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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 328/2014

STATE

..... Petitioner

Through : Mr. Jitender Kumar Singh, Standing
Counsel for railways with Ms.
Madhulita Agarwal, Adv.

versus

BIJENDER

..... Respondent

Through : Mr. Jivesh Tiwari, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **17.11.2016**

Petitioner seeks leave to appeal against the order dated 14th August, 2013 passed by the trial court, whereby respondent has been acquitted of the charges under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 (“the Act”, for short).

Brief facts of the case are that petitioner filed a complaint under Section 3 of the Act, alleging therein that respondent was apprehended at about 1:30 hours by the RPF officials comprising of SI Hukum Singh, ASI Rambir Singh and Constable Lokesh on 26th September, 2011 near OHE Pole No. 1047, Platform No. 10, DLI(M) station, with a heavy package on

his right shoulder. On opening, the package contained a consignment booked vide railway marka no. 23/9 DLI 0497702 P-2 JU, being a railway property, which was suspected to be the stolen property. Consignment, recovered from the respondent, was seized and the respondent was arrested. Thereafter, Pointing out memo was prepared, Railway property was got assessed and value thereof was opined to be worth ₹16,800/-.

After the petitioner led pre-charge evidence, trial court framed charge under Section 3 of the Act against the respondent on 4th March, 2013; to which he pleaded not guilty and claimed trial. Post-charge evidence was again led and witnesses were recalled for cross-examination. In addition, the prosecution examined Booking Supervisor PW8 Jagdish Prasad Sharma, Marka Man PW9 Amrish Kumar and CPC PW10 Ram Dhan Yadav. PW1 Vipin Malhotra, the Loading/unloading Clerk, proved theft memo Ex. PW1/A in respect of the loss of parcel. PW2 Anil Kumar Sharma, Receipt Clerk had booked the consignment from Delhi to Jodhpur and he exhibited certified copy of way bill as Ex. PW2/A and Ex. PW2/B respectively. PW3 SI Hukam Singh and PW7 ASI Rambir Singh were the members of team and had apprehended the respondent. They have deposed about the proceedings conducted by them. PW4 Vinay Sharma deposed that he had

booked the recovered consignment on 23rd September, 2011. PW5 Pradeep Kumar deposed that he loaded 44 parcels in the train. PW6 SI Ram Mehar Singh had verified the case property and has deposed in this regard. PW8 Jagdish Prasad Sharma was the Booking Supervisor at Jodhpur railway station. PW9 Amrish Kumar was the Marka Man. PW10 Ram Dhan Yadav was the Weighment Clerk and has deposed that he had weighed the parcel.

In his statement under Section 313 of the Cr.P.C., respondent denied all the allegations against him and claimed that nothing was recovered from his possession.

Learned trial court has examined the evidence, the relevant provisions of the Act and the Rules and Regulations framed thereunder, known as Railway Protection Force Regulations, 1966 (“the Regulations”, for short) and RPF Rules 1987 regarding the maintenance of records and registers. Trial court has concluded that petitioner had failed to bring on record, the original DD entries concerning departure of officials for patrolling as well as the original DD entries concerning the arrest of the respondent and recovery of the case property. For non-compliance of the requirements, as laid down in the Rules and Regulations; trial court has concluded that prosecution had failed to prove the charges against the respondent beyond the shadow of

reasonable doubt and respondent deserved to be given benefit of doubt.

It is submitted by the learned counsel for the petitioner that the Regulations and the Rules are directory in nature and mainly on the ground of non-compliance thereof respondent ought not have been acquitted more so, when the members of raiding party had supported the prosecution story. However, I do not find any force in this contention of the learned counsel. In *State/Railway Protection Force vs. Raju*, 2014 III AD (Delhi) 453, a learned Single Judge of this Court has held that RPF Rules are mandatory and non-compliance thereof creates a doubt about the story propounded by the prosecution. The relevant portion of the judgment reads as under:-

“20. The above provisions abundantly make it clear that the actions taken by the RPF have to be strictly in terms of the procedure outlined under the RPF Rules 1987, and any infraction of the said Rules would invalidate such action. There can be no doubt that as far as the present case is concerned, RPF failed to demonstrate before the learned MM that the various theft memos and seizures memos, copies of which were produced before the Court, actually formed part of the original railway record maintained in terms of the aforementioned Rules. The learned MM cannot be faulted for discarding the above evidence since the original registers were not produced.

21. The RPUP Act defines the offences and prescribes the punishment. The offence under [Section 3](#), the ingredients of which were

explained by the Supreme Court in [State of Maharashtra v. Vishwanath Tukaram Umale](#) is punishable with imprisonment for not less than one year and a fine not less than Rs. 1,000 for the first offence and for the second or subsequent offence, the imprisonment may extend to five years. In such event, the imprisonment cannot be less than two years except for special and adequate reasons and the fine not less than Rs. 2,000. The word 'force' occurring in RPUP Act means the RPF constituted under Section 3 of RPF Act, 1957. Under [Section 8\(1\)](#) read with Section 8(2) of RPUP Act, an officer of the RPF exercises the power of an officer in-charge of a police station under the Cr PC. [Section 6](#) gives him the power to arrest without a warrant. Since police powers have been given to the officers of RPF to deal with the suspects, it is all the more essential that they should scrupulously follow the procedure prescribed under the RPF Rules which govern their functioning.

22. The Court accordingly holds that the procedures outlined under the RPF Rules 1987, and, in particular, those regarding entries to be made in the crime registers, both as regards the theft of railway property as well as the apprehension of a suspect and recovery of the stolen railway property from him, are mandatory.

23. Under the RPF Regulations 1966, there was a requirement for the RPF to maintain registers which would show the movement of the Railway staff on patrolling duty. Although the said Regulations stand repealed, it is not known whether under Rule 268 of the RPF Rules 1987, the proforma of the records and registers for maintaining the entries of such movement have been prescribed. In any event, when the question arises whether an RPF officer was on patrolling duty at a particular point in time

when the suspect was apprehended, the burden would be on the RPF to prove before the Court by producing such records and registers in original that the movement of the RPF officers involved in the arrest is reflected in the register maintained for that purpose.

24. The insistence on the procedure established by law being followed is essentially on account of the fact that the vast powers vested in the RPF under the RPUP Act and the RPF Rules has the potential of depriving a person of his liberty and abrogating his constitutional rights. The provisions would, therefore, have to be interpreted strictly and any violation of the mandatory procedure would result in the benefit of doubt being given to the accused.

25. As far as the present case is concerned, the learned MM was entirely justified in doubting the prosecution evidence on account of the failure of RPF to produce the original registers.”

Since RPF Rules were not complied with in this case, view taken by the learned trial court is a possible view and does not suffer from any perversity. In my opinion, petitioner has failed to make out a case for grant of leave to appeal.

Petition is dismissed.

A.K. PATHAK, J.

NOVEMBER 17, 2016

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