

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :22.03.2018

DELIVERED ON : 25.10.2018

CORAM:

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.158 of 2018

M.Kumar

..Petitioner

Vs.

Union of India
The State, rep. by Inspector of Police
Railway Protection Force
Katpadi, Vellore District.

..Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment and sentence passed by the learned Principal District and Sessions Judge, Vellore, Vellore District in Crl.A.No.36 of 2017, dated 14.12.2017, confirming the judgment in C.C.No.621/2005, on the file of the learned Judicial Magistrate I, Vellore, Vellore District, dated 8.12.2015 and to set aside the judgment dated 14.12.2017.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.G.Ramar
Government Advocate (Crl.Side)

ORDER

This criminal revision case is filed against the judgment and sentence passed by the learned Principal District and Sessions Judge, Vellore, Vellore District in Crl.A.No.36 of 2017, dated 14.12.2017, confirming the judgment in C.C.No.621 of 2005 on the file of the learned Judicial Magistrate I, Vellore, Vellore District dated 8.12.2015 and to set aside the judgment dated 14.12.2017.

2. The facts in a nutshell are as under: It is the case of the prosecution that on 12.8.2005 at about 0450 Hrs., when the respondent police along with police party was on confidential watch between Katpadi and Sevoor railway Stations, they found the petitioner along with one Rajendiran and Kathavarayan

carrying polythene bags. On examination of the polythene bag carried by the petitioner, he was found to be in possession of 2 Nos. ACB Plates bearing 69 Kg. EWSRD 2776 which is a railway mark and was also having 11 Nos. of Pantrol Clips worth about Rs.520/-. The other accused were also found to be in possession of similar items. When enquired about the possession of railway property, the accused had given unacceptable reasons. They have not produced any lawful authority for possessing the said properties. Therefore, the said properties were seized under mahazar by the respondent and the accused were arrested and their confession statements were recorded. Thereafter, the accused were brought to the police station and case in Crime No.8 of 2005 for the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1996 was registered. On completion of the investigation, the Investigating Officer filed a final report as against the petitioner and two others.

3. The trial Court, after hearing arguments of both sides and considering the evidence adduced - both oral and documentary, found the accused guilty. On appeal, the Sessions Court confirmed the order passed by the trial Court.

4. Assailing the said order, the present criminal revision case is filed for the relief stated supra.

5. The learned counsel for the petitioner vehemently contended that the Courts below erred in convicting the petitioner based upon the confession statement of accused 2 and 3, namely Exs.P3 and P4, the preparation of which is disputed by the petitioner. He added that there is no missing report from the Railway authority and there was no complaint of theft qua the railway property.

6. He further contended that the scene of occurrence is thickly populated residential area and public were present at the time of occurrence, but none of them were made witnesses and it only shows that the case has been foisted against the petitioner. He further contended that non examination of material witness, Parthasarathy, who was working as Watchman in the godown and in-charge of the Trolley Engine is fatal to the prosecution.

7. Per contra, the learned Government Advocate (Criminal Side) contended that the complainant had proved the charge against the accused person beyond reasonable doubt and hence, the onus shifts upon the accused to prove that his possession was lawful and inasmuch as the petitioner had not adduced any defence witness and the prosecution had satisfied all the ingredients stipulated in Section 3(a) of the Railway Property (Unlawful Possession) Act, the arguments advanced by the

petitioner are to be negated and the judgments of the Courts below do not warrant interference.

8. I heard Mr.E.Kannadasan, learned counsel for the petitioner and Mr.G.Ramar, learned Government Advocate (Criminal Side) for the respondent and perused the documents available on record.

9. The Railway Property (Unlawful Possession) Act, 1966 has been enacted to consolidate and amend the law relating to unlawful possession of railway property. Prior to enactment of this Act, the Railway Protection Force Act, 1957 had been enacted with a view to provide for the constitution and regulation of the Railway Protection Force for the better protection and security of the railway property. Under the said Act, the power of investigation regarding cognizable offences concerning railway property was conferred on the members of the Force or its superior officers. After making arrest under Section 13 of the 1957 Act, the member of the Force or superior officer shall have to make over the person arrested to a Police Officer or cause his production in the nearest police station. The Act has been enacted with the object to vest power of investigation and prosecution of offences relating to railway property in the same manner as in the Excise and Customs Act.

10. Section 3 of the Act provides penalty for unlawful possession of railway property and Section 5 states that the offence under the Act shall not be cognizable. Section 6 vests power in the superior officer or member of the force to arrest without warrant and Section 7 provides that if a person is arrested for an offence punishable under the Act by a person other than an officer of the Force, he shall be forwarded without delay to the nearest officer of the Force. Section 8 contains the provision with regard to enquiry to be made by an officer of the Force and Section 9 empowers an officer conducting enquiry to summon persons to give evidence and produce documents and, according to sub-section (4) of Section 9 such enquiry is a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. Section 14 of the Act states that the provision of this Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

11. Section 3(a) of the Railway Property (Unlawful Possession) Act, reads thus:

"Section 3. Penalty for unlawful possession of railway property: Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or

unlawful obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable—

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees."

12. From the above it is clear that the essential requirements of Section 3 are that: (a) the property in question should be railway property; (b) it should reasonably be suspected of having been stolen or unlawfully obtained; and (c) it should be found or proved that the accused was or had been in possession of that property. If the first two ingredients are proved, then the burden shifts on the accused to establish that the Railway property had come into their possession legally/lawfully.

13. In the case on hand, the Courts below found that all the accused are railway employees and they were enquired before their subordinates in the Railways and inasmuch as Railway Protection Force personnel are not police officers within the meaning of Section 25 of the Evidence Act, the confession made by the accused is admissible in evidence. It is not disputed that the Railway Protection Force officer was entitled to make an enquiry under the Act and the officer under the said Act is not a Police officer for the purposes of Section 25 of the Indian Evidence Act and the confessional statement recorded by him is admissible in evidence. However, in the case on hand, the implication of the petitioner in the case is purely based on the confessional statements of accused 2 and 3, namely Exs.P3 and P4, and preparation of such confession statements are seriously disputed by the petitioner. It is well settled that no conviction can be based solely on the confession of a co-accused. In the instant case, there is no other evidence against the petitioner besides this. If the statement of the co-accused is left out of consideration, there remains nothing against the petitioner.

14. "Railway property" has been defined thus under Section 2(d) of the Act as under:

"Section 2(d): 'Railway property' includes any goods, money or valuable security or animal belonging to, or in the charge or possession of a Railway Administration."

15. It is evident from this definition that Railway property includes two types of properties, one is that property of which the Railway itself is the owner and the other is that property of which the Railway itself is not the owner but is in charge or possession, obviously in the course of its transit from one place to other. In the case on hand, on examination of the seized items, it was deposed the property belonging to Railways bears "IR" mark and all the seized items bear the said mark. The Section Engineer in Railways, P.W.2, categorically deposed that the seized articles are railway property. However, what needs to be noted at this juncture is that the railway authority had not given any missing report qua the railway property or theft of railway property. It is not known as to why the railway authorities remained mute spectators when railway property has been said to be stolen by the petitioner.

16. Even though law is well settled vide the decision in Public Prosecutor (A.P.) v. Shaik Galib and Others (1975) Cri.L.J.952, wherein it is held as follows:

"It is not necessary that there should be a report of the theft of the railway property. It is sufficient if the facts and circumstances disclose that the property is reasonably suspected of having been stolen.

Once it is established that it is the railway property and it is reasonably suspected to have been stolen, the burden shifts upon the accused to show how he came into lawful possession of the same.

The fact that no report of theft was made from the railway yard is not a ground for holding that the accused came into possession of the property by lawful means."

the fact which gains prominence in the instant case is that except the confessional statements of the co-accused, the railway authorities have not chosen to examine the material witness, Parthasarathy, who was working as Watchman in the godown and in-charge of the Trolley Engine. No reason has been adduced by the respondent authorities for non-examination of the material witness. It is not the case of the respondent that there was no other material witness or that Parthasarathy was not working as Watchman in the godown.

17. The scope of revision is restricted to consider the legality and propriety of the decisions of the Courts below. In the case on hand, except the confessional statements of the co-accused there is no material to impute the petitioner in the

crime. No material witness has been examined and the presence of the material witness is not disputed by the respondent authority by producing any document or evidence.

18. The procedural law, in my considered opinion, has not been followed, inasmuch as but for the confessional statements of the co-accused there is no iota of evidence against the petitioner.

19. For the foregoing reasons,

(a) the criminal revision case is allowed;

(b) the judgment and sentence passed by the learned Principal District and Sessions Judge, Vellore, Vellore District in CrI.A.No.36 of 2017, dated 14.12.2017, confirming the judgment in C.C.No.621 of 2005 on the file of the learned Judicial Magistrate I, Vellore, Vellore District dated 8.12.2015 are set aside;

(c) the petitioner is acquitted from all the charges and the trial Court is directed to refund the amount, if any paid by the petitioner.

vs

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge, Vellore, Vellore District.
2. The Judicial Magistrate I, Vellore, Vellore District.

+3ccs to Mr.E.Kannadasan, Advocate S.R.Nos.73784, 73158

KR/9/11/18

CrI.R.C.No.158 of 2018