



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.25 OF 2021**

R.P.F. Loco, Bhusawal,  
Dist. Jalgaon,  
For Central Railway

**.. Applicant**

**Versus**

1. Sudhakar @ Sudam Hari Tayde  
Age: 50 years,  
R/o. 40, Bunglow, Near Buddha  
Wihar, Bhusawal, Tq. Bhusawal,  
District Jalgaon.
2. Dilip Onkardas Bairagi (Pardeshi)  
Age: 42 years,  
R/o. 40, Bunglow, Near Buddha  
Wihar, Bhusawal, Tq. Bhusawal,  
District Jalgaon.
3. Kashinath @ Kashya @ Jadugar  
Bhivsan Jadhav, Age: 54 years,  
R/o. Mata Yashoda Nagar,  
Behind Buddha Wihar, Bhusawal,  
Tq. Bhusawal, District Jalgaon.
4. Rajendra Sing Bist,  
Age: 59 years,  
R/o. Railway Awas No.TYFD/2/D,  
Bhusawal, Tq. Bhusawal,  
Dist. Jalgaon.
5. Ratiram Bhaniram Kushwah,  
Age: 50 years,

R/o. Saraswati Nagar,  
Near Jalasa Baba Darga  
Bhusawal, Tq. Bhusawal,  
District Jalgaon.

6. Gajraj Sing Vishnu Sing,  
Age: 53 years,  
R/o. Railway Quarter  
No.RBI-740/A+B  
Chandmari Chawl, Bhusawal,  
Tq. Bhusawal, District Jalgaon.

7. Sachin Yashwant Sonavane  
Age: 40 years,  
R/o.40, Bungalow, Near Buddha  
Wihar, Bhusawal, Tq. Bhusawal,  
District Jalgaon.

**.. Respondents**

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Mr. Rahul B. Bagul, Advocate for the appellant.

Mr. Swapnil S. Patil, Advocate for Respondent Nos.4, 5, and 6.

Mr. Navin Shah, Advocate for respondent Nos.3 and 7.

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**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 30.09.2026

Pronounced on : 01.10.2026

**ORDER :-**

1. Dissatisfied by the judgment and order dated 29.09.2020 passed by the learned Judicial Magistrate First Class (Rly.), Bhusawal, acquitting accused Nos.1 and 3 to 7 and discharging accused No.2, the original complainant has preferred the present application seeking

leave to file an appeal.

2. Learned Counsel for the applicant would point out that complaint is Railway Police Force Loco, Bhusawal and has both movable as well as immovable properties. That, informant noticed theft of movable railway property and, therefore, inquiry was conducted and, thereafter, complaint was lodged. That, after gathering sufficient evidence, seven accused were duly charge-sheeted. He pointed out that, as accused No.2 was not traceable, the trial against him was separated, while the remaining accused were duly tried by the learned Judicial Magistrate First Class, Railway Court, Bhusawal. He pointed out that before trial Court, complainant's case was rested on testimony of as many as 12 witnesses and reliance was also placed on documentary evidence. That, there was overwhelming evidence in support of the charge and accusations. However, learned trial Court acquitted accused Nos.1 and 3 to 7 and discharged accused No.2 by invoking Section 245 Criminal Procedure Code. That, said acquittal is without assigning sound reasons.

3. Learned Counsel for the applicant took this Court through the provisions of the Railway Property (Unlawful Possession) Act, 1966 [for short "R.P.U.P. Act"], more particularly Sections 8 and 9 of the

said Act. According to him, the above provisions empower the authorized officer to record a confessional statement. There were confessional statements of the accused, however, the learned trial Court discarded the said evidence. He pointed out that even the CDR/SDR, demonstrating contact between the accused inter se as well as possession of the goods by the accused, was not correctly comprehended and appreciated. According to him, the complainant has a good case on merits and, therefore, he urges for leave to file appeal.

4. Per contra, both the learned Counsel representing each of the accused justify the judgment and order of acquittal. The common point advanced by them is that firstly there was no cogent, reliable or direct evidence about accused committing theft and secondly, there to be inadmissible evidence in the form of confessional statements. They seek reliance on the following judgments :-

- 1) *Nikhil Chandra Mondal vs. State of West Bengal*, (2023) INSC 198 : (2023) AIR (SC) 1323;
- 2) *The State of Maharashtra vs. Nizamuddin Kutubuddin Ansari*, [Criminal Appeal No.395 of 1998 decided by this Court on 20.08.2015]
- 3) *Union of India, through Railway Protection Force, District Akola vs. Mohomad Harun s/o Mainudkhan*, [2018 ALL

MR (Cri.) 2120];

- 4) ***Union of India Through RPF Inspector, Railway Protection Force, Akola vs. Imadkhan Afroz Khan and others***, [Criminal Application [APPA] No.91 of 2022 decided by this Court Bench at Nagpur on 18.04.2026].

5. After hearing above respective submissions and on going through the papers, it appears that, on behalf of complainant, one Gawai lodged complaint regarding theft of railway property i.e. copper wire. Said complaint was in the backdrop of inquiry conducted by PW10 and PW12. Charge was invoked under Section 3 of the R.P.U.P. Act, which reads as under :-

***3. Penalty for theft, dishonest misappropriation or unlawful possession of railway property.—Whoever commits theft, or dishonestly misappropriates or is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable—***

*(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;*

*(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.”*

6. As usual, the evidence of the complainant and the authorities who conducted the inquiry, being crucial, is dealt with at the outset. Informant Gawai has deposed in the capacity of **CW3** at Exhibit-84. In his testimony, he seems to have reiterated the prosecution case regarding noticing five bags containing pieces of copper wire lying behind the compound wall of POH. He claims to have reported it to the higher authorities and thereafter, watch was said to be kept over the goods. According to him, secret information was received that one Kashya was behind the theft and he had committed the offence of theft by conniving and conspiring with some of the railway staff. He seems to be arraigned as accused No.3. It is noticed that the reason for the ill-treatment of accused No.3 was that he had earlier also indulged in theft of railway property, and it is claimed that information had been received that the said accused was likely to commit theft of the goods moved and kept behind the compound. However, while facing **cross-examination**, he seems to have admitted

that he has no details about accused No.3 and was also not in a position to identify accused No.3. Even his testimony shows that mere suspicion was raised that accused No.3 might commit theft. Therefore, it is doubtful whether the actual act of theft was committed at all. When such is the quality of the evidence of the informant himself, at whose instance the complaint was registered, serious doubt arises regarding the authenticity of the information about the involvement of accused No.3 and some of the other accused, including the railway staff. Apparently, the very act of theft was not shown to be committed and goods lying behind the compound wall are appear to be directly seized and crime came to be registered.

7. The fundamental ground raised by learned Counsel for the applicant is that there were confessional statements recorded by inquiry officer. However, as pointed out by the learned Counsel for the respective respondents, the learned Judicial Magistrate First Class appears to have relied upon the judgment of this Court in the case of *State of Maharashtra v. Nizamuddin Kutubuddin Ansari [Criminal Appeal No. 395 of 1998, decided on 20.08.2015]*, while rejecting the prosecution case and refusing to act upon the confessional statements recorded by the Inquiry Officer.

8. Similarly, based on the confessional statements of the accused taken in custody, remaining accused appear to have been implicated. Therefore, conviction solely on the basis of confessional statements cannot, by any means, be recorded. The learned Counsel for the respondents/original accused have relied on the judgments in the case of ***Nikhil Chandra Monda*** (supra) wherein it has been held that an extra judicial confession is a weak piece of evidence needing independent corroboration. Further, it is held that an acquittal is not disturbed unless it is perverse or impossible. Again, in ***Union of India vs. Imadkhan Afroz Khan*** (supra), it has been held that an RPF confession cannot be relied, if the panchas are not examined and Rules 14 and 15 of the Manual of Railway Laws are not complied with. Similarly, in ***Union of India vs. Mohomad Harun s/o Maimudkhan*** (supra), it has been held that an RPF confession is admissible, but cannot be relied, unless clauses 14 and 14(1) is followed. Lastly, in ***State of Maharashtra vs. Nizamuddin*** (supra), it has been held that an RPF confession must be proved voluntarily. It cannot be sole basis of conviction.

. Here, procedure as contemplated does not seem to have been followed.

9. Lastly, in the light of above discussion and taking into consideration the above judgments, and no good ground made out on merits so as to accord leave, the same is refused. Hence, the following order is passed :-

**ORDER**

. Application is rejected.

**[ABHAY S. WAGHWASE, J.]**

scm