

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 318 OF 1999

The State of Maharashtra

... **Appellant.**

Versus

Nitin Subhash Datt & Anr.

... **Respondents.**

None for the Appellant.

Mr.S.G.Surana for the Respondents.

CORAM : S.B. SHUKRE, J.

DATED : 13TH JUNE, 2016.

P.C. :

1] None present for the Appellant. The learned Counsel for the Respondents, the original accused Nos.1 and 2 is present. The appeal is pending since the year 1999. Therefore in view of the mandate of Section 386 of CrPC, I have heard learned Counsel for the Respondents/Accused, who is present before me. I have also gone through the record of the case including the impugned judgment and order.

2] By the impugned judgment and order rendered on 17th March 1999, the learned Judicial Magistrate First class (Railways), Manmad has acquitted the Respondents of the offence punishable u/Sec 3(a) of the Railway Property (Unlawful Possession) Act, 1966 read with Section 34 of the IPC. The learned Judicial Magistrate has found the evidence lead by the prosecution against the Respondents as not sufficient to believe the story of the prosecution that the Battery of Railway Coach in question was seized from the possession of the Respondents. The learned Magistrate considered omissions in the complaint (Exh.1) filed by PW1 Pradipkumar Singh regarding lodging of the report against both the Respondents at the spot as material, thereby creating a doubt about the seizure of the Railway Coach Battery from the possession of accused No.1. The learned Magistrate also found that the confessional statements vide Exh.105 and 106 respectively made by the Respondent Nos.1 and 2 were not trustworthy for the reasons that both the Respondents had retracted those statements, that no circumstances were brought on record to prove the fact that they were recorded voluntarily and of own free will of the Respondents, and that even though the panch witnesses were

available when they were recorded, they were not recorded in the presence of panch witnesses. These discrepancies in the prosecution evidence, in the opinion of the learned Magistrate, created reasonable doubt about involvement of the Respondents in the crime alleged against them. Accordingly by the impugned judgment and order, the learned Magistrate acquitted these Respondents of the offence punishable under Section 3(A) of the Railway Property (Unlawful Possession) Act, 1966 read with Sec.34 of the IPC.

3] The view so taken by the learned Magistrate is not impossible nor could it be considered as perverse, not arising from the facts established on record. Therefore, in my opinion, no case has been made out for making any interference with the impugned judgment and order. The appeal deserves to be dismissed.

4] The appeal stands dismissed.

(S.B. SHUKRE, J.)