IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMNINAL APPEAL NO.886 OF 2002

The State of Maharashtra …Appellant
Versus
Jamil Ahemad Juber Khan and Ors. …Respondents

Mr.Arfan Sait,APP for the Appellant
None for the Respondents.

CORAM: A.S.Oka, J
DATED: 16th May 2016

ORAL JUDGMENT:(Per A.S.Oka,J):-

1. By the impugned order, the Learned Judicial Magistrate, First Class, Railway Court, Kalyan acquitted the Respondents herein (the accused No. 8 and 9) for the offence punishable under Section 3(a) of the Railway Property (unlawful possession) Act, 1966 (for short the "said Act").

2. The allegation of the prosecution was that the Respondents herein were found in unlawful possession of the property of the Railways. It is alleged that scrap belonging to Railways was found in the shop premises of the first

Respondent, wherein the first accused and the Respondents herein (Accused Nos.8 and 9) were carrying on business. The first to seventh Respondents pleaded guilty.

3. The submission of the learned APP is that the stolen property was found in the premises of the Respondents and therefore, in view of the express provisions of the said Act, the burden was on the Respondents to prove that the property found in their possession, was not the property of Railway. He submitted that the learned Magistrate has completely ignored that the burden shifted on the Respondents.

4. I have carefully considered the submissions. I have perused the notes of evidence. PW-7 Lal Pinjani was working as the Assessor and Collector of Taxes deposed that in the assessment record, the first Respondent is shown as an occupant in respect of the premises at Sr. No.2027 and the second Respondent is shown as an occupant of the premises at Sr. No.2033. He deposed that both of them were occupiers going by the record. In the cross-examination, the witness admitted that he has no personal knowledge as to who are the persons actually conducting the business in the said premises and he was not aware as to who was carrying on business in the said premises.

5. The perusal of the evidence shows that there is nothing on record whatsoever, to prove that the Respondents were in possession of the property where the Railway property was allegedly found. Mere entry of the names of the Respondents in the assessment record of property taxes is not sufficient to prove that the respondents were in possession of the premises. The record of the property taxes is essentially maintained for fiscal purpose for identifying the persons who are primarily liable for payment of municipal taxes.

6. The view taken by the learned Magistrate is that the prosecution has failed to establish that the Respondents were in possession of the premises where alleged stolen property was found. The view taken by the learned Magistrate, that the guilt of the Respondent is not proved beyond reasonable doubt, is certainly a possible view which could have been taken on the basis of the evidence on record.

7. There is no merit in the Appeal and the same is accordingly dismissed.

(A.S.Oka, J.)