

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEAL No.1214 OF 2006

JUDGMENT:

This Criminal Appeal is preferred by the *de facto* complainant, aggrieved by the judgment dated 06.03.2003 in C.C. No. 44/2001 passed by the learned VI Metropolitan Magistrate for Railways, Waltair, acquitting the accused for the offence punishable under Section 3 (a) Railway Property (Unlawful Possession) Act, 1968 for short RP (UP) Act .

2. The factual matrix of the case is thus :

a) The IPF, DLS, Waltair filed a complaint against A1 to A3, seeking punishment for the offence under Section 3(a) RP (UP) Act, alleging that on 07.12.2000 at 9 P.M., when PW1-Sri Murugu- IPS, DLS, Waltair along with DI, CIB and other staff and constables started conducting joint raid, at that time, at about 10.00 P.M., they found A1 riding a rickshaw loaded with certain railway property like CST-9 plates, one railway signal tressal, two railway brick blocks, one cut rail piece and one quintal of iron scrap, having polythene covers over it at DLS West side on the road and on demand, A1 failed to produce proper authority or receipt for possessing the said railway property and on that PW1 seized the said property from the possession of the accused under the cover of Ex.P1-seizure list-I and recorded the statement of A1, wherein A1 allegedly stated that he collected said Iron material by the nearby villages and he was going to dispose of the same at the scrap godown of A3 at Visakhapantam. On 08.12.2000, in

pursuance to the confession statement of A1, PW1 along with CIB staff and local police of II Town Police Station, Visakhapatnam went to the scrap shop of A3, where they found A2 dealing with iron scrap material and in the said course, they found 85 railway wagon nuts, 44 railway wagon pins, 230 railway wagon clips, 25 railway wagon washers, 24 railway wagon siphon pipe clips, 20 railway brake cutter pins, 8 different sizes of railway wagon pull rod cut pieces and two different sizes of railway OHE catching plates in the shop of the A3 and on demand A2 failed to produce any authority or receipt for possessing the aforesaid railway iron articles. Therefore PW1 seized the said iron railway property from the possession of A2 and A3 under the cover of Ex.P.4-seizure list-II.

b) On 25.12.2000, PW7, who is Section Engineer, C & W of Waltair, on requisition attended RPF Post and inspected item Nos. 6 to 12 of the complaint mentioned property and issued certificate stating that the said iron articles belong to Indian railways and they would not be available in open market. On 08.01.2001, PW7, Senior Section Engineer, Waltair on requisition, attended RPF post and inspected item No.2 of complaint mentioned property and issued a certificate stating that the said property belongs to Indian railways and the same is not available in the open market. On 29.01.2001, PW1 obtained ownership certificate of the shop bearing D.No.27-21-3 Assessment No. 13870 of Ward No.10, Visakhapatnam. On completion of investigation he filed a complaint against the A1 to A3. The Trial Court has taken cognizance for the offences punishable under Section 3(a)RP(UP) Act against A1 to A3. During trial, the Trial Court followed the

warrant procedure and PW1 to PW10 were examined and Ex.P.1 to P.13 were marked on behalf of prosecution. Thereafter, the Trial Court framed charge under Section 3 (a) RP(UP) Act for which the accused denied charges, pleaded not guilty and they claimed to be tried. Thereafter, PW2 to 10 were examined on behalf of the prosecution. After completion of prosecution evidence, the accused A1 to A3 were examined under Section 313 Cr.P.C for the incriminating evidence adduced against them, for which they pleaded not guilty by contending that the evidence adduced against them is false.

c) Having regard to the nature of the property seized, the Trial Court observed that since inception, the claim of the complaint is that MOs.1 to 5, iron articles, seized from the possession of A1 under the cover of Ex.P.1 - seizure list-I and MOs.7 to 15 iron articles which were seized from the possession of A2 and in the shop of A3 under the cover of Ex.P.4 - seizure list II are railway iron properties and they will not be available in the market. The claim of the complainant was well established through the evidence of PW1, PW6,7 and 8 and also under Exs.P.7 to P.9. The Trial Court further observed that though the accused challenged the credibility and genuineness of the testimonies of the prosecution case, but they could not establish that MOs 1 to 5 and MOs 7 to 15 , iron articles do not belong to Indian railways and they belongs to the accused or some other department other than Indian railways and the said property could freely available in the open market. On that observation, the Trial Court came to the conclusion that MOs.1 to 5 and MOs.7 to 15, iron articles belong to Indian railways alone and those properties could not be available in

open market freely. Then the Trial Court embarked upon, deciding whether accused were guilty of the offence punishable under Section 3(a) RP(UP) Act. The Trial Court on analysis of the evidence was of the view that prosecution failed to establish that A1 was found in possession of MOs1 to 5 carrying on MO6 push trolley and that they seized those articles from him under the Ex.P.1 seizure list. It further observed that similarly, the prosecution also failed to prove the seizure of items of MO.7 to 15 from the possession of A2 in the shop of A3 under the cover of A4 seizure list, in view of the fact that a record does not disclose sufficient proof beyond reasonable doubt to show that MOs.7 to 15 were seized from the possession of A2. The Trial Court observed that PW1 did not depose accurately at what point of time on 07.12.2000 he and other staff members started conducting the search at DSL area, Visakhapantam, though in the complaint it was mentioned as if PW1 and other staff members started conducting raid at 9 P.M. on that day. Further, PW3 deposed as if PW1 recorded the Ex.P.-2 confessional statement of the A1 on his translation and as if he read over and explained contents of Ex P2 to A1 in Telugu, but interestingly Ex.P.2 the alleged confessional statement of A1 did not contain the name of A1 and it contains only sur name as “Chipurupally” instead of full name of A1. Therefore, the seizure report cannot be attributed to A1 and cannot be said to have been recorded by seizing the Articles, while A1 was carrying them. The Trial Court further observed that PW3 admitted during the course of cross-examination that he does not know whether A1 knows reading and writing of the Telugu language, although he allegedly read over and explained the contents of the Ex.P1 – seizure list

and Ex.P2- confessional statement. The Trial Court further observed that prosecution also failed in placing sufficient material before the Court to show that signatures of A-1 were obtained on Ex.P1 and P2 and contents were read over and explained to A-1 in the language known to him. Therefore, the seizure cannot be accepted. The Trial Court ultimately held that since the prosecution failed in proving the contents of Ex.P1 and P2, the seizure list shall fail. Then, coming to seizure on 08.12.2000 the Trial Court observed that since the seizure on 07.12.2000 from A1 could not be established, it must be held the prosecution failed in proving the subsequent seizure also. On these observations, the Trial Court acquitted the accused.

3) Heard learned Assistant Public Prosecutor and learned counsel for respondents.

4) The main contention of learned Assistant Public Prosecutor is that prosecution by letting cogent, concrete and clinching evidence of PW1 established the seizure of MOs1 to 5 from the possession of A-1 on 07.12.2000 and A1 failed to produce any record justifying the possession of railway property and basing on the statement of A1, PW1 along with other staff members, proceeded to the shop of A3 on 08.12.2000, conducted raid, seized MOs.7 to 15 from the possession of A2 under the cover of Ex.P4- seizure list and the Trial Court without proper appreciation of the evidence acquitted the accused.

5) Learned counsel for respondents would submit that as rightly observed by the Trial Court the prosecution failed to establish the initial seizure, allegedly made from A1 under Exs.P1

and P2. He would submit that in Ex.P2 statement the name of A1 is not at all mentioned and it was only mentioned as “Chipurupally”. Further, A1 is admittedly a rikshaw puller and he was only a signatory that too, in Telugu where as Ex.P.1 and P2 were recorded in English language which manifests that his signatures were obtained on Exs.P1 and P2 without explaining him of the contents of those documents. Therefore, the Trial Court rightly held that initial seizure itself was not established. Therefore, the question of conducting raid on 08.12.2000 and making 2nd seizure basing on the alleged confessional statement of A1 does not arise.

6) The point for determination is:

Whether there are merits in this Criminal Appeal to allow?

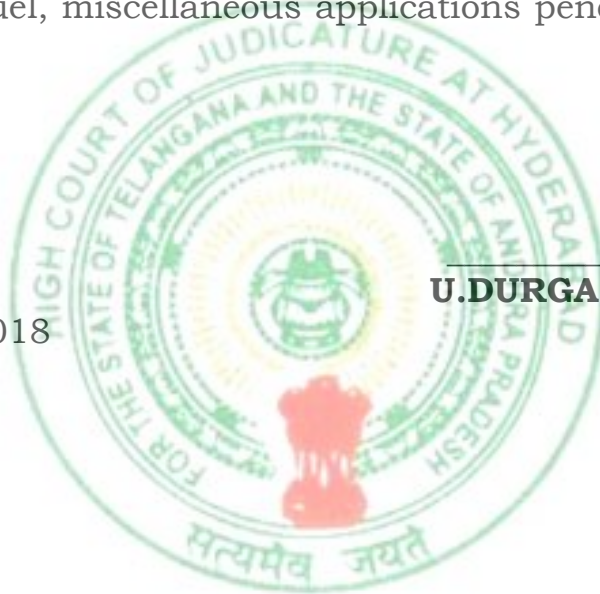
7) **POINT** : The prosecution case is that PW1 along with other staff members while conducting search on 07.12.2000 at about 10 PM happened to found A1 driving rikshaw loaded with MO.1 to 5 and on interception, A1 allegedly failed to produce any record for possessing the railway property and thereupon PW1 seized the articles under the cover of Ex.P1 and P2. A perusal of Ex.P1, seizure list and Ex. P2-statement of A1 would show that they were recorded in English and no doubt the signatures of A1 are affixed on them. In Ex.P2- statement the full name of A1 is not mentioned. It is only mentioned as “Chipurupally”. It must be said that this is a haphazard way of recording an important and crucial document list seizure statement. Hence it creates any amount of doubt regarding the genuinity of prosecution case regarding the seizure. Therefore, the Trial Court rightly discarded

the initial seizure. So far as the seizure dated 08.12.2000 is concerned, if the initial seizure and the confessional statement of A1 are omitted, the subsequent seizure on 08.02.2000 on the basis of the statement of A1 does not arise. At any rate, the prosecution case does not infuse confidence and hence this court finds no illegality in the judgment impugned.

8) This appeal is dismissed by confirming the judgment of the Trial Court in CC No.44 of 2001 dated 06.03.2003 passed by the VI Metropolitan Magistrate for Railways, Waltair.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date : 29.06.2018
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