

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 568 OF 1997

The State of Maharashtra ... Appellant

V/s.

1. Mahendranath Vansh Narayan Pandit
R/o. Gajanand Housing Society,
M.I.D.C. Ahmednagar

2. Bitto Fakirchand Gupte
R/o. 154/2 Hansika Building,
Garodiya Nagar,
Ghatkopar Bombay East.

... Respondents

...

Mrs. G. P. Mulekar, Asstt. Public Prosecutor for the appellant.
Mr. D. B. Patil for respondent no.2.

...

CORAM : S. B. SHUKRE, J.

DATE : 16 JUNE 2016.

P.C.:

1. By this appeal, legality and correctness of the Judgment and order dated 17 March, 1997 passed by the Judicial Magistrate First Class, (Railways), Daund in Regular Criminal Case No.7 of 1995 has been challenged.

2. Heard the learned Asstt. Public Prosecutor for the appellant-the State and the learned counsel for respondent no.2. Perused the evidence available on record and also the impugned Judgment and order.

3. It is seen from the impugned Judgment and order that the allegation made against the respondents that on 7 May 1994, respondent no.1 was found to be in possession of railway property for which he could not account for and which property was acquired by respondent no.1 from the possession of respondent no.2, has not been proved, in the opinion of the learned Judicial Magistrate First Class, beyond reasonable doubt. The evidence on record shows that the conclusion so reached by the learned Magistrate can not be faulted with. In fact, this evidence indicates that the prosecution could not at all prove the fact that the railway property found in the possession of the accused no.1 was indeed a stolen property. There have been admitted documents produced by respondent no.2 vide Exh.109, 100, 111 showing that he had purchased in all approximately 200 metric tonnes of the railway property in public auction. No theft report has been produced on record. There is no doubt about the fact that this property was purchased by respondent no.1 from respondent no.2. Therefore, this property would have to be said to have been lawfully obtained by the respondents and as such, the finding of acquittal recorded by the

learned Magistrate in respect of the offence punishable under section 3(a) of the Railway Property (Unlawful Possession) Act, 1966, cannot be seen as erroneous.

4. In the circumstances, the appeal deserves to be dismissed, there being no sufficient grounds to make any interference. Accordingly, the Appeal stands dismissed.

(S. B. SHUKRE, J.)