

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE
CRIMINAL APPEAL NO.561 OF 1996**

The State of Maharashtra	)	Appellant/Complainant
V/s.		
1. Mohammed Ibrahim Lal Mohammed	)	
Pipe Road, Surat Prasad Chawl,	)	
Kurla (W), Mumbai – 400 070	)	
2. Mohd. Arshad Mohd. Ibrahim Pipe	)	
Road, Surat Prasad Chawl,	)	
Kurla (W), Mumbai – 400 070	)	Respondents/Accused

Ms. Anamika Malhotra, APP for State.

CORAM : K.R.SHRIRAM, J.
DATE : 11th NOVEMBER 2019

ORAL JUDGMENT :

1 Respondents/accused are being prosecuted for alleged offence under Section 3 (a) of the Railways Property (Unlawful Possession) Act, 1966 (the said Act).

2 As per the charge sheet supplied, it appears that accused were arrested in another unrelated incidence being Crime No.34 of 1993 on 14th September 1993. While the Investigating Officer – K.B. Gange was interrogating accused, accused were supposed to have disclosed that there were railway property kept in their godown at Kurla, Mumbai valued at about Rs.30,000/-. Accused no.1 is also supposed to have informed the Investigating Officer that those materials, which were in his godown, were purchased by them. In the confessional statement, accused no.1 has

admitted that he has been regularly buying stolen railway property and he would cut those property into pieces so that they cannot be identified as railway properties. There is a similar confessional statement by accused no.2.

3 Based on this confessional statement, both accused were taken by Investigating Officer to the godown and he seized the property in question. Thereafter, the offence under Section 3(a) of the said Act has been registered.

4 The particulars of charge were explained to accused, who denied the same and claimed to be tried. The stand of the accused has been that they have been wrongfully framed and according to accused, the property, which were seized, were actually handed over to them by a Court in Kalyan. I have to, at this stage, note that I have not been able to sight any Court order, even a photocopy. At the same time, accused were acquitted because according to the Trial Court the prosecution has failed to prove that the goods seized were actually railway property.

5 PW-1, who was the complainant, in the cross examination though has admitted that accused no.1 told him that seized property was obtained by them from Kalyan Court, but he has denied that accused no.1 showed him any certified copy of any order passed by any Court in Kalyan. He has also denied that accused no.1 showed any cash bills or that the

originals of the bills were handed over to him and PW-1 did not return those bills. Accused no.1, however, admitted that part of the seized property was scrap and accused were scrap dealers.

6 PW-2 has admitted that railway administration does auction railway properties and anyone can purchase the same in auction sale. He has also admitted that it is possible for accused to own such property. PW-3 in his cross examination has stated that the seized materials were old and were unused. He has also admitted the fact that railway sells its property in auction and such properties can be easily available in open market. He has also admitted that he is unable to produce any evidence to show that the property found in the premises of the accused were in the possession of railways at any time. Moreover, the seized property do not bear any railway mark or are there any other mark like, IR, CR or WR or any other mark to show that those were railway properties.

7 PW-1 is a RPF Inspector and PW-2 and PW-3 are railway employees. No independent panch was ever produced or examined. Though confessional statements in proceedings under the said Act are admissible in evidence, it does not mean that the prosecution does not have to corroborate what is stated therein. In the statement of accused recorded under Section 313, both accused have denied that they made any confessional statement. They have also denied and rightly so, that any seizure panchnama was prepared in their presence. Accused have in their

statement stated that the case has been falsely registered against them.

8 The properties seized were scrap. Accused were scrap dealers. No panch witness has been examined to show any memorandum of seizure. The prosecution witnesses have admitted that railway properties are sold in auction and anybody can purchase. PW-1 has also stated that accused also informed him that they purchased these scrap as they are scrap dealers. The prosecution has not been able to show from where the property was stolen. In the cross examination, it has also come out that the properties seized do not have any marking of railway. Under Section 3 of the said Act, for a person to be held guilty, the person should be found to be in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained. In this case, the prosecution has not been able to show that the property seized were stolen or that the accused unlawfully obtained the same. Only once the prosecution crosses this hurdle will be accused have to prove that railway property came into his possession lawfully. The prosecution not having crossed the hurdle, the Trial Court was correct in acquitting the accused.

9 In *State of Maharashtra V/s. Vishwanath Tukuram*¹, the Apex Court laid down the following ingredients of the Section 3 of the said Act :

- (a) the property in question should be railway property;
- (b) it should be reasonably suspected of having been stolen or

1. (1979) 4 SCC 23

unlawfully obtained; and

(c) it should be found or proved that the accused was or had been in possession of that property.

In all these three grounds, the prosecution has failed.

10 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***² in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

2. (2007) 4 SCC 415

11 There is an acquittal and therefore, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

12 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

13 Appeal dismissed.

(K.R. SHRIRAM, J.)