

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 66 OF 2000

The State of Maharashtra
(Through the Inspector of Police
R.P.F., Lonavla,
Distt. Pune).

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APPELLANT
(Orig. Complainant)

-: Versus :-

1. Razak Mohammad Tamboli
Age about 40 yrs., Occ.: Business.
2. Sattar Mohammad Tamboli,
Age 36 yrs., Occ.: Business.
3. Mohammad Iqbal Rangrej,
Age about 39 yrs., Occ.: Business,

All r/o Star Scrap Centre,
Near Hariom Traders, Dehu Road,
Distt. Pune.

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RESPONDENTS
(Orig. Accused)

Ms Sharmila Kaushik, A.P.P. for the appellant-State.
None for the respondents.

CORAM : S. B. SHUKRE, J.
12th JUNE, 2015

ORAL JUDGMENT

1. This is an appeal preferred against the judgment and order dated 22/7/1999 passed by Judicial Magistrate, First Class, Railway, Pune in R.C.C. No.93/97, thereby acquitting the respondents of the offence punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 ("the Act of

1966”, for short). Briefly stated, the facts of the case are as under.:

Respondents No. 1 and 2 are the brothers, who deal in the business of scrap material. Respondent No.3 was doing service at the scrap shop, named 'Star Scrap Center' owned by respondent No. 1. Respondent No.2 owned a godown situated near Hariom Traders, Dehu road.

Two accused persons namely Laxmi Yallama and Pavitra Kingkong came to be arrested on 13/9/1997 in connection with theft of railway property. During the course of inquiry these two lady-accused confessed to inquiry officer Mr. Sharma that after stealing the railway property, they had sold the stolen property to the respondents. Therefore, a search warrant under Section 10 of the Act of 1966 was obtained from the inquiry officer by the Magistrate and seized the property, which was later-on identified to be a railway property, from the godown of respondent No.2. All the respondents confessed to purchasing of the stolen railway property and since they were found to be possessing the stolen railway property, a complaint was filed against the respondents by the inquiry officer before the Court of Railway Magistrate, First Class, Railway Court, Pune.

Particulars of the charge were read over and explained to the respondents. As they denied the same and claimed to be tried,

they were tried in accordance with law. On merits of the case, learned Magistrate found that the offence that was charged against the respondents was not proved beyond reasonable doubt by the prosecution and, therefore, the learned Magistrate by his judgment and order dated 22/7/1991, acquitted the respondents of the offence punishable under Section 3(a) of the Act of 1966. Not being satisfied with the same, the State is before this Court in the present appeal.

2. I have heard learned A.P.P. for the appellant-State. None appears for the respondent. I have carefully gone through the case papers and the impugned judgment and order.

3. Although learned A.P.P. for the State has in her argument made an attempt to assail the judgment and order on the ground that the finding recorded by the Magistrate that search warrant that was issued under Section 10 of the Act of 1966 was ambiguous and there was a doubt about from where the property was actually seized is not based upon the evidence, I find the position to be otherwise.

4. The learned Magistrate, after considering the contents of the search warrant vide Exh.37 and also the evidence of the inquiry officer, Mr. Sharma, found that the inquiry officer himself was not sure as to who was the owner of the shop, "Star Scrap Center" as the issuance of warrant was sought in the name of

accused Sattar Mohammad and also accused Razaq Mohammad, whereas the search warrant came to be issued against “Star Scrap Center” in the name of Sattar Mohammad, i.e. accused No.2 (owned by Razaq Mohammad). In such a case, the search warrant should have been issued against specific property and person and if it was not so issued, the consequent search taken by the inquiry officer was rendered invalid. The search warrant having been issued against Star Scrap Center in the name of Sattar Mohammad Tamboli, accused No.2 (shown to be owned by Razaq Mohammad), the entire search and seizure operation was rendered invalid and, therefore, it was rightly held as striking a fatal blow to the prosecution case. The entire case of the prosecution rested upon the outcome of the search of the godown of respondent No.2 based upon the search warrant vide Exh.37 and if the search warrant was invalid, the seizure made in execution of the search warrant could not be accepted as reliable.

5. There are also doubts about preparation of panchanama vide Exh.23. The prosecution has examined Kazi Bahouddin as P.W.-5 in order to support its story that the railway property was seized in his presence from the godown of respondent No.2. However, signature of P.W.-5 does not appear on the panchanama (Exh.23). His statement was also not recorded by the inquiry officer and no explanation about the same

has been given by the prosecution. He has stated that different person stood as panch for the seizure of the railway property. According to him, Nazir Khan, Constable Pasalkar together with Dehuroad RPF staff personnel were present, although, neither P.W.-1 Maheshchandra Sharma nor the complainant has disclosed about the presence of these three persons at the time of seizure. Thus, there are material discrepancies in the panchanama (Exh.23) and the panchanama cannot be relied upon for accepting the story of the prosecution regarding seizure of railway property from the possession of the respondents.

6. Thus, on the whole, I find that the evidence of the prosecution in the instant case is sketchy in as much as the entire search and seizure operation is suspect having been based upon unspecific and ambiguous search warrant. Therefore, rejection of evidence of the prosecution by learned Magistrate cannot be seen as erroneous or perverse. No case is made out for making any interference with the impugned judgment and order. The appeal deserves to be dismissed.

The appeal stands dismissed.

S. B. SHUKRE, J.