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

+ CRL.L.P. 337/2014

STATE

..... Petitioner

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

versus

RAJ KUMAR

..... Respondent

Through : Attendance slip not given

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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17.11.2016

Vide judgment dated 21st September, 2013 trial court has acquitted the respondent for offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 ("the Act", for short). Aggrieved by the acquittal, petitioner has preferred this petition under Section 378(4) of Cr.P.C. seeking leave to appeal against the acquittal of respondent.

Brief facts of the case are that the petitioner had filed a complaint under Section 3 of the Act alleging therein that on 6th October, 2004, co-accused Umesh was apprehended by the team of RPF officials at about 17:10 hrs. near Km No. 4/19. RPF and 12 pendrol clips were recovered from his possession. The said clips were railway property and had been stolen or

unlawfully obtained by said Umesh. In his disclosure and confessional statements, Umesh stated that he used to sell the railway property in a shop at Murga Market, Village Wazirpur. He took the RPF officials to the shop of respondent from where 154 pendrol clips were recovered. The railway property was seized and the respondent was arrested. Respondent disclosed that accused Rakesh Kumar was his partner in the scrap shop. Subsequently, Rakesh Kumar was also arrested on 23rd October, 2004. Railway expert examined the recovered articles and gave his report, thereby certifying the same to be railway property, valuing ₹6,000/-.

During trial, Umesh pleaded guilty and was convicted for the offence under Section 3 of the Act and was sentenced to the period already undergone by him. Accused Rakesh Kumar filed an application for plea bargaining and was convicted and sentenced by the trial court vide order dated 20th July, 2011.

To prove the guilt of respondent, petitioner examined six witnesses. Mr. Kamal Kumar Sharma (Railway expert) was examined as PW-1. IPF Ajay Jyoti Sharma, ASI Sumer Singh, SI Ram Karan, Ct. Ram Rattan and Ct. Usman Khan (all recovery witnesses) were examined as PW-2 to PW-6. In his statement under Section 313 Cr.P.C., respondent denied the recovery

of railway property from him. He claimed that he was not the owner of the scrap shop. He claimed that Rakesh Kumar was the owner of scrap shop. He had gone to shop of Rakesh Kumar since both of them were from the same village. Rakesh Kumar was not available at the shop at that time; in the meanwhile RPF officials came there and apprehended him.

Trial court has meticulously scrutinized the statement of witnesses and other material on record and has concluded that the provisions of the RPF Rules, 1987 as well as Railway Board order No.73 SPL/REGN/CH.XXV dated 9th July, 1975 were contravened and violated during the investigation thereby making the prosecution story suspicious. Trial court has also noted that there were several discrepancies in the statements of the witnesses thereby casting doubt on the prosecution story, regarding the involvement of respondent in the offence alleged against him.

Trial court has relied on Rattan Lal Vs. State, 1987 (2) Crimes 29 whereby it has been held as under:-

“if the investigating agency deliberately ignores to comply with the provisions of the Act, the courts will have to approach their action with reservations. The matter has to be viewed with suspicion if the provisions of law are not strictly complied with and the least that can be said is that it is so done with an oblique motive.”

Trial court has noted that all the procedures were to be followed from

the moment of arrest of the offender (under the Act) till the forwarding of the complaint for trial as laid down in Railway Board's order dated 9th July, 1975, but the same were not followed. Rules 222 and 223 of the RPF Rules, 1987 were also not complied with and were blatantly violated as necessary entries were not recorded in the relevant registers. As per rule 222, all the crimes affecting railway property have to be entered either in the 'localized crime register' or in 'unlocalized crime register'. Localized crimes are those where the actual place of the offence is, prima facie, apparent from the inspection of the scene and unlocalized crimes are those where actual place of crime cannot be immediately known or ascertained. Under the Rules 223 of the RPF Rules, 1987 it has been provided that all seizures or recoveries of railway property shall be entered in malkhana register and an entry to that effect has to be made in the concerned crime register. Rule 223.2 of RPF Rules further envisages that where the seized property cannot be linked to the railway property for which theft or shortage memo has been issued, the same shall be entered in railway property (Unlawful Possession) Act Register. Trial court has also noted that petitioner had not followed the procedure laid down by the statutory bodies to regulate the inquiry anticipated under Section 8 of the Act, inasmuch as,

RPF officers, who allegedly apprehended the respondent red handed not only prepared the recovery memo but also the disclosure statement and the pointing out memo. Thereafter, the same officials went on to take respondent to the concerned RPF post and got recorded the roznamcha entry whereby all the proceedings held by them were recorded. This conduct of the RPF officials was in direct conflict with the Railway Board's order dated 9th July, 1975 prescribed under Rule No.7, that the apprehending RPF officials were to prepare only a recovery memo and then bring the entire facts and circumstances into the notice of officer in-charge of the RPF post and hand over the accused along with recovered property to him. Concerned officer in-Charge was then to make inquiry as anticipated under Section 8 of the Act. However, in this case, substantial part of inquiry was conducted by the RPF officials who had apprehended the respondent and role of Inquiry Officer was negligible only to the extent of getting the recovered property verified.

During the course of hearing, learned counsel for petitioner has failed to show that the relevant rules, as aforesaid, were duly complied with. It is not the case that relevant registers were produced and proved in the Court, in accordance with the relevant rules. He has also failed to point out that

inquiry was conducted in terms of the Railway Board's circular.

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. It has been further held that, since relevant RPF Rules were not complied with, learned Metropolitan Magistrate was justified in doubting the prosecution story on account of the failure of RPF to produce the original registers. It is further held that violation of the mandatory procedure would result in the benefit of doubt being given to the accused.

For the foregoing reasons, I am of the opinion that view taken by the learned trial court does not suffer from any legal infirmity and perversity. Accordingly, in my view, petitioner has failed to make out a case for grant of leave to appeal to the petitioner.

Petition is dismissed.

A.K. PATHAK, J.

NOVEMBER 17, 2016/dk