

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1177 OF 2002

The State of Maharashtra. ... Appellant.

V/s.

1. Anil Namdeo Yadav,
Age: about 24 yrs., Occ.: Driver,
R/o. Rayapada, Malad, Mumbai.
2. Manik Ramhari Hasbe,
Age: about 21 yrs., Occ.: Cleaner,
R/o. Rayapada, Malad, Mumbai.
3. Prakash Haiba Jadhav,
Age: about 30 yrs., Occ.: Driver,
R/o. Rajendra Nagar, Duttapada Road,
Borivali (East), Mumbai.
4. Rizwan @ Nizan Usman Khan,
Age: about 25 yrs., Occ.: Businessman,
R/o. Charkop, Ganesh Nagar Society,
Kandivali (West), Mumbai.
5. Amir Ali @ Bhupat Mohanbhai Daredia,
Age: about 33 yrs., Occ.: Businessman,
R/o. Dana Jairam Wadi, Plot No.863,
Room No.41, Bandra (W), Mumbai.
6. Vinesh Kumar Bolaram Sharma,
Age: about 30 yrs., Occ.: Service,
R/o. Railway Colony, 83/2,
Andheri (East), Mumbai.

7. Jagadish Hasmukhlal Chavan,
Age: about 29 yrs., Occ.: Service,
R/o. Ramkrishna Chawl, Room No.4,
Apna Nagar, Kandivali (E), Mumbai. ... Respondents.

Mrs.A.S.Pai, APP for the appellant- State.

None for the respondent.

CORAM : S.B. SHUKRE, J.

DATED : 15th October 2015.

JUDGMENT :

This appeal has been preferred against the judgment and order dated 3rd May 2001 passed by the Judicial Magistrate, First Class in R.C.C. No. 43/1994 thereby acquitting all the accused persons i.e. respondents herein of the offences punishable under sections 3 and 4 of the Railway Property (Unlawful Possession) Act ("said Act" for short). Briefly stated, the facts of the case are as under:

The allegations against accused Nos.1 to 5 and 7 are that they, in furtherance of their common intention, illegally took away the property belonging to the Railways, which consisted of 52 C.S.T. 9 plates, 104 crossing blocks, and 321 bearing plates together valued at Rs.42,000/- from the Bhayander Godown of the Indian Railways with active assistance as well as in connivance with RPF Inspector Vinesh Kumar Sharma, accused No.6/respondent No.6 on 26th May 1994 and

thereby all the respondents committed offences punishable under sections 3 and 4 of the said Act. A complaint was filed by Inspector- Ashok Sawant for taking action in accordance with law against all the respondents on these allegations. Upon finding that there were grounds to proceed against respondent Nos.1 to 7, process was issued to all these respondents and evidence before charge was recorded. As prima facie case was found to be made out against the respondents, learned Magistrate framed charge for offences punishable under sections 3 and 4 of the said Act. The respondents pleaded not guilty to the charge framed. Accordingly, they were tried on the said charge by the learned Magistrate. On merits of the case, learned Magistrate found that the offences with which the respondents were charged were not proved beyond reasonable doubt and, therefore, by judgment and order dated 3rd May 2001, the learned Magistrate acquitted the respondents of both the offences. Being not satisfied, the prosecution is before this Court in the present appeal.

2. I have heard Mrs.Pai, learned A.P.P. for the appellant- State. Nobody has appeared for the respondent. I have carefully gone through the record of the case including the impugned judgment and order.

3. Upon perusal of the impugned judgment and order the impression that one gets is that the learned Magistrate has not properly appreciated the evidence on record, rather has not marshalled the relevant facts and has given extremely insufficient reasons for recording a finding of innocence of the respondents. Therefore, it has now fallen upon this Court to assess the evidence carefully. Accordingly, with the

assistance of the learned A.P.P for the State, I have carefully gone through the evidence of all the 23 witnesses examined on behalf of the prosecution.

4. Upon considering the evidence on record what comes out to the fore is that the prosecution has failed to establish the core of the allegations against the respondents. The respondents were charged for the offences punishable under sections 3 and 4 of the said Act, the essential ingredient of which is the unlawful possession of the property belonging to the Indian Railways. So, what was necessary for the prosecution in the instant case was to prove beyond reasonable doubt the factum of ownership of the Railways in respect of the property alleged to be stolen by respondent Nos.1 to 5 and 7 with the active assistance of respondent No.6- Vinesh Kumar Sharma. However, the evidence adduced by the prosecution on this aspect of the case is extremely inadequate and leaves much to be desired. There is only one witness i.e. P.W.4- Venkatrao, Permanent Way Inspector, working with the Indian Railways, who was examined by the prosecution to prove the aspect of ownership. This witness upon examination of the material from the truck in question issued a certificate vide Exh.86. According to him, this material was usable in railway tracks. This witness has nowhere stated or asserted in a positive way that the material belonged to and was owned by the Indian Railways. On the contrary, he admits that the material could be manufactured by the private manufacturers upon supply of necessary drawings by the Indian Railways. This admission on his part creates a possibility of material being procured from the sources other than the

Railways. The possibility of material belonging to some other source is, however, not ruled out by the prosecution evidence. The cumulative effect of this evidence would be that no culpability could be seen in the action of respondent Nos.1 to 7. As stated earlier, there is no evidence brought on record showing clearly or by the standard of proof beyond reasonable doubt the factum of ownership of the Indian Railways with respect to the stolen property. Therefore, I am of the view that even though the reasons stated in the impugned judgment and order for acquitting the respondents are inadequate and improper, this is not a fit case for this Court to make interference in the impugned judgment and order. The appeal deserves to be dismissed.

5. The appeal stands dismissed.

(S.B. SHUKRE, J.)