

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

CRIMINAL APPEAL NO. 46 OF 2002

The State of Maharashtra ... Appellant
V/s.

1. Mahendranath Vanshi Narayan Pandit
Gajanan Housing Society,
M.I.D.C. Ahmednagar.
2. Sukhdev Mahadeo Shivcharan
Depot of Stores Keeper,
KWV W/Shop,
Rly Qtr No.D 328 KWV, District Solapur.
3. Bittu Fakirchand Gupta
R/o. 154/2 Hansika Building,
Garudiya Nagar, Ghatkopar, Mumbai.
4. Rajkumar Singh
Inspector, Railway Protection Force,
Kurduwadi (now at present RPF Sub Inspector
at Juhi under DSC/Jhansi).
5. Sanjay Singh
Inspector Railway Protection Force,
at Kurduwadi (now at present
sub Inspector RPF DSC/ Reserve at Nagpur).
6. Mohan Sahabrao Shinde
Constable in RPF at Kurduwadi, Buckle No.267,
now at present under DSC/Nagpur).
7. Madhukar Shivppa Balge
Constable in RPF at Kurduwadi,
Buckle No.313, now at present
under DSC/Nagpur).

... Respondents

...
Mrs. G. P. Mulekar, Asstt. Public Prosecutor for the appellant.
Mr. D. B. Patil for respondent nos.2 to 7.
...

CORAM : S. B. SHUKRE, J.

DATE : 16 JUNE 2016.

P.C.:

1. By this appeal, legality and correctness of the Judgment and order dated 01 March 2001 delivered in Regular Criminal Case No.45 of 1994 by the Judicial Magistrate, First Class, (Railways), Daund, has been challenged.

2. Heard the learned counsel for the Asstt. Public Prosecutor and the learned counsel for the respondents. I have carefully gone through the record of the case including the impugned Judgment and order.

3. In this case, respondent nos.1 and 3 were prosecuted for an offence punishable under section 3(a) of the Railway Property (Unlawful Possession) Act and respondent no.2 and 4 to 7 of offence punishable under section 4 of the said Act. The allegations made against the respondent nos.1 and 3 were that they were found to be in possession of the stolen railway property, which property was actually stolen by respondent no.3 with the help of respondent no.2, and delivered to respondent no.1 at a factory, Prakash Casting Company situated at MIDC Ahmednagar. This property comprised scrap material consisting of cast iron pots, cast iron plates, and so and so forth. It was weighing about 27.500 metric tonnes, worth

Rs.1,75,000/- (Rupees One lakh Seventy Five Thousand only). It was also alleged that respondent Nos.4 to 7 being RPF Personnel posted at Kurduwadi Work Shop of the Railway Department from where the said property was alleged to be stolen connived at and abetted the commission of the offence punishable under section 3(a) of the said Act by respondent no.1 to 3. The incident had occurred on 27 March 1994. The record shows that in all 26 witnesses were examined in this case. Most of those witnesses were the officials of the railways or the railway protection force. There were also confessional statements made by respondent nos.1 to 3. However, the evidence so voluminously recorded in this case shows that there was hardly any material establishing the ingredients of offence punishable under section 3(a) of the said Act. The offence under section 3(a) prescribes punishment for commission of theft or dishonest misappropriation or unlawful possession of the railway property, which is reasonably suspected to be stolen or unlawfully obtained. In the instant case, the prosecution evidence has not established beyond reasonable doubt that the railway property was basically stolen away from its Kurduwadi Work Shop. The evidence of material witness P.W.1 has been found by the learned Magistrate as wanting in this regard and so also the evidence of other witnesses. The learned Magistrate also found that though it was the case of the prosecution that in one single day two trucks were loaded with the scrap material from Kurduwadi Work Shop, the material alleged to be loaded was of such a nature as to reasonably indicate that it was practically not possible to do so in such a short period of time. That apart, no proper record of the subject property was found to be

maintained at Kurduwadi Work Shop. Therefore, benefit of doubt deserved to be given to the accused persons i.e. all the respondents which indeed was given rightly by the learned the Judicial Magistrate. The view so taken by the learned Judicial Magistrate is possible and it is now well settled law that only because any other view is possible, it is not open to this court in exercise of its jurisdiction in matters like the present appeal to substitute its view with the view taken by the Court below unless the view under challenge is perverse or arbitrary or goes against other established principles of law. Such is, however, not the case here in this appeal. No sufficient grounds have been made out for making any interference with the impugned Judgment and order and the appeal deserves to be dismissed.

4. The appeal stands dismissed.

5. If there is any stay granted by this Court to the effect and operation of the impugned Judgment and order, same shall stand vacated with the dismissal of this appeal.

(S. B. SHUKRE, J.)