

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1132 OF 2016

1. Ranjitji s/o Gambhirji Thakur
Age : 2 Yrs., Occ. : Business,
R/o : Palej, Thakurvas,
Dist. Mhisana (Gujrat),
P.S. Santhal, Dist. Mhisana.
2. Mitesh s/o Chandrakant Patel
Age : 32 Yrs., Occ. Business,
R/o : 1935/60, Niranjan
Society, Rajkot (Gujrat). .. **PETITIONERS**

VERSUS

The State of Maharashtra

Through G.R.P. Police

Station Officer, Railway

Police Station, Bhusawal,

Tq. Bhusawal, Dist. Jalna. .. **RESPONDENT**

.....

Mr. S.G.Ladda, Advocate for Petitioners.

Mr. A.B.Girase, Public Prosecutor for Respondent

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CORAM : Z.A.HAQ, J.

DATE OF JUDGMENT :20th DECEMBER, 2016

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ORAL JUDGMENT :

01. Heard Mr. S.G.Ladda, learned Advocate for the petitioners and Mr. A.B.Girase, learned Public Prosecutor for the Respondent – State.

02. Rule. Rule made returnable forthwith.

03. The petitioners have challenged the Judgment passed by the learned Additional Sessions Judge dismissing the Criminal Revision Application filed by the petitioners and upholding the order passed by the learned Magistrate rejecting the application filed by the petitioners u/s 457 of the Code of Criminal Procedure.

04. The Constable of Railway Police Protection Force lodged complaint on 22/12/2015 stating that on 21/12/2015 at about 10.00 p.m. when he was on

duty along with other Officers, the policemen found that the movements/behaviour of Ranjitji Gambhirji Thakur [petitioner No. 1] were suspicious and, therefore, his belongings were checked and in a bag, currency notes of ₹ 500/- and ₹ 1,000/- worth ₹ 22 Lakhs were found and on being enquired, Ranjitji Gambhirji Thakur was not able to give satisfactory answers. With these accusations, the complaint was lodged asserting that Ranjitji Gambhirji Thakur was harboring the bag after stealing it from some passenger. The concerned policemen undertook consequential exercise, drew panchanama, seized the amount and registered non-cognizable case against Ranjitji Gambhirji Thakur.

05. The petitioner No. 2 filed an application u/s 457 of the Code of Criminal Procedure before the Magistrate, Bhusawal [Railway] seeking interim custody of the property [amount of ₹ 22 Lakhs]. The petitioner No. 2 claimed that the amount belongs to him. According to the petitioner No. 2, he is a businessman, dealing as an agent in the business of

cotton and betel-nuts having office at Rajkot and Surat, that the petitioner No. 1 is working under him, that the petitioner No. 1 was sent along with the amount of ₹ 22 Lakhs on 20/12/2015 to Akola for purchasing cotton, but the transaction could not take place and when the petitioner No. 1 was returning from Akola to Surat, on 22/12/2015, the amount was seized between Bhusawal and Jalgaon.

The application was opposed on behalf of the respondent on the grounds as recorded in para Nos. 4 and 5 of the Order passed by the learned Magistrate, which are as follows :

"4. Ld. A.P.P. opposed to the application on the ground that, applicant has given any appointment letter of accused. He argued that, the seized amount is huge, therefore, applicant ought to have given bank details but he did not give any bank details. He argued that the C.A. is private person and only on his certified documents whole reliance can not be placed unless and until applicant

gives the account of seized cash amount.

5. I.O. opposed in his say and stated that, it was revealed during the investigation that accused obtained amount from Akola and Amravati and he was carrying that amount to Surat and it is stated that, as per contention of applicant, such seized amount was sent with accused from Gujrat and he was returning as transaction could not take place. "

The learned Magistrate accepted the submissions made on behalf of the respondent and rejected the application filed by the petitioner No. 2.

06. The petitioner No. 2 challenged the above order in Revision Application before the Sessions Court, which is dismissed by the impugned Judgment.

07. Considering the tenor of the objections raised by the respondent to the prayer of the petitioners, it is clear that the respondent is reeling

under the mis-conception that the Railway Protection Force and the police have the power and authority to seize the property if the policemen feel that the person from whom the property is seized is not able to account for it. When the matter was argued for some time on 15/12/2016, the learned Additional Public Prosecutor made submissions relying on the stand taken before the sub-ordinate Courts and based on the provisions of Sections 11, 12 and 14 of the Railway Protection Force Act, 1957 [hereinafter referred to as 'Act of 1957'], Rule 41.2 (vii) of the Railway Protection Force Rules, 1987, Section 41 (i) (d), Section 102 (i) of the Code of Criminal Procedure and section 124 of the Maharashtra Police Act. I thought that it would be appropriate that the stand of the respondent is on record in the form of an affidavit and an order was passed to the effect. The respondent filed affidavit sworn on 16/12/2016 by Police Sub Inspector, Railway Police Station, Bhusawal, district Jalgaon.

08. Mr. A.B.Girase, learned Public Prosecutor,

relying on the affidavit filed on behalf of the respondent has submitted that the powers conferred by Sections 11 and 12 of the Act of 1957 are wide enough and enable any Officer or Member of the Railway Protection Force to take action as referred under the provisions of Sections 11 and 12 of the Act of 1957 in the contingencies as mentioned in those provisions. It is submitted that the petitioners have nowhere controverted the accusations made against the petitioner No. 1 that he was found in suspicious state, because of which the policemen felt it necessary to conduct a checking of his belongings and when huge amount of ₹ 22 Lakhs was found in his bag, he failed to give satisfactory answers and to account properly for it. Referring to the statement of the petitioner No. 1 which was recorded on 22/12/2015 and the contents of the application filed by the petitioner No. 2 u/s 457 of the Code of Criminal Procedure, it is submitted that the discrepancies in the statements/stand of the petitioners and the failure on their part to account for the huge amount, justify the action of the policemen.

It is submitted that the sub-ordinate Courts have properly considered all the relevant aspects and the impugned Judgment and order does not suffer from any perversity and illegality necessitating the interference by this Court in the extra-ordinary jurisdiction.

09. Per contra, Mr. S.G.Ladda, learned Advocate for the petitioners has submitted that the amount is illegally seized from the petitioner No. 1 without any justification. It is argued that the reliance on the provisions of Section 124 of the Maharashtra Police Act by the respondent to justify the seizure of the amount is mis-placed. It is argued that the powers u/s 124 of the Maharashtra Police Act can be exercised only if there is reason to believe that the acquisition of property is by fraudulent manner or the property is stolen property and as, in the present case, there is nothing on record to show that the policemen were satisfied that the pre-requisites for exercising the powers u/s 124 of the Maharashtra Police Act existed, it should be held that the seizure of

property is illegal. To support the submission, reliance is placed on the Judgment given by this Court in the case of **Pratap B.Bhosale Vs. State of Maharashtra reported in 1970 Mh.L.J. 729.** It is prayed that the impugned Judgment and Order be set aside, the application filed by the petitioner No. 2 u/s 457 of the Code of Criminal Procedure be allowed and the proceedings registered against the petitioner No. 1 be quashed.

10. After considering the contents of the complaint and the submissions made on behalf of the respondent, I find that the basis for the seizure of the amount is that huge amount was found in the bag of the petitioner No. 1, that the petitioner No. 1 failed to give satisfactory answers justifying the custody of the amount and the petitioner No. 1 could not account for the amount. As recoded earlier, the respondent relies on the provisions of Sections 11 and 12 of the Act of 1957 and Section 124 of the Maharashtra Police Act to justify the seizure of the amount.

Section 11 (b) (d) of the Act of 1957

enables every superior Officer and Member of the Railway Protection Force to protect and safe-guard railway property, passenger area and passengers and to do any other act conducive for the better protection and security of railway property, passenger area and passengers.

Section 12 (ii) of the Act of 1957 enables any Member of the Railway Protection Force to arrest, without an order from the Magistrate and without a warrant, any person against whom a reasonable suspicion exists of his having been concerned in or who is found to taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to commit a cognizable offence which relates to railway property, passenger area and passengers. Section 12 (iii) of the Act of 1957 further empowers any Member of the Railway Protection Force to arrest, without an order from the Magistrate and without a warrant, any person found taking precautions to conceal his presence within the railway limits under circumstances which afford reason to believe that he

is taking such precautions with a view to commit theft of, or damage to the railway property, passenger area and passengers.

11. It is clear that the provisions of Sections 11 and 12 of the Act of 1957 enables any Member of the Railway Protection Force to take action if railway property, passenger area and passengers are to be protected. The above provisions do not confer power on the Member of the Railway Protection Force to cause arrest of any person or to seize any property from the person if the Member of the Railway Protection Force believes that the movements/conduct of the person were suspicious or if the Member of the Railway Protection Force finds that the person from whom the property is seized has not been able to account for the property.

In the present case, there is no accusation in the complaint that the petitioner No. 1, from whom the amount is seized, gave an impression or conducted himself in such a manner that he posed a threat to railway property, passenger area or

passengers. Moreover, the Member of the Railway Protection Force can exercise his powers u/ss 11 and 12 of the Act of 1957 if there is reason to believe that the person against whom action is taken, may commit a cognizable offence which relates to railway property, passenger area and passengers. Simplicitor belief or perception of the Member of the Railway Protection Force that the person was conducting himself in a suspicious manner is not sufficient to enable the Member of the Railway Protection Force to take action u/s 11 or u/s 12 of the Act of 1957. The belief of the Member of the Railway Protection Force should be supported by reason which is *sine qua non* for exercising the powers u/s 11 and/or u/s 12 of the Act of 1957. There is nothing on the record to show that at the time when the amount is seized from the petitioner No. 1, such circumstances prevailed that the Members of the Railway Protection Force had reason to believe that the petitioner No. 1 was conducting in such a manner that action was required to be taken against the petitioner No. 1 to protect railway property, passenger area and passengers.

12. The provisions of Section 124 of the Maharashtra Police Act lay down that a person is liable for conviction if he fails to account for possession of property regarding which there is reason to believe to be stolen property or property fraudulently obtained. The conviction of the person u/s 124 of the Maharashtra Police Act can be if he fails to account for such possession. The conviction can not be if the person from whom the property is seized, fails to account for the property. The powers to investigate on the ground that the person in whose possession the property was, can account for the property is with other authorities and not with the Railway Protection Force. The respondent has misunderstood the provisions of Section 124 of the Maharashtra Police Act and has seized the property on the ground that the petitioner No. 1 failed to account for the property. The petitioner No. 1 stated before the Members of the Railway Protection Force that the property [the amount of ₹ 22 Lakhs] belongs to the petitioner No. 2, the petitioner No. 2 claimed that the property belongs to him and justified his ownership by

producing documentary evidence i.e. Income Tax returns and Balance Sheets.

In the above facts, the seizure of the amount without any reason and justification, in exercise of the powers u/ss 11 and 12 of the Act of 1957 and Section 124 of the Maharashtra Police Act is illegal and in colourable exercise of powers. The subordinate Courts have failed to appreciate this aspect and, therefore, the Judgment and Orders passed by them are unsustainable.

Hence, the following order :

(i) The Judgment passed by the learned Additional Sessions Judge, Bhusawal in Criminal Revision Application No. 23/2016 on 02/03/2016 is set aside.

(ii) The Order passed by the learned Magistrate, Bhusawal [Railway] on Misc. Application No. 01/2016 on 03/02/2016 is set aside.

(iii) The application filed by the petitioner No. 2 u/s 457 of the Code of Criminal Procedure is allowed.

The respondent is directed to return the amount of ₹ 22 Lakhs seized from the petitioner No. 1, to the petitioner No. 2 forthwith.

According to the respondent, the amount of ₹ 22 Lakhs which was seized from the petitioner No. 1 on 22/12/2015 was in the currency notes of ₹ 500/- and ₹ 1,000/-. Because of the demonetization of currency notes of ₹ 500/- and ₹ 1,000/- from 08/11/2016, it is directed that the respondent shall return the amount of ₹ 22 Lakhs to the petitioner No. 2 by Demand Draft.

The respondent shall take necessary action for complying with the directions, immediately.

(iv) The proceedings of S.C.C. No. 584/2016 pending before the Judicial Magistrate First Class, Bhusawal [Railway] against the petitioner No. 1 are quashed.

(v) Rule Made absolute in the above terms.

(vi) In the circumstances, the parties to bear their own costs.

(vii) In my view, it would be appropriate that the Director General of Railway Protection Force issues certain guide-lines for the guidance of the Officers and the Members of the Railway Protection Force for exercising their powers u/ss 11 and 12 of the Act of 1957 so that the innocent passengers/people are not put to any hardships and inconvenience.

(viii) The office of the Public Prosecutor, High Court, Bench at Aurangabad shall ensure that the copy of this Judgment is sent to the Director General of Railway Protection Force.

[Z.A.HAQ, J.]