

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.L.P. 182 of 2013

THE STATE/RAILWAY PROTECTION FORCE Petitioner
Through: Mr. Jitender Kumar Singh, Advocate.

versus

RAJU

..... Respondent

CORAM: JUSTICE S. MURALIDHAR

ORDER
06.02.2014

1. This petition seeks leave to appeal against the judgment dated 9th October 2012 passed by the learned Metropolitan Magistrate ('MM') in CC 100/3/2012 acquitting the Respondent accused of the offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 ('RPUP Act').

Background facts

2. The case of the Railway Protection Force ('RPF'), which is the complainant, is that, on 7th April 2012, while the RPF officials were on patrolling duty, they apprehended the accused near 'Masjid' at around 10:30 pm. The accused is stated to have been found in possession of one SAB worth Rs. 8,000. When he failed to give any proper explanation as regards the possession of the said railway property, he was arrested and the property was seized. After completion of the inquiry, a complaint was

filed. The pre-summoning evidence was dispensed with and the matter was listed for pre-charge evidence.

3. At the pre-charge stage, the RPF examined Mr. P.S. Verma (PW1) and Sub-Inspector ('SI') Mr. Prem Singh (PW2). After the charges were framed against the accused under Section 3 of the RPUP Act, the aforementioned witnesses were recalled for further cross-examination. Additionally, the RPF examined Assistant Sub-Inspector ('ASI'), Mr. G.P. Meena (PW3), Constable Sattar Ahmed (PW4), Constable Ramesh Kumar (PW5) and ASI Kabul Chand (PW6).

4. The prosecution case, as it emerged through the evidence of the above witnesses, was that PWs 2, 4 and 5 were on patrolling duty and were proceeding from the Coaching yard to Sadar Bazar, when they apprehended the accused carrying a cylindrical object, which later turned out to be an SAB. The seizure memo prepared by them was Exhibit PW2/A. According to the RPF, the accused made a disclosure statement (Exhibit PW2/B), pointing out the place of theft about which a memo (Exhibit PW2/C) was drawn up, and also made a confessional statement admitting to his guilt (Exhibit PW2/E). PW1 is stated to have issued a theft memo (PW1/A) when he found one SAB missing between washing lines 7 to 10 towards Sadar Bazar on 7th April 2012. On 19th April 2012, PW1 verified the case property as being the same which was the railway property and gave his report (Ex.PW1/B).

5. The Respondent accused denied the allegation and pleaded innocence.

He stated that he had come to take bath near the railway station from where he was called by a police official and locked up for two days in the police station. A senior official came on the third day and told the accused that he would be released after 1¹/₂ months and gave him beatings.

The decision of the trial court

6. The trial court noticed that the Supreme Court has in *State of Maharashtra v. Vishwanath Tukaram Umale AIR 1979 SC 1825* explained the three ingredients of Section 3 of RPUP Act, required to be established by the prosecution, as under:

- “(i) the property in question should be railway property.
- (ii) it should reasonably be suspected of having been stolen or unlawfully obtained and
- (iii) it should be found or proved that the accused was or had been in possession of that property.”

7. On the first ingredient, there was no doubt that the property in question was railway property. As regards the other ingredients, the learned MM first analysed the requirements under the Railway Protection Force Regulations 1966 (‘RPF Regulations 1966’) regarding maintenance of records and registers and opined that the failure by the prosecution to bring on record the original DD entries concerning the departure of the RPF officials for patrolling duty as well as the original DD entries concerning the arrest of the accused and the recovery of case property, rendered the prosecution case doubtful. Although DD entry No. 31 dated 7th April 2012 concerned the arrest of the accused, recovery of the case

property and the original thereof was never produced in the Court. The second shortcoming was that no public person was associated with the inquiry, at any stage of the inquiry prior to the filing of the complaint. It was not even shown that the RPF officials requested any public person to join the proceedings. Further, two of the three recovery witnesses, i.e. PW1 and PW4, could not say on what part of the body the accused was carrying the case property.

8. The learned MM next discussed the requirement of maintenance of 'localised' and 'unlocalised' crime registers. It was noted that the fact of the theft being noticed on 7th April 2012 (Exhibit PW1/A) was not entered in the register as mandated by the relevant rules. Secondly, the testimony of PW1 regarding the theft and the arrest of the accused together with seizure from him of the railway property on 7th April 2012 was doubtful. As regards the alleged confessional statement of the accused, it was noted that other than PW2, none of the recovery witnesses affixed their signatures on the said statement. It was observed by the learned MM that it was beyond comprehension as to why the accused would confide in an armed police official and make a detailed confessional statement without force or threat. Accordingly, it was held that it was unsafe to convict the Respondent only on the basis of the said confessional statement.

The position under the RPF Rules

9. Learned counsel for the Petitioner first submitted that the reference by the learned MM to the RPF Regulations 1966 was misplaced, since the

said Regulations had been repealed by Rule 280.1 of the Railway Protection Force Rules 1987 ('RPF Rules 1987').

10. While learned counsel for the Petitioner is right in his submission that the RPF Regulations 1966 stands repealed, it is not as if there are no other rules to replace the said Regulations. Rule 268 of the RPF Rules 1987 titled 'Records and Registers' reads as under:

“The records and registers to be maintained in the office of superior officers, Posts, Companies out-posts detachments and other units and the proformae therefor shall be such as may be specified by the Director-General from time to time.”

11. Rule 222.1 of RPF Rules 1987 requires that all the cases of crime affecting railway property shall be entered in the “localised” crime register” or in the “unlocalised” crime register, as the case may be. On the facts of the present case, it is clear that the crime that allegedly took place was a “localised” crime since it purportedly took place within the jurisdiction of the Railway post. Rule 222.1 is in relation to “theft or pilferages or misappropriation of the railway property”. Railway property could be “booked consignment and railway material.”

12. It was sought to be submitted by learned counsel for the Petitioner that the aforementioned crime registers are intended only to deal with the situation of theft and pilferage of parcels booked for transport by Railways and are meant only for the purpose of internal inquiry by the Railways. The above submission overlooks the detailed provision in RPF Rules 1987

concerning “investigation and prosecution in Chapter XIV of RPF Rules 1987.”

13. Rule 222.1 requires the reports of crimes against railway property to be entered in the records and registers as specified by the Directives. Rule 221.2 requires the Post Commander to convey to the higher authorities, as may be specified by the directives, the gist of the report of the crime against the railway property. The Post Commander is expected to make all possible efforts to investigate the case, recover the stolen property, arrest the offenders and put them up for trial before the Court. Under Rule 221.3, where the Post Commander is not empowered to take action for any crime against the railway property, he shall lodge a complaint with the police station having jurisdiction. Under Rule 221.4, if as a result of inquiry, the Post Commander finds that no offence actually took place, then he could, after obtaining orders from the Divisional Security Commissioner, expunge the case from his records and inform the police station.

14. A collective reading of Rules 221.1 and 221.2 of RPF Rules 1987 shows that the requirement of maintaining a record of crime against railway property is not only mandatory for the purpose of an internal inquiry in every case but also preparatory to the case being registered as a criminal case with the localised police station having jurisdiction. In other words, the inquiry at the level of RPF precedes the investigation by the police since the complaint would be filed on the basis of such inquiry by the RPF.

15. Under Rule 222.5, the localised crime register requires two summaries to be prepared – one cause-wise and the other commodity-wise. The cause-wise summary is to have the following sub-headings:

- (a) Running Train Thefts;
- (b) Yard Thefts;
- (c) Goods Shed, Parcel Godowns and Platform Thefts;
- (d) Pilferages;
- (e) Thefts of fittings from Rolling Stock;
- (f) Thefts of Railway Material including coal (except theft of fittings from rolling stock);
- (g) Miscellaneous”

16. Rule 223 deals with seizures and recoveries of railway property. All seizures or recoveries of railway property are to be entered in *Malkhana* register and an entry to that effect is to be made in the concerned crime register after it is classified as – (a) pertaining to cases in which theft or shortage memo has been issued or received; and (b) where no such memo has been issued or received. Further, Rule 223.1 states that “In respect of the first category, whenever any property is recovered or criminals are taken into custody, relevant entries shall be made in the “Localised Crime Register” against the particular crime already registered. Such a seizure shall not be reflected separately in the RP(UP) Act Register though such seizures shall invariably be taken into account for compilation of statistics in respect of action under the Railway Property (Unlawful Possession) Act, 1966.”

17. Rule 223.4 of the RPF Rules underscores that there is an interlinking between the records maintained by the RPF and the action taken by the police. The said Rule reads as under:

“Any railway property recovered by the Police shall also be reflected in the records of the Post along with the particulars of the criminal (s) for purposes of accounting.”

18. In view of the above clear provisions of law, the Court rejects the submission of learned counsel for the Petitioner that the entries in the above registers are only for the purpose of internal inquiry by the police and are not mandatory as regards the criminal case that would be registered as a consequence with the police.

19. Rule 231 specifically talks of “Prosecution of cases and disposal of seized or recovery property.” Under Rule 231.1, on the completion of inquiry in cases where a criminal has been arrested in connection with any offence against the railway property, there could be two courses of action – one is to close the case for lack of sufficient evidence and the other is to launch a prosecution. In the either case, it should be entrusted to the prosecution branch for scrutiny and for conducting the case if any in the Court of law.

The RPF Rules are mandatory

20. The above provisions abundantly make it clear that the actions taken by the RPF have to be strictly in terms of the procedure outlined under the RPF Rules 1987, and any infraction of the said Rules would invalidate such action. There can be no doubt that as far as the present case is

concerned, RPF failed to demonstrate before the learned MM that the various theft memos and seizures memos, copies of which were produced before the Court, actually formed part of the original railway record maintained in terms of the aforementioned Rules. The learned MM cannot be faulted for discarding the above evidence since the original registers were not produced.

21. The RPUP Act defines the offences and prescribes the punishment. The offence under Section 3, the ingredients of which were explained by the Supreme Court in *State of Maharashtra v. Vishwanath Tukaram Umale* is punishable with imprisonment for not less than one year and a fine not less than Rs. 1,000 for the first offence and for the second or subsequent offence, the imprisonment may extend to five years. In such event, the imprisonment cannot be less than two years except for special and adequate reasons and the fine not less than Rs. 2,000. The word 'force' occurring in RPUP Act means the RPF constituted under Section 3 of RPF Act, 1957. Under Section 8(1) read with Section 8(2) of RPUP Act, an officer of the RPF exercises the power of an officer in-charge of a police station under the Cr PC. Section 6 gives him the power to arrest without a warrant. Since police powers have been given to the officers of RPF to deal with the suspects, it is all the more essential that they should scrupulously follow the procedure prescribed under the RPF Rules which govern their functioning.

22. The Court accordingly holds that the procedures outlined under the RPF Rules 1987, and, in particular, those regarding entries to be made in

the crime registers, both as regards the theft of railway property as well as the apprehension of a suspect and recovery of the stolen railway property from him, are mandatory.

23. Under the RPF Regulations 1966, there was a requirement for the RPF to maintain registers which would show the movement of the Railway staff on patrolling duty. Although the said Regulations stand repealed, it is not known whether under Rule 268 of the RPF Rules 1987, the proforma of the records and registers for maintaining the entries of such movement have been prescribed. In any event, when the question arises whether an RPF officer was on patrolling duty at a particular point in time when the suspect was apprehended, the burden would be on the RPF to prove before the Court by producing such records and registers in original that the movement of the RPF officers involved in the arrest is reflected in the register maintained for that purpose.

24. The insistence on the procedure established by law being followed is essentially on account of the fact that the vast powers vested in the RPF under the RPUP Act and the RPF Rules has the potential of depriving a person of his liberty and abrogating his constitutional rights. The provisions would, therefore, have to be interpreted strictly and any violation of the mandatory procedure would result in the benefit of doubt being given to the accused.

25. As far as the present case is concerned, the learned MM was entirely

justified in doubting the prosecution evidence on account of the failure of RPF to produce the original registers.

Public witnesses to arrest and seizure

26. In many of these cases, it may not be possible for the RPF to associate public witnesses at the time of apprehension of the accused, given the hour of the day when such arrest takes place. Nevertheless, there must be contemporaneous entries made in the records maintained by the RPF to indicate that an attempt was made to associate public witnesses. In other words, the requirement of associating public witnesses must not be treated as a mere formality. It must not be presumed by the RPF in every case that the requirement can be dispensed with.

27. Where there are no public witnesses involved, a trial Court is bound to view with suspicion the confessional statement made by an accused in the presence of the RPF officers. It has been held in ***Balkishan Devidayal v. State of Maharashtra (1981) SCC (Crl) 62*** that the statement made to an RPF officer will not be hit by Section 25 of the Evidence Act, 1872. In ***Babu Lal v. State 1977 Crl. L.J. 2008 (All)***, it was held that the statements recorded by the officers of the RPF during the investigation do not attract the provisions of Section 162 Cr PC. In ***Chinna v. State, (1977) 2 Karn LJ 480***, it was held that the statements recorded by an officer of the RPF in the course of inquiry can be read in evidence. This makes it all the more necessary for the Court to cautiously evaluate the confessional statement purportedly made by an accused to an officer of the RPF soon after his arrest. The Court will have to be satisfied that the

statement was voluntary. Otherwise, it will be a denial of a just, fair and reasonable procedure and constitute a violation of Article 21 of the Constitution as well. The voluntariness of the statement will have to be tested on a case by case basis and evaluated in light of the attendant circumstances of each case. Where there are no public witnesses associated, or where, as in the present case, all the RPF officers stated to have been present at the time of the arrest do not sign the confessional statement, or where, as in the present case, the entries mandatorily required to be made in the registers maintained under the RPF Rules as regards the arrest of the accused and the seizure of the railway property are not proved by producing the original registers, it would be unsafe for the Court to proceed to convict the Respondent only on the basis of his confessional statement.

Conclusion

28. In the present case, the learned MM was justified in declining to convict the Respondent only on the basis of his purported confessional statement, which, in the circumstances, could not be said to be voluntary.

29. No grounds for grant of leave to appeal have been made out by the Petitioner. The petition is accordingly dismissed.

30. Copy of this order be delivered to the Railway Magistrate(s), Delhi as well as General Manager (Legal), Railways through counsel for Petitioner.

S. MURALIDHAR, J.

FEBRUARY 06, 2014 /tp