

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

CrI.R.C.No.826 of 2010

1.E.Ponnurangam
S/o.Ettiyappan

2.C.Ramesh
S/o.Chinnasamy

3.C.Venkata Perumal
S/o.Chakkara Chettiar ... Petitioners/Accused 1 to 3

Vs.

State represented by
Inspector of Police,
Railway Protection Force,
Chengalpattu,
Southern Railway. ... Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C. against the judgment of learned Additional District Judge/Fast Track Court I, Chengalpattu, passed in C.A.No.73 of 2007 on 05.08.2010 confirming the judgment of learned Judicial Magistrate II, Chengalpattu, passed in C.C.No.66 of 2004 on 05.06.2007.

For Petitioners :Mr.T.Vijayaraghavan,
Senior counsel

For Respondent :Mr.V.Arul,
Additional Public Prosecutor

O R D E R

This revision arises against two concurrent judgments of Courts below convicting petitioners for offence u/s.3(a) of Railway Property (Unlawful Possession) Act, 1966 and sentencing them to undergo 6 months R.I.

2. The prosecution case is that on 13.02.2004 at about 06.30 hours, a secret inspection was conducted near railway stations. During such inspection, first petitioner/A1 was found in possession of one ACB Plate, three Railway Pantrol Clips and

second petitioner/A2 was found in possession of twelve Railway Pantrol Clips. When questioned, they admitted to having stolen the above properties near the Railway track between Thozhupedu and Karasangal Railway stations. Third petitioner/A3 used to buy railway properties stolen by A1 and A2. A case was registered in Crime No.1 of 2004 on the file of respondent. Upon completion of investigation and filing of charge sheet informing commission of offence u/s.3(a) of Railway Property (Unlawful Possession) Act, 1966, the case was tried in C.C.No.66 of 2004 on the file of learned Judicial Magistrate II, Chengalpattu.

3. Before the trial Court, the prosecution examined 10 witnesses and marked 31 exhibits and 10 material objects. None were examined on behalf of the defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 05.06.2007, convicted petitioners/accused for offence u/s.3(a) of Railway Property (Unlawful Possession) Act, 1966 and sentenced them to undergo 6 months R.I. There against, petitioners preferred C.A.No.73 of 2007 on the file of learned Additional District Judge, Fast Track Court I, Chengalpattu, which came to be dismissed under judgment dated 05.08.2010. Hence, this revision.

4. Heard learned senior counsel for petitioners and learned Additional Public Prosecutor.

5. Submitting that petitioners have suffered imprisonment for a period of 27 days, learned senior counsel contended that it would be improper to require petitioners to undergo further imprisonment in a case of offence of the present nature and of date 13.02.2004. Learned senior counsel submitted that it would be proper to follow the judgment of this Court in State by Public Prosecutor v. Rathinavelu [1973 Cri.L.J.354] and afford the petitioners the benefit of The Probation of Offenders Act, 1958.

6. Heard learned Additional Public Prosecutor on the above submissions.

7. In convicting petitioners, Courts below have found that though the evidence of PW-3 did not support the evidence of PW-1, Inspector, PW-1's evidence was supported by PW-10 regards seizure of M.Os.1 to 5 under Ex.P2 - seizure mahazar and hence, the evidence of PWs.1 and 2 could not be discarded for the mere reason that their evidence was not supported by PW-3. PW-7, Village Administrative Officer, Karasangal, has issued a certificate under Ex.P19 informing that A2 was running a grocery as also an old scrap iron business in the premises bearing Door No.68, Karasangal Main Road, Karasangal. PW-1's evidence clearly revealed the missing of MOs.1 to 5 at the occurrence spot and the evidence of PWs.6 and 9 was to the effect that the suit

properties belonged to Southern Railway and would not be freely available in the market place. On the above findings, Courts below have convicted petitioners/accused. This Court is of the view that the finding of conviction rightly stands arrived at.

8. The judgment of this Court in State by Public Prosecutor v. Rathinavelu[1973 Cri.L.J.354], relied upon by learned senior counsel, is brief and this Court is of the view that this Court do well to reproduce the same:

"1.ORDER : - The respondent herein was convicted for an offence under Section 3(a) of the Railway Property (Unlawful Possession) Act and released under Section 4(1) of the Probation of Offenders Act on his bond for Rs. 300/- with two sureties to be of good behaviour for a period one year by the Additional First Class Magistrate, Trichirapalli. The State in this revision contends that Section 3 of the Act provides for a minimum sentence and that as such the Court below erred in releasing him under the Probation of Offenders Act.

2. Clause (a) of Section 3 of the Railway Property (Unlawful Possession) Act, 1966 states that unless for adequate reasons to be recorded in the judgment, the Court shall impose on, the person convicted under Section 3 a sentence for a minimum of one year with a fine of Rs. 1000/-. The question which arises for determination is as to whether despite the fact that a minimum sentence of imprisonment with fine having been prescribed by the Legislature for a person found guilty under Section 3 of the Railway Property (Unlawful Possession) Act, the Court can still resort to the provisions of the Probation of Offenders Act. This Act, as pointed out by the Supreme Court in Rathanal v. State of Punjab is a milestone in the progress of the modern liberal trend of reform in the field of criminology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. This Act received the assent of the President on the 16th of May, 1958. Section 18 of this Act specifically excludes from its purview (1) offences under Section 5(2) of the Prevention of Corruption Act, (2) offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956 and (3) Section 31 of the Reformatory Schools Act 1897. The Railway Property (Unlawful Possession) Act is of the year 1966 and this is long subsequent to the Probation of Offenders Act. Therefore there could have been no specific exclusion of this Act under Section 18. In the Railway Property (Unlawful Possession) Act there is no specific exclusion of the applicability of the

provisions of the Probation of Offenders Act. Their Lordships of the Supreme Court had to deal with an offence under Section 16(1) of the Prevention of Food Adulteration Act as amended by Act 49 of 1964 in Criminal Appeal No. 54 of 1969 Gurumukh Singh v. State of Punjab. By this amendment a minimum sentence with a minimum fine was provided for in Section 16. Their Lordships have held that even in a case under Section 16(1)(a) of the Prevention of Food Adulteration Act which provides for a minimum sentence the benevolent provisions of Section 4(1) of the Probation of Offenders Act could be applied.

3. Thus except in regard to the offences specifically referred to in Section 18 of the Probation of Offenders Act, for other offences under the other Acts, even though a minimum sentence is provided for, the benevolent provisions of the Probation of Offenders Act could be applied if the other conditions are satisfied. The learned Magistrate has applied this provision and there is no case to interfere with his order. The revision fails and the same is dismissed."

9. Following the rationale of the above judgment, this Court is inclined to afford petitioners the benefit of Section 4 of the Probation of Offenders Act. This Court has referred to the 2017 publication of the Probation of Offenders Act, 1958 and finds that there has been no further amendment to Section 18 of such Act.

10. Accordingly, this Court would confirm the findings of conviction and sentence of the Courts below but invoke provision 4 of the Probation of Offenders Act. Consequently, this Court directs that the petitioners be released on probation of good conduct, on their executing a bond in a sum of Rs.10,000/- (Rupees Ten Thousand only) with one surety in a like sum to the satisfaction of the trial Court viz., Judicial Magistrate II, Chengalpattu, within one month from the date of receipt of this order, undertaking to appear and receive sentence when called upon to do so, during a period of three years of the date of the bond and in the mean time to keep the peace and be of good behaviour. It is made clear that in keeping with Section 12 of the Probation of Offenders Act, the petitioners shall not suffer disqualification, attaching to this conviction.

11. The Criminal Revision Case is disposed of with the above direction.

Post 'for reporting compliance' on 22.08.2017.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

gm

To

- 1.The Additional District Judge/Fast Track Court I,
Chengalpattu.
- 2.The Judicial Magistrate II,
Chengalpattu.
- 3.The Inspector of Police,
Railway Protection Force,
Chengalpattu,
Southern Railway.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Section Officer,Criminal Section,
High Court, Madras-104 (For Sending Lower Court
records if any and post the matter for compliance
on 22/8/17)

+1cc to Mr.T..Vijayaraghavan,Advocate sr.46620

Cr1.R.C.No.826 of 2010

msm(co)
ss(12/7/2017)

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