 3 of the Prevention of Damage to Public Property Act deals with two ingredients. First there must be an act of mischief and secondly such act of mischief damages certain public properties. Although the allegation was that the petitioner damaged the public properties, no seizure of such alleged damaged properties was made. Even, no such property was brought to the Court during trial. Moreover, nobody from the prosecution witnesses identified the alleged damaged equipment, if any, during trial.

4. Mr. Ilango, Learned Counsel has also pointed out that no expert opinion was called for to substantiate that the public properties as described in the F.I.R. were actually damaged. The petitioner is a young fellow and if his guilt is affirmed by this Court, he will suffer serious prejudice in securing the



government jobs etc., and that is why, the appellant was compelled to file the appeal, although he was released after admonition.

5. The Learned Counsel appearing for the State Mr. Sumit Kumar Karmakar has very evocatively advanced his argument stating that even if the seizure was not made, it should not give a fatal blow to the prosecution case. According to him, if there is direct evidence regarding commission of offence, place of occurrence and time of occurrence, the Court should not disbelieve such evidence only on the ground that damaged properties were not brought before the Learned Trial Court at the time of evidence.

6. Mr. Karmakar, Learned Counsel has further argued that as the father of the petitioner died on 23.06.2019, the petitioner was performing the last rites and rituals for the departed soul and for which he was not arrested.

7. The Learned Counsel for the State has also pointed out that during trial all the PWs identified the petitioner and therefore there is no reason to disbelieve the deposition of said witnesses who had consistently deposed that the petitioner had damaged the properties on the relevant date in the concerned hospital. As the deposition of eye witnesses inspires confidence in the mind of the Learned Trial Court and also in the Appellate



Court, the conviction should not be disturbed in the larger interest of the society.

**COURT'S VIEW :**

8. The duty of the Court is to see whether an allegation made against the accused has been proved beyond reasonable doubt or not. In this case, if we peruse the F.I.R. (Exhibit P-1) we shall find the following contents of the F.I.R. :

“To  
The Station House Officer  
PS Pahargaon,  
Port Blair.

Sub:- Complain for damaging of Govt. property – reg.

Sir,

It is to inform you that I was on call duty on 23<sup>rd</sup> June, 2019 at 7.35PM, duty staff informed me over phone that one patient namely.K.Radhakrishnan S/O Late.T.K.Kumaran R/O sippyghat was brought dead by his Son, Wife and his neighbours.When I examined him and I declared him dead the patient, immediately the patient party started shouting and they have damaged PHC, Garacharma. Medical property such as **Suction Apparatus and Oxygen Regulator with flow meter.**

Therefore,I request you kindly take necessary action against them.

Yours faithfully

Chief Medical Officer  
District Hospital  
Garacharma”.

9. From the above contents, we shall find that the de-facto complainant has alleged that not only one person but the patient party started shouting and ‘they’ had damaged the Suction Apparatus and Oxygen Regulator with flow meter. It



goes to show that not only one person but there are several persons who allegedly committed such offence but the formal F.I.R. shows that the F.I.R. was lodged only against one unknown person.

10. The F.I.R. does not disclose the name of the petitioner as Rakesh Kumar but if we peruse the deposition of PW-1 to PW-4 we shall find that the present petitioner was identified by his name also. When and how did the said witnesses come to know about the name of the petitioner? It is not clear from the evidence of those witnesses. Were they tutored by the prosecution or not, is a debatable issue. In the F.I.R. there is no mention that the son of the deceased damaged the properties. There was no Test Identification Parade of the present petitioner. Then, how did the PWs come to know about the name of the petitioner? These are certainly doubtful issues.

11. The Learned State Counsel has rightly submitted that even if the seized articles are not produced before the Learned Trial Court there are several decisions holding that even in such a case seizure list cannot be doubted. But the nicety of this case is that although there was an allegation that properties of the government were damaged no such properties were seized under a proper seizure list.



12. The Learned State Counsel has taken the plea that as the said apparatus were being used in the government hospital they were not seized. But this is not correct in my estimation, since, it is usually seen that in this type of cases, such properties are seized under a proper seizure list and thereafter the same can be returned to the government hospital after taking a zimmanama bond on condition that the same should be placed before the Learned Trial Court as and when called for. But that is not done here. Although the Investigating Officer has taken photographs of several persons to identify the petitioner by showing those photographs to the alleged eye witnesses, the Investigating Officer did not think it proper to take snaps of those damaged properties. It is astonishing that no such damaged property was produced before the Learned Trial Court. It is also correct that no expert opinion was collected to substantiate the extent of damage. Needless to mention that a relevant fact is to be proved by the best evidence rule.

13. Whether the properties were damaged or not can be proved either by way of producing the same before the concerned Learned Trial Court or by showing reliable expert opinion in support of such alleged damage of the public properties. The photographs of the such damaged properties could have been produced before the Learned Trial Court after



complying with necessary formalities but that was done in this case. It is not correct to say that as the PWs' evidence are consistent, the other deficiencies are to be ignored. It is also not understood that when the Investigating Officer was given certain powers to seize and return the damaged properties to the government hospital authorities after executing the zimmanama bond, why was the same not done, why were the photographs of those damaged properties not taken, why was no such expert opinion called for, are all debatable issues and those have not been properly addressed in both the judgments of the District Judiciary. The prosecution cannot ask to rely on the deposition of specific witnesses particularly when there was opportunity to produce best evidence to prove the case against the accused beyond doubt.

14. Therefore, I find that the prosecution case was not proved in accordance with the settled principles of law and hence, the petitioner is entitled to be acquitted from the charges of the case.

15. The judgment and order dated 19.12.2025 of the Appellate Court of the Learned Sessions Judge, Port Blair in Criminal Appeal No. 7 of 2025 affirming the judgment and order dated 17.02.2025 passed by the Learned Judicial Magistrate



First Class-I at Port Blair in G. R. Case No. 120/2019, is hereby set aside. CRR/2/2026 is allowed.

16. The convict be released at once. He is acquitted from all charges as stated above. Bail bond stands discharged.

17. The revisional application stands disposed of along with all connected applications, if any.

18. Let the Trial Court Record be sent down immediately to the Learned Trial Court along with copy of this judgment.

19. Urgent photostat certified copy of this judgment, if applied for, may be supplied to the parties upon compliance of usual formalities.

**[ APURBA SINHA RAY, J. ]**