

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.141 OF 2013

UNION OF INDIA (THE STATE))...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ORS.)...RESPONDENTS

Mr.T.J.Pandian, Advocate for the Applicant.

Ms.S.S.Kaushik, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 10th FEBRUARY, 2015.

P.C. :

1 Respondent nos.2 and 3 herein were prosecuted on the allegation that they had committed an offence punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966. The learned

Judicial Magistrate First Class (Railways) Manmad, after holding a trial found respondent nos.2 and 3 not guilty and passed the order of acquittal. The Union of India is aggrieved by the said order of acquittal, and is, by the present application, seeking special leave to appeal therefrom.

2 I have heard Mr.T.J.Pandian, the learned counsel for Union of India. With his assistance, I have gone through the impugned judgment and the notes of evidence that was adduced during the trial.

3 The case of the complainant – one Shivprasad Bhawarsingh Yadav, who was, at the material time, working as an Inspector of the Railway Protection Force at Chalisgaon, is that, on 6th June, 2000, he received a message from Manmad City Police, to the effect that, they had seized one tempo containing 64 CST-9 plates. Apparently, this property was believed to be railway property, and as such, information was given to the said complainant. The respondents were, allegedly, found in

possession of the said property. After investigation, a complaint alleging unlawful possession of the railway property by respondent nos.2 and 3 came to be filed.

4 A perusal of the impugned judgment shows that the Magistrate doubted whether the property in question was indeed 'railway property.' This aspect of the matter was sought to be established, on the basis of the confessions, allegedly made by the respondents before the Railway Protection Force Officers, and on the basis of the opinion of PW4 Brijbhushan Puran Singh, who was said to be an "expert." The Magistrate observed that there was some discrepancy with respect to the description of the property. The Magistrate also did not place reliance on the confessional statements of the accused persons.

5 Though a number of contentions have been raised by the learned counsel for the applicant, the finding that, that the property in question was railway property, was not satisfactorily established, as arrived at by the Magistrate, does not seem to be

suffering from any error or illegality. The property had not been found within the railway area. There was some discrepancy about what was seized by the police, what was handed over to the RPF Officers, and what was actually produced before the court. Moreover, the evidence of PW4 Brijbhushan Puran Singh does not show that he was specially skilled in the matter of identifying 'Railway Property' so as to have his opinion in that regard, admissible in evidence by virtue of Section 45 of the Evidence Act.

6 It is well settled that while considering the question of grant of leave, the principles on which the order of acquittal can be interfered with in appeal, need to be kept in mind. It is well settled that, even where two views of the matter on the evidence adduced before it are possible, and the trial court has taken one of them, leading to acquittal, the appellate court would not interfere with an order of acquittal, even if had it been the trial court, it might not have taken the same view.

7 In this case, since the view of the matter, as taken by
the Magistrate, is a possible view, grant of leave would be futile.

8 Leave refused.

9 The application is rejected.

(ABHAY M. THIPSAY, J.)