

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.627 OF 1996

The State of Maharashtra
(through Shri P.S.Dahake,
Sub-Inspector RPF, Nasik
Road Station)

... Appellant

Vs

1 Popat Yashwant Mali
age 35 years;
2 Kisan Sravan Mali
age 35 years;
3 Bhagwan Junare,
age 45 yrs;
4 Dattu Tukaram Shinde,
age 22 yrs;
5 Balu Kachru Junare,
age 25 years;
All residing at Lahavit Rly Station,
Near Rly. 'B' Cabin Lahavit
Dist. Nasik (MS)

... Respondents

...

Mr. Vinod Chate, APP for the Appellant-State.
None for the Respondents.

CORAM : SANDEEP K. SHINDE J.

DATE : AUGUST 23, 2019

ORAL JUDGMENT :

The State has preferred this appeal under Section 378(1)
of the Code of Criminal Procedure, 1973 against the order of

acquittal passed by the learned Judicial Magistrate First Class (Railways), Manmad, Camp at Nasik Road in Regular Criminal Case No.49 of 1993.

2 Respondents/accused were prosecuted for the offence punishable under Section 3(a) of the Railway Property Unlawful Possession Act, 1966.

3 It is the prosecution's case that on 6th August, 1993, Divisional Commissioner, RPF, sent a message that gunny bags of fertilizers found off the tracks, near Lahavit Railway Station where one goods train containing fertilizers was stationed. Therefore, inspector Joshi and others reached the spot and found sixteen bags of urea beside that railway line and a road adjoining that railway line. He seized those bags of urea by recording seizure panchanama. On 19th August, 1993, Enquiry Officer Sub-Inspector Mr. Dahake received the information that accused nos.1 and 2 have committed the theft of urea. He, therefore, held an enquiry in terms of Section 9 of the Railway Property Unlawful Possession Act, 1966. It is the prosecution's case that in the enquiry, accused confessed commission

of theft of the urea bags, who then disclosed the place where the urea fertilizers was used and the gunny bags were burnt. Prosecution thus seized burnt pieces of urea bags from the field of accused no.3 under the seizure panchanama. PW 1-Enquiry Officer thus, registered the offence and then, accused were tried for the charge framed against them under Section 3(a) of the Railway Property Unlawful Possession Act, 1966.

4 Accused were tried in the regular warrant trial wherein the prosecution has relied upon the evidence of P.W.1-Pramod Sriram Dahake, an Enquiry Officer (RPF Sub-Inspector). He relied on the statements of the accused recorded in enquiry under Section 9 of the Railway Property Unlawful Possession Act, 1966. Besides, prosecution has examined panch witnesses, Vithal Bhadange and Tukaram Bhosale. These two witnesses did not support the prosecution's case in whose presence, confessions of the accused were allegedly recorded in the enquiry.

5 The learned Trial Court having found that P.W.2 and P.W.3, panch witnesses did not support the prosecution and thus in

the absence of any independent witness, declined to rely upon the evidence of P.W.1, Enquiry Officer and that of P.W.4-Bhimrao Bhagat ASI, RPF at Nashik Road.

6 Panch witnesses P.W.2 and P.W.3 in whose presence, statements of the accused were recorded in an enquiry have turned hostile. More so, statements of the accused were recorded in Hindi and such statements recorded in the course of judicial enquiry do not bear an endorsement that contents of the statements were explained to them in Marathi or language known to them. There is no evidence other than that of enquiry officer to corroborate his version. Thus, for want of cogent and dependable evidence, the Trial Court has correctly acquitted the accused persons.

7 In view of the facts of the case and for the reasons, no case is made out for interference in the order of acquittal recorded in the Regular Criminal Case No.49 of 1993. Appeal fails and dismissed accordingly.

(SANDEEP K. SHINDE, J.)