

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 135 OF 2000

[illegible]

-: Versus :-

Riyat Mohiddin Ansari
r/o Shivaji Road, Bhsidam,
Ramnagar, Lonawala,
Tal. Mawal,
Distt. Pune.

:: **RESPONDENT**
 (Ord. Accused)

Ms G. P. Mulekar, A.P.P. for the appellant-State.
None for the respondent.

CORAM : S. B. SHUKRE, J.
24th JUNE, 2015

ORAL JUDGMENT

1. This is an appeal preferred against the judgment and order dated 07/10/1999 delivered in R.C.C. No. 41/97 by Judicial Magistrate, First Class, Railway Court, Pune. Briefly stated, facts of the case are as under.

The offence alleged against the respondent is one of unlawful possession by him of railway property. Complainant, S. L. Sainee, Inspector, Crime Branch, Railway Protection Force, Pune had received an information about unlawful possession of

railway property by the respondent and that it was kept by the respondent in his godown situated at Ramnagar, Lonavala. Therefore, the Inspector obtained search warrant from the Court and together with other R.P.F. personnel and panchas proceeded to godown of the respondent situated at Ramnagar, Lonavala for taking search on 11/3/1997. After reaching there at about 4.30 p.m., the Inspector conducted search of the godown in presence of panchas and found that there were 10 A.C.B. plates and 5 brake blocks worth Rs.1,000/-, apparently belonging to Indian Railway stored in the said godown. On enquiry, respondent produced one receipt stating that it was issued by one A. M. Lokhandwala. He also stated that it was issued to him after the said property was purchased by him from the said person. The Inspector, therefore, made enquiry with said Lokhandwala. But, he was told by Lokhandwala that the receipt was not issued by him. The Inspector got convinced that respondent was in unlawful possession of the railway property and, therefore, after seizing the property, he placed him under arrest. The respondent also confessed to his crime. A report of an expert from Indian Railway was also obtained, which confirmed that the property seized in this case belonged to Indian Railway. Statements of witnesses were recorded. 7/12 extract in respect of piece of land where godown in question was situated was also obtained. The licence

for running scrap material business stood in the name of Zeenat, wife of the respondent. But, the statements of witnesses recorded by the Inspector disclosed that Zeenat did not look after the business and it were the respondent only who was carrying on the scrap business. On completion of investigation, the Inspector filed a complaint before the Railway Court.

Charge for an offence punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 (hereinafter referred to as “the said Act”) was framed, read over and explained to the respondent. As the respondent pleaded not guilty to the same, he was tried in accordance with law.

On merits of the case, learned Magistrate found that the evidence was wanting on material aspect of the case i.e. the seized property as not belonging to the respondent and, therefore, learned Magistrate vide judgment and order dated 07/10/1999, acquitted the respondent of the offence punishable under Section 3(a) of the said Act. 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 State. Nobody has appeared on behalf of the respondent. I have carefully gone through the record of the case and also the impugned judgment and order.

3. It is seen from the impugned judgment and order that

learned Magistrate has found that seizure of the property in this case was doubtful in nature and that the original receipt, though handed over by respondent to Inspector Mr. Saini, the complainant, during the course of investigation, as disclosed by the prosecution evidence, was not adduced in evidence by the prosecution and what was produced was only a photo-stat copy of the same, which created doubt about the fairness of the prosecution of the respondent in this case. He has found that the Inspector, although having received from the respondent a receipt of the property, which according to the respondent, disclosed that the seized property was purchased by him from one Lokhandwala, thereby showing that he was a bona fide purchaser, no enquiry was made by the Inspector as to whether the photo-stat copy of the receipt vide Article-A was genuine or not and whether the respondent purchased it under a valid receipt or not. The learned Magistrate has also found that on 14/3/1997, Mr. Saini, the complainant, had been to Khar, Mumbai and had enquired with P.W.-12 Amirali Darediya. But this witness refused to give his any statement in the matter. The learned Magistrate found that said Amirali was the alleged seller of the seized property to respondent and, therefore, the complainant ought to have issued him a summons under Section 9 of the said Act for production of the record pertaining to issuance of the receipt, but, same was not

done by the complainant Mr. Saini, which created doubt about his motive in filing complaint against the respondent.

4. The above referred observations of the learned Magistrate appear to be consistent with the facts which have appeared in the evidence of the prosecution witnesses, particularly the evidence of P.W.-5 Zeenat and P.W.-12 Amirali. Learned A.P.P. also could not show to me that said findings on facts recorded by Magistrate are not based upon evidence available on record. Therefore, I find that the learned Magistrate is right when he concludes about the doubtful nature of the enquiry made by Mr. Saini, the complainant, in the matter. It appears that no genuine effort was made to ascertain as to whether or not the property belonged to Indian Railway. When the original receipt had been handed over by the respondent to the complainant, the complainant ought to have made proper enquiry in the matter to ascertain as to whether or not the receipt that was given to him was genuinely issued by the person whom the respondent called as seller of the seized property to him. Since this has not been done by the investigating officer, benefit of doubt in this case deserves to be given to the respondent.

5. In the circumstances, I find, the prosecution failed to prove beyond reasonable doubt the fact that on 11/3/1997, the respondent was found to be in unlawful possession of railway

property. No case has been made out by the prosecution so as to make any interference in the impugned judgment and order. The appeal deserves to be dismissed.

Appeal stands dismissed.

S. B. SHUKRE, J.