

\$~42

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

+ CRL.L.P. 564/2016

STATE/RFP & ANR.

..... Petitioners

Through :Mr. J.K. Singh, Standing Counsel for
the Railway

versus

SATISH

..... Respondent

Through :

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **24.10.2016**

Crl. M.A. No. 16524/2016 (for condonation of delay)

Delay in re-filing is condoned. Application is disposed of.

**CRL.L.P. No. 564/2016 and Crl. M.A. No. /2016 (Sec. 378(4)
& (5) r/w Sec. 482 Cr.P.C.) {to be numbered}**

Trial court has acquitted the respondent for the offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 by giving benefit of doubt to the respondent.

I have perused the impugned judgment and other material placed on record including the statement of witnesses and I am of the opinion that the view taken by the trial court is a possible view and does not suffer from any

perversity. It is trite law that acquittal of accused reinforces his innocence and the acquittal cannot be interfered with lightly only because the superior Court is of the view that other view is more plausible. If the view taken by the trial court does not suffer from any perversity and is a possible view, no interference by the superior Court is required. In this case, petitioner alleges that respondent was apprehended on 9th September, 2014 at about 15:05 hours in between OHE Pole No. GL – 48 and junction box No. L-409A, North of Coach Care Centre, while he was carrying a plastic bag containing one iron spring (Railway Property) without any authorization. As per the petitioner, paper work was done at the spot. Respondent was arrested, stolen property was seized and deposited in Malkhana. Subsequently, seized property was taken out from the Malkhana and sent for verification to the Technical Expert, who certified the same to be the railway property. Trial court has noted that petitioner had failed to prove any entry in the Malkhana register to show that seized property was deposited in the Malkhana promptly and without any unreasonable delay, to rule out the possible plantation. PW12 HC Joginder Singh has stated that on 26th September, 2014 he was on duty as Malkhana Muharrar and on that day, ASI Rajender had asked him to take out the case property from Malkhana for verification.

After verification, case property was again deposited in Malkhana. However, no material on record was produced and proved before the trial court to show that the seized property was deposited in Malkhana on 9th September, 2014 or immediately thereafter. First entry in the register was that of 26th September, 2014. Trial court has noted that as to where the case property remained from 9th September, 2014 to 26th September, 2014, which had remained unexplained because the relevant entry in the Malkhana Register was not exhibited. Trial court has also noted that none of the prosecution witnesses, who participated in the recovery including EO, had remained silent regarding deposit of the case property in the Malkhana. Accordingly, respondent has been given benefit of doubt. I do not find the view taken by the trial court, which is on appreciation of evidence, to be perverse, inasmuch as find the same to be plausible and possible view.

For the foregoing reasons, I do not find any justifiable reason to grant leave to appeal to petitioner.

Petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

OCTOBER 24, 2016/rb