IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 362 OF 2000

The State of Maharashtra
Through Chief Security Commissioner,
Secundarabad APPELLANT

VERSUS

1. Balaji s/o Manikrao Jadhav,
age : 25 years,
R/o. Sanjaynagar, Aurangabad
Original R/o Deualghat,
Dist. Buldhana(Occupation Driver)

2. Shaikh Waluyuddin S/o
Shaikh Ameeruddin,
Age : 25 years, R/o. Choti Gumad,
Khultabad, Dist. Aurangabad
(Occupation : Motor Mechanic)

3. Sudam S/o Vithal Nikalje,
Age : 28 years,
R/o. Hamalwadi, Aurangabad
(Occupation : Watchman)

4. Dinkar S/o Ramchandra Surve,
Age : 50 years,
R/o. K-1, 97, HUDCO, Aurangabad
(Occupation : Watchman)

5. Vijay Uttam Sinde,
Age : 22 years,
R/o. Kailasnagar, Aurangabad
(Occupation : Labour)

6. Manikrao S/o Gulabrao Jadhav,
Age : 58 years,
R/o : Deulghat, Dist. Buldhana,
(Owner of Maruti Van)

7. Shaikh Nadeem S/o Shaikh Rahim,
age : 19 years,
R/o Dalalwadi, Aurangabad
(Occupation : Labour) RESPONDENTS

Appeal abated as against R.No.6, vide order dated 23.02.2010.

AND

CRIMINAL APPEAL NO. 443 OF 2000

The State of Maharashtra
through R.P.F. Loco-Shed,
Bhusawal APPELLANT

VERSUS

Salimsha Gambhirsha,
Age : 24 years,
R/o Kazi Plot Bhusawal RESPONDENT

AND

CRIMINAL APPEAL NO. 448 OF 2000

The Union of India
through R.P.F. Bhusawal yard,
Bhusawal APPELLANT

VERUS

Shaikh Rashid Shaikh Majid
Age : 21 years, R/o. Din-dayal Nagar
Jamner Rd, Bhusawal,
Dist. Jalgaon RESPONDENT

AND

CRIMINAL APPEAL NO. 50 OF 2001

The Union of India
through Railway Protection Force,
Jalgaon District Jalgaon,
Jalgaon APPELLANT

VERSUS

1. Akbarkhan Gafurkhan Pathan
Age : 45 years,
R/o 515, Agakhan Wada,
Near Maten Market, Bhusawal,
Bhusawal, Dist. Jalgaon
BHUSAWAL

2. Madhukar Pandurang Patil,
age : 35 years, r/o. Datta Nagar,
Bhusawal — Dist. Jalgaon
BHUSAWAL RESPONDENTS

AND

CRIMINAL APPEAL NO. 359 OF 2001

1. The Union of India,
through Railway Protection Force,
Bhusawal Yard,

2. The State of Maharashtra APPELLANTS

VERSUS

Shaikh Rauf Shaikh Kasam,
Age : 32 years, R/o. Jamner Road,
Bhusawal, Tq. Bhusawal
District Jalgaon RESPONDENTS

WITH

CRIMINAL APPEAL NO. 238 OF 2001

The Union of India,
Through
Railway Protection Force,
Bhusawal Yard APPELLANT

VERSUS

1. Sk. Lukman Sk. Kasam
age 44 years,

2. Sk. Rauf Sk. Kasam
age : 34 years,
Both R/o Jamner Road,

Bhusawal, Tq. Bhusawal
Dist. Jalgaon RESPONDENTS

AND

CRIMINAL APPEAL NO.7 OF 2006

The State of Maharashtra
through R.P.F. Bhusawal Yard,
Dist. Jalgaon APPELLANT

VERSUS

1. Sk. Kasam Sk. Sakauddin,
Age : 35 years, Occu.Business,
R/o. Near Gajanan Talkies,
Varangaon, Tah. Bhusawal,
Dist. Jalgaon

2. Sk. Husen Sk. Rajjak,
Age : 27 years, Occu.Labour,
R/o. Khidki Mohalla,
Varangaon, Tal. Bhusawal,
(Accused No. 3 Shankar
is still absconding) RESPONDENTS

Mr. D.V.Soman, Spl.Counsel for the appellant/State in all Criminal Appeals

---

Mr. Joydeep Chatterji, Advocate for respondent no. 1 (Cri.Appeal No.362/2000)
Mr. S.A.G. Qureshi, Advocate for respondent nos. 2 and 7 (Cri.Appeal No.362/2000)
Mr. K.E. Shinde, Advocate for respondent no. 5 (Cri.Appeal No.362/2000)

Criminal Appeal No. 362 of 2000 stands abated as against respondent no. 6 as per Court's order dated 23/02/2010

Mr. Swapnil S. Patil, Advocate for the respondent nos. 3 and 4 in Cri. Appeal No. 362/2000 and for the respondent in Cri. Appeals No.443/2000, 448/2000, for respondent no. 1 in Cri. Appeal No.50/2011 and for respondent-sole

in Cri.Appeal No.359/2001 and for respondents in Cri. Appeal No. 238/2001

Mr. R.M. Chavan, Advocate h/f. Mr. Vijay Sharma, Advocate for the respondents in Cri.Appeal No. 7/2006

CORAM : M.T. JOSHI, J.

JUDGMENT RESERVED ON : 18th DECEMBER, 2015
JUDGEMENT PROUNCED ON : 11th JANUARY, 2016

JUDGEMENT :

1. Out of the present seven appeals, four appeals i.e. Cri. Appeals No. 448/2000, 50/2001, 359/2001 and 238/2001 are filed by the Union of India while the remaining three appeals i.e. Cri. Appeals No. 362/2000, 443/2000 and 7/2006 are filed by the State of Maharashtra, aggrieved by the acquittal of all the respondents in respective appeals in separate criminal cases registered by the Judicial Magistrate First Class (Railways), Aurangabad on the basis of the complaint filed by the Inspector, Railway Protection Force (R.P.F.), Aurangabad, for the offence punishable under section 3 (1) of the Railway Property (Unlawful Possession) Act, 1966 (for short, "RPUP Act"). All the respondents were acquitted in respective complaint after trial and, therefore, the present appeals.

2. The respondents were charged either of being in unlawful possession of the railway property or assisting in committing theft of railway property. The learned Judicial Magistrate First Class, however, in each of the cases, held that the charge was not proved against the respective respondents.

3. The appeals, in each of the complaint, will have to be decided on its own facts. However, since common arguments were advanced on the issue of maintainability of the appeals filed by the State of Maharashtra and the value of the alleged confession said to have been recorded by the investigating agency, these two questions are being decided in common while each of the appeal would be decided on its own facts independently by this Court.

4. As already observed, the complaint in each the case was filed by the Inspector of Railway Protection Force, Aurangabad, after making investigation in the crime. It is thus admittedly an independent agency empowered to make investigation into the offences under the provisions of Railway Property (unlawful possession)

Act, 1966 and the Rules framed thereunder i.e. the Central Act. Three out of the present seven appeals, as detailed above, however, are filed by the State Government.

5. It was canvassed on behalf of the acquitted respondents that in view of the provisions of section 378 of the Code of Criminal Procedure, 1973, as amplified by the ratio laid down by the Supreme Court of India in the case of ***"Lalu Prasad Yadav and another Vs. State of Bihar and another"***, reported in ***AIR 2010 Supreme Court 1561,*** the appeals filed by the State of Maharashtra are not competent.

6. On the other hand, Mr. D.V. Soman, learned special counsel for the appellants submitted that though the three appeals are filed by the State of Maharashtra, the documents filed on record in the appeals would show that the instructions were issued by the office of the Divisional Security Commissioner, Railway Protection Force, Bhusawal to the Public Prosecutor for filing of the respective appeals. In the circumstances, in effect, these are the appeals filed on the instructions of the Central Agency which has carried the investigation into

the crime. Therefore, merely because the State of Maharashtra is shown to have filed the appeals, the same are through Chief Secretary Commissioner of Railways and therefore, the appeals are maintainable.

7. Section 378 of the Code of Criminal Procedure, 1973, runs as under:

> "**378. Appeal in case of acquittal.**-[(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),-
>
> (a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
>
> (b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]
>
> (2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this code, [the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal-
>
> (a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision].

(3) [No appeal to the High Court] under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under sub-section (4) for the grant of special leave, to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under section sub-section (1) or under sub-section (2)."

8. In the case of ***"Lalu Prasad Yadav and another Vs. State of Bihar and another"***, (cited supra), the Supreme Court of India had an occasion to deal with these provisions. In the said case, the petitioner-Lalu Pradas Yadav and another before Supreme Court of India were prosecuted on the basis of lodgement of FIR by

Central Bureau of Investigation (C.B.I.) itself for the offences punishable under section 13(1)(e) read with section 13 (2) of the Prevention of Corruption Act, 1988. The accused in the said case were acquitted by the Special Judge at Patna. The C.B.I. took a conscious decision not to file an appeal against the said order of acquittal. The State Government of Bihar, however, had filed the appeal. The petitioners in the Supreme Court of India, therefore, took exception on the ground of maintainability of the appeal. The Patna High Court rejected their objection. Therefore, the Special Leave Petition was filed in the Supreme Court of India.

9. While interpreting the term “save as otherwise provided in sub-section (2)” as is found in sub-section (1) of section 378 of the Code of Criminal Procedure and the word “also” as is found in the sub-section (2) of section 378 of the Code of Criminal Procedure, the Supreme Court held that the term “save as otherwise provided in sub-section (2)” would show that mutually exclusive division in the matter of appeal from an order of acquittal is made. It was also declared that in two types of cases, referred to in sub-section (2), the

competent authority would be the Central Government and the authority of the State Government in relation to such cases has been excluded. It was, therefore, held that the State Government of Bihar was not competent to direct its public prosecutor to present the appeal from the judgment passed by the Special Judge on the basis of investigation carried by the C.B.I. (Page 40).

. So far as the word “also” as is found in sub-section (2) of section 378 of the Code of Criminal Procedure is concerned, it was held that in view of the specific term “save as otherwise provided in sub-section (2)”, this word “also” is immaterial (Page 34).

10. On the strength of these declarations by the Supreme Court of India, the learned counsel for the acquitted respondents, submitted that since the present three appeals referred above are also filed by the State of Maharashtra though the investigation was carried by the Central Agency i.e. Railway Protection Force, these appeals filed by the State of Maharashtra are not maintainable.

11. On the other hand, learned counsel Mr. D.V. Soman, for the Railway Protection Force submitted that

in the case of ***"Lalu Prasad Yadav and another Vs. State of Bihar and another"*** (cited supra), though the Central Agency (C.B.I.) had taken a conscious decision not to file any appeal against the order of acquittal, the State Government of Bihar had directed its public prosecutor to file the appeal. In the present case, however, the Central Agency has directed the public prosecutor of the State of Maharashtra to file the appeals and, therefore, the ratio laid down in the case of ***"Lalu Prasad Yadav and another Vs. State of Bihar and another"*** (cited supra), would not be applicable.

12. The reading of the ratio in the case of ***"Lalu Prasad Yadav and another Vs. State of Bihar and another",*** would show that the Supreme Court of India has held that the provisions contained in sub-section (1) and sub-section (2) of section 378 of Code of Criminal Procedure are mutually exclusive. Paragraph 40 of the aforesaid judgment of the Supreme Court reads as under:

> *"40. In our opinion, the Legislature has maintained a mutually exclusive division in the matter of appeal from an order of acquittal inasmuch as the competent authority to appeal from an order of acquittal in two types of*

cases referred to in sub-section (2) is the Central Government and the authority of the State Government in relation to such cases has been excluded. As a necessary corollary, it has to be held, and we hold, that the State Government (of Bihar) is not competent to direct its public prosecutor to present appeal from the judgment dated December 18, 2006 passed by the Special Judge, CBI (AHD), Patna."

13. It is thus clear, that the Supreme Court held the appeal as not competent as directions were issued to the public prosecutor by the State Government to file an appeal against the order of acquittal rendered in the case investigated by the Central Agency (C.B.I.).

. In the present cases, the Central Agency has directed the public prosecutor of the State of Maharashtra to file these three appeals. If at all certain mistake can be found, it is of direction by the Central agency to the public prosecutor of the State of Maharashtra to file the appeals. In such circumstances, when the Central Agency has taken a conscious decision to file the appeals and issued directions to the public prosecutor of the State of Maharashtra to file the appeals, in my view the ratio laid down in the case of

"Lalu Prasad Yadav and another Vs. State of Bihar and another" (cited supra), would not be applicable in the facts of the present case. The objection as regards the maintainability of the appeals filed by the State of Maharashtra, therefore, fails.

14. In all the present appeals, the appellants/prosecution inter-alia relies on confession recorded by the competent officer of the Railway Protection Force under section 8(i) of the RPUP Act. It is the case of the appellant/prosecution that the signatures of the witnesses were obtained on the said statements. In none of the cases, however, the confessional statements were recorded by the Judicial Magistrate First Class as provided by section 164 of the Code of Criminal Procedure. In the circumstances, the learned counsel for the acquitted respondents relied on the ratio laid down in the case of ***"State of Maharashtra Vs. Rampal s/o Ramavtar Sahu and others"*** reported in ***2008 (O) BCI 387.*** In the said case the provisions of Rules 14 and 15 of the Railway Property (Unlawful Possession) Rules were relied which provide that besides recording the confessional statements in presence of two

witness, the person making a confessional statement shall also be produced before the Magistrate of competent jurisdiction and the Magistrate shall record the confession as required by the provisions of the Code of Criminal Procedure. In those circumstances, this Court had declared that the confessional statement cannot be said to be sufficient to form the basis of conviction of the accused.

15 Keeping in mind these principles, I propose to deal with each of the case/appeal, on facts independently.

CRIMINAL APPEAL NO. 362 OF 2000:

16. During the pendency of the appeal, respondent No. 6 Manik Gulabrao Jadhav has died and therefore, the appeal has abated as regards him.

17. The prosecution case, in short, is as under :-

. That on 1st December, 1997, at about 5.30 a.m. in the morning, Constable Tanaji Sadashiv Shahane of the Railway Protection Force alongwith one security watchman , namely, Shaikh were taking round outside railway oil

siding yard of Aurangabad. At that time, they found respondent No. 1 with a can of blue colour in his hand. He was caught on suspicion. He admitted that with the help of respondent No. 5 – Vijay Shinde and respondent No. 7 – Sk. Nadeem, he broke open the seal of the wagon wherefrom the petrol was transported. He also admitted that by using a plastic pipe, they had filled in 24 similar cans and deposited the same in a Maruti van. Upon information, the complainant – PW1 Inspector of Railway Protection Force went to the spot. The respondent No. 1 also admitted the above facts. The panchanama of the spot was recorded. All the cans were seized alongwith the Maruti van. The crime was registered. The respondents No. 5 and 7, however, had fled away in the meantime.

. During the course of enquiry, the respondent No. 4 was apprehended. The complainant also recorded his confessional statement who has admitted the above facts and further stated that some petrol was already sold to respondent No. 2 at Khultabad. Therefore, the complainant went to Khultabad and respondent No. 2 was apprehended. He also made a confessional statement that he had purchased fifteen cans of petrol for a price of

Rs. 10,500/- two to three days back. He stated about selling of the petrol and earning of profit of Rs. 3200/-. The said amount with the empty cans were produced by him. His confessional statement was recorded. One litre of the petrol seized was sent for analysis to the Indian Oil Corporation (I.O.C.) for testing. It was proved to be petrol itself.

. During further enquiry, respondent No. 3 was called. He also admitted of the theft on the day, upon payment of rs. 500/- to him just to be a silent spectator. The Respondent No. 4 also, by his confessional statement, corroborated the said version. In the meantime, the wagon was inspected and short delivery particulars of two wagons were received. In the meantime, the respondent No. 5 was apprehended and he also admitted to have accompanied with respondents No. 1 and 7 for committing theft and receipt of an amount of Rs. 1000/- from respondent No.1. After verifying the registration record of the Maruti van, the respondent No. 6 was called for enquiry. He also admitted that his van was used for stolen railway petrol. Lateron, the respondent No. 7 was also apprehended and he also admitted of his participation

in the crime and receipt of Rs. 1200/- from respondent No. 1 for helping him for removing the can from the wagon. In the circumstances, the complaint came to be filed.

18. Before the learned Judicial Magistrate First Class (Railway), the necessary witnesses, mostly the panch witnesses and the investigating officer were examined.

19. PW1 – Constable Tanaji Sadashiv Shahane deposed that at the fateful time when he was taking a round towards the oil siding alongwith security watchman Mr. Shaikh, they caught hold a person who was found in possession of plastic can of blue colour. He told that he had removed petrol from the petrol wagon. The two further accused were also found and one Maruti van was standing. He found 24 similar cans in the Maruti van. Therefore, he immediately informed to the complainant i.e. Inspector of Railway Protection Force. The respondent No. 1 was caught. The Maruti van was found on the spot. Its panchanama was drawn. During cross-examination by the respondent No.1, it was pointed out that the duty register was not placed on record. He

further admitted that there always used to be traffic at the pump-house and so many persons from the companies used to come to their respective companies and there is no separate way available from the railway yard to go to the pump-house. The Maruti van was standing at a distance of 70 to 80 feet from the pump-house.

20. The rest of the witnesses are either the complainant or the panch witnesses regarding the seizure panchanama or the confessional statement said to have been made by the rest of the accused, as detailed supra. The photographer who had taken the photograph of the Maruti van at the spot of occurrence was a regular contractor of the railway.

21. The learned Judicial Magistrate First Class found that the sample of the petrol seized was not sent to the Chemical Analyzer but to the Indian Oil Company. The evidence showed that the deficit of the petrol from the wagon was measured by dipping a gauge in the same and it was admitted by the prosecution witness that due to heat, evaporation of petrol may occur. Except the nabbing of the respondent No. 1 at the spot with a plastic can, there is no direct evidence against any of

the respondents.

22. Upon hearing both sides and considering the value of the confessional statements, as detailed supra, in my view, the learned Judicial Magistrate First Class has taken a reasonable and probable view of the material before him. In the circumstances, in the present appeal against acquittal, no interference in the reasoning forwarded by the learned Judicial Magistrate First Class is warranted. The appeal is, therefore, dismissed. The bail bonds of the present respondents, if any, shall stand cancelled.

CRIMINAL APPEAL NO. 443 OF 2000 :

23. The sole accused i.e. the respondent – Salimsha Gambhirsha was chargesheeted for the offence punishable under section 3 (A) of the RPUP Act. According to the prosecution, on 26th November, 1995, PW1 – Constable Rakeshkumar Raghuvirsing of the Railway Protection Force was returning from his duty to house at about 4.10 p.m. in the noon. Near the electric sub-station – Chalis Bungalow, Bhusawal station, within railway premises, he found one outsider carrying some heavy property in a

white plastic bag. He, therefore, enquired with him and found that two brake-blocks were there in the said bag. He produced the said person (accused/present respondent) before the Sub-Inspector – PW2 Mukeshkumar Shricharan. Two panch witnesses i.e. PW3 Ramesh Souse and PW4 Ishwarlal Mannalal were called and in their presence, the property was seized. The accused/respondent was arrested. His confessional statement was recorded at Exhibit-14 in presence of the panch witnesses. The expert's opinion was called and the certificate was received at Exhibit-15 that the property seized was the railway property.

24. Before the learned Judicial Magistrate First Class, both the panch witnesses turned hostile. The learned Judicial Magistrate First Class observed that to corroborate the evidence of PW1 Rakeshkumar and PW2 Mukeshkumar, there is nothing on record. The confessional statement was held to be not trustworthy in absence of any independent witness.

25. Upon hearing both sides, in my view, the learned Judicial Magistrate First Class has taken a reasonable and probable view of the material placed

before him. All the evidence is considered by the learned Judicial Magistrate. In the present appeal against acquittal, therefore, no interference is warranted. The appeal is, therefore, dismissed. The bail bonds of the respondent, if any, shall stand cancelled.

CRIMINAL APPEAL NO. 448 OF 2000 :

26. The respondent – Shaikh Rashid Shaikh Majid was alleged to have found with a trust-bar of steel near the over-bridge of the Railway Bhusawal on 27th February, 1995 at about 1.30 p.m. in the noon. PW2 – Head Constable Chandrabhan Patil had apprehended him and produced before the Sub-Inspector of Railway Protection Force PW1 Munnalal Babulal Yadav. The Sub-Inspector, therefore, called two panch witnesses i.e. PW4 Vasudeo Koli and PW5 Vinayak Garud. The trust-bar was seized and the confessional statement of the respondent was allegedly recorded in presence of these panch witnesses. When the property was sent to the expert for opinion, it was found that it was the railway property and the respondent failed to explain about the possession of the said property. Therefore, he was charged of commission

of the offence.

27. Before the learned Judicial Magistrate First Class, both the panch witnesses turned hostile. The learned Judicial Magistrate, therefore, observed that the interested version of PW1 Munnalal Yadav and PW2 Chandrabhan Patil i.e. the complainant and the Sub-Inspector cannot be relied as the independent panch witness has turned hostile.

28. Since the observations are made by the learned Judicial Magistrate First Class on the basis of the material placed before him, in the present appeal against acquittal, no interference is warranted. The appeal is, therefore, dismissed. The bail bonds of the present respondent, if any, shall stand cancelled.

CRIMINAL APPEAL NO. 50 OF 2001 :

29. The prosecution case, in short, is as under :-

. That on 2nd July, 1991, a matador-truck bearing registration No. MH-19/1053 was stopped by PW11 - PSI Kautik Patil of Jamner Police Station. The said truck was carrying scrap. The said truck as well as the material was seized and PW11 - PSI Kautik Patil filed a

proceeding under section 41 (1) (b) of the Code of Criminal Procedure in the court of Judicial Magistrate First Class, Jamner. Some of the seized material appeared to be the railway property, therefore he informed the Railway Protection Force regarding the same. In the circumstances, PW1 Pandit Suryawanshi, the Sub-Inspector of Railway Protection Force moved an application in the court of Judicial Magistrate First Class, Jamner for transferring of the case to the Railway Court. He seized the part of the scrap i.e. 500 kilograms of steel being the railway property. He recorded confessional statement of respondent No. 1 who admitted that he had purchased the said railway property from unknown vendor and was taking the same to Aurangabad to sell on higher rate. The respondent No. 2 was driver of the said truck. His confessional statement showed that he was knowingly carrying the stolen railway property by charging higher freight charges. In the circumstances, the complaint came to be filed.

30. Before the learned Judicial Magistrate First Class (Railway), in all 12 witnesses were examined. Those were the complainant, the witnesses of the Railway

Protection Force, the Expert of the Railway, who deposed that the property seized was the railway property and the panch witnesses. The relevant panch witness turned hostile. Second panch witness to seizure panchanama Exhibit 55 could not be examined by the prosecution despite taking efforts for securing his presence.

31. The learned Judicial Magistrate First Class held that the seizure panchanama is not proved. The confessional statements are not trustworthy and it could not be proved that the possession of the property was a conscious being unlawful possession of the railway property. It was, therefore, held that the prosecution has miserably failed to prove the conscious possession of the railway property.

32. Mr. D.V. Soman, learned counsel for the appellant submitted that the deposition of the informant and the Police witnesses can not be thrown away. The confessional statements are admissible.

33. Upon considering the entire record, in my view, what could be gathered is that in the scrap, 500 kgs of steel was found to be the railway property. The accused

are dealer in scrap material and the driver of the matador, respectively. The so called confessional statement of accused/respondent no.1 would show that he had purchased all the scrap from small hawkers.

. Taking into consideration all these facts, no interference in the reasoning forwarded by the learned Judicial Magistrate First Class is warranted in the present appeal against acquittal. The appeal is therefore dismissed. The bail bonds of the respondent, if any, shall stand cancelled.

CRIMINAL APPEAL NO. 359 OF 2001 :

34. The prosecution case, in brief, is as under :-

. That on 30th September, 1993, upon getting secret information that the present respondent – Shaikh Rauf Shaikh Kasam had stored the railway property in his shop near Mamaji Talkies at Bhusawal, the Sub Inspector of Railway Protection Force – PW1 – Birendrakumar Pandey, upon obtaining a search warrant from Judicial Magistrate First Class, Bhusawal at 5:20 pm, raided the said shop with the Head Constable of Railway Protection Force. In presence of panch witnesses, upon showing the search warrant to the respondent, the shop was

searched. At that time, 2500 kgs of railway property containing railway tie-bars, fish plates, S & T poles, ACB plate pieces, etc. were found. Those were seized. The confessional statement of the respondent was recorded wherein he admitted the purchase of the said property from outsider with intent to sell it. Accordingly, Sub Inspector gave his report to the Inspector of Railway Protection Force alongwith these documents. The said Sub Inspector recorded the statements of some witnesses and got the property examined from the Expert to certify it as railway property. The shop inspector PW5 - Vijay Bhalerao had told that the said shop belongs to the present respondent. The complaint therefore came to be filed with the Judicial Magistrate First Class.

35. Before the learned Judicial Magistrate First Class, in all 9 witnesses were examined. Those included the Sub Inspector, the Constable, the Head Constable, panch witness PW4 - Rafik Khan, PW5 - Vijay Bhalerao, the Shop Inspector and PW6-Sopan Patil the neighbouring shop owner, in whose presence, according to the complainant, the property was seized.

36. The panch witnesses though supported the prosecution in examination-in-chief, in cross-examination, they deposed that the panchanama was drawn at the office of the Railway Protection Force and not at the spot. PW5 – Vijay Bhalerao – Shop Inspector orally made a statement that as per his record, one shop named and styled as 'Bhangar shop', situated near Mamaji talkies, Bhusawal belongs to the respondent. Neither any certified copy of the license nor the extract of any record was placed before the Court. The neighbouring shop owner, though admitted that the accused/respondent runs a shop near his shop, he denied that any raid was conducted in his presence.

37. In the circumstances, the learned Judicial Magistrate First Class (Railway) appreciated the evidence of Sub Inspector and the Police Constable accompanying him. He, however, found that there were major contradictions in their evidence about location of the shop. While one constable PW4 – Rafik Khan deposed that video theatre is situated near respondent's shop, PW7 – Kailas Thoke, the another Constable deposed that

the said video theater was 5-6 shops away from the shop of the respondent. PW7 – Kailas Thoke deposed that on 14th October, 1993, the shop was raided in his presence, while the prosecution case is that the said raid was carried on 30th September, 1993.

. Considering all this material on record, the learned Judicial Magistrate First Class observed that the confessional statement cannot be relied on and acquitted the respondent.

38. Upon hearing both sides and considering the material on record, in my view, the learned Judicial Magistrate First Class has taken into consideration all the evidence on record, as detailed supra and took reasonable and probable view of the material placed before him. In the circumstances, no interference in the reasoning is warranted. The appeal is therefore dismissed. Bail bonds of the respondent, if any, shall stand cancelled.

CRIMINAL APPEAL NO. 238 OF 2001 :

39. The present respondents who are the brothers were charged of storing the railway property weighing

810 kilograms in their scrap shop situated near Mamaji Talkies at Bhusawal.

40. According to the prosecution, on 6th March, 1993, upon receiving secret information, Sub-Inspector – PW1 Munnalal Babulal Yadav obtained a search warrant and raided the said shop. It was informed that respondent No. 2 was the owner of the same. The respondent No. 1 was found sitting in the shop. In presence of two panch witnesses, the shop was searched wherein the said railway property was found. The respondent No. 2 was absconding. He was ultimately found after about 21 hours on Jamner road. The complaint was already filed. The confessional statements of both the respondents were recorded. The necessary examination of the railway property was carried by the expert. The extract regarding the Shop and Establishment Licence of the shop was obtained from the Shop Inspector and the complaint was filed.

41. Before the learned Judicial Magistrate First Class, in all nine witnesses were examined. PW6 Iqbal Sardar Tadvi was examined to show that in his presence, accused No. 2 had identified the property and panchanama

in this regard at Exhibit-25 was drawn. PW7 – Sunil Pralhad Valkar, another panch witness was examined to show that in his presence, the search of the shop was carried and the property was seized. PW6 – Iqbal Tadvi, however, admitted in cross-examination that the identification panchanama was already prepared. The respondent No. 2 did not make any statement regarding identification, etc. PW7 Sunil Valkar, panch witness to the search and seizure panchanama turned hostile.

. The learned Judicial Magistrate First Class found the contradictions in the oral evidence of PW1 Munnalal Yadav, the Sub-Inspector and PW9 – Mohammad Yunus – Constable of Railway Protection Force, who was the member of the raiding party. The contradiction was regarding as to whether, after the search at the shop near Mamaji Talkies, the party went further to the another shop of respondent No. 1 at Jamner road. The learned Judicial Magistrate First Class further noted that statement of any neighbouring shop-owner was not recorded. Further, though it is the prosecution case that the shop was owned by respondent No. 1, the municipal record at Exhibit-49 did not show the same. Further, the confessional statements were not believed

and in the circumstances, the acquittal of the respondents came to be recorded.

42. Mr. D.V. Soman, learned counsel for the appellant submitted that the confessional statements are admissible pieces of evidence and there is nothing to discard the evidence of the Sub-Inspector and the police constable.

43. Considering the material on record, in my view, the learned Judicial Magistrate First Class has acquitted the respondents on the basis of the material placed before him. The view cannot be called as unreasonable one. No interference in the order of acquittal, therefore, is warranted. Hence, the appeal is dismissed. The bail bonds of the respondents, if any shall stand cancelled.

CRIMINAL APPEAL NO. 7 OF 2006 :

44. The present two respondents alongwith absconding accused No. 3 Shankar are alleged to have dealt in the railway property i.e. certain iron material weighing 45 kilograms.

45. The prosecution case, in short, is as under :-

. That on 22nd March, 2001, upon receipt of the secret information that the respondent No. 1 – Sk. Kasam was loading one truck No. MH-19/3213 the scrap material alongwith the railway material, the Sub-Inspector of Protection Force PW2 Bhagwan Ipper conducted the raid on National Highway No. 6 near Fekri village. He stopped the said truck and found that the railway material weighing approximately 450 kilograms valued at Rs. 2250/- was seized in presence of panch witness – PW5 Pulanand Sushil Roy. Present respondent No. 1 Sk. Kasam was in the truck. His statement was recorded. He admitted that the said material was purchased by him from respondent No. 2 Sk. Husen and absconded accused No. 3 Shankar. He, therefore, reported the matter to PW1 – Roshan Sinsinwar and conducted the investigation. The respondent No. 2 was lateron apprehended and his statement was also recorded. The absconding accused No. 3 Shankar, however, could not be traced by the Protection Force. The case, therefore, proceeded in his absence.

46. Before the learned Judicial Magistrate First Class, in all six witnesses were examined. PW1 Roshan Sinsinwar had given the report against the respondents. PW2 — Sub-Inspector Bhagwan Ipper had conducted the investigation. PW3 Josef Thomas and PW4 Ajitsing Pardeshi are the experts who deposed that the property sent to them was the railway property. PW5 Pulanand Roy and PW6 Mohammad Rahim Khan are the panch witnesses.

47. Before the learned Judicial Magistrate First Class, though PW5 Pulanand Roy deposed that he was present at the time of recording of panchanama, he could not identify the respondent as the occupant of the truck. PW6 — Mehmood Rahim Khan — the another panch witness turned hostile and did not support the prosecution case at all.

. In the circumstances, the case rested on the statement of PW2 Bhagwan Ipper and the confessional statement recorded by him. The learned Judicial Magistrate First Class, in the situation, held that the solitary statement of PW2 Bhagwan Ipper cannot be relied upon. The confessional statement of respondent No. 1 was also not believed.

48. Mr. D.V. Soman, learned counsel for the appellant submitted that the learned Judicial Magistrate First Class ought to have relied over the statement of PW2 – Bhagwan Ipper, the investigating officer and the confessional statement of respondent No. 1.

49. It is to be noted that there is no independent corroboration in the present case. The confessional statement could not be relied upon for the reasons already forwarded. In the circumstances, in the present appeal against acquittal, no interference in the reasoning forwarded by the learned Judicial Magistrate First Class is warranted. The appeal is, therefore, dismissed. The bail bonds of the respondents, if any shall stand cancelled.

50. For the foregoing reasons, all the present seven appeals are dismissed and disposed of as such.

[M.T. JOSHI]
JUDGE

npj/criapl362-2000-group