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IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 17.04.2018]

[Pronounced on : 06.08.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.222 of 2008

State rep.by

The Sub Inspector of Police,
Railway Protection Force,
Thiruvarur.

(Crime No.2/2004)

... Appellant/Complainant

.. Vs ..

Ponnudurai

... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the judgment of acquittal of the respondent/accused passed by the learned Judicial Magistrate No.I, Nagapattinam in C.C.No.366 of 2004, dated 27.09.2007, convict the respondent/accused for the offence framed against him, pass sentence against him in accordance with law.

For Appellant : Mr.T.Shanmuga Rajeswaran,
Government Advocate

For Respondent : No appearance

JUDGMENT

The State is the appellant herein.

2. The appeal against the acquittal of the respondent/accused passed by the learned Judicial Magistrate No.I, Nagapattinam in C.C.No. 366 of 2004, dated 27.09.2007.

3. The case of the prosecution is that on 12.05.2004 at about 3.45 a.m., when the P.W.1 Sub-Inspector of Police, Railway Protection Division, Tiruvarur on the regular cheque to prevent the theft of railway property have found that the accused was standing near the Telegram post No.78/5-6 and on enquiry, he



found to be in possession of to fit railway track metal pieces without any authorization. Accordingly, he seized and completed the investigation and filed the final report which was taken as C.C.No.366 of 2004.

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4. Before the trial Court, the Sub-Inspector of Police who is alleged to have been seized railway property was examined as P.W.1 and Head-Constable who went along with him is examined as P.W.2 and P.W.3 is the Constable and P.W.4 is the Junior Engineer of Southern Railway who identify the seized property as that of the railway property. On behalf of the prosecution Seizure Magazar is marked as Exhibit P1 and alleged Confession Statement is marked as Exhibit P2 and Observation Magazar is marked as Exhibit P.3 and the Report is marked as Exhibit P4 and Exhibits P5,P6,P7,P8 were also marked and Mo1 and Mo2 are marked.

5. The learned Judicial Magistrate, Nagapattinam after consideration of the evidence has held that there is no independent witnesses for the alleged seizure and all the 3 witnesses being police witnesses have disbelieved the prosecution theory regarding the alleged position of the Railway property by the accused and also observed that since P.W.1 being the complainant, he ought not to have investigated the matter and file a charge sheet. Since both the investigation officer and as well as the complainant appears to be one and same person and accordingly, granted the benefit of doubt to the accused and held that the charge 3(A) of Railway Property (Unlawful Possession) Act, 1966 is not made out and ordered acquittal.

6. Aggrieved against the said order of the acquittal, the State has preferred the appeal.

7. The learned Public Prosecutor (Crl.side) has submitted that acquitting the accused on the ground that no independent witnesses have been examined by the prosecution and so also for the arrest and recovery of the accused and in acquitting the accused on the ground that the officer who has lodged the complaint cannot investigate the case. The trial Court has failed to consider Section 8(1) of Railway Property (Unlawful Possession) Act, 1966.

8. Heard both sides and perused the records.

9. The respondent/accused stands charged for an offence under Section 3(A) of railway property (unlawful possession Act) was registered by the Tiruvarur RPF post with No.2/04 taken on file by the learned Judicial Magistrate No.I, Nagapattinam as C.C.No.366 of 2004.



10. As such, the reason assigning by the learned Judicial Magistrate No.I that there was no independent witnesses for the alleged seizure of the property namely MO1 and MO2 from the possession of the accused and even Observation Magazar all documents produced by the prosecution attested by the police witness. Besides also found that the complainant himself as investigated and file the charge sheet and considering the finding of the trial Court, I find that there is no infirmity in the said order of factual in the appellate stage.

11. In this view of the matter, this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.I,
Nagapattinam.
- 2.Do 'Thro The Chief Judicial Magistrate,
Nagapattinam.
- 3.The Sub Inspector of Police,
Railway Protection Force,
Thiruvarur (Crime No.2/2004)

Crl.A.No.222 of 2008

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srg 25/09/2018