

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.27 of 2010

State rep.by

The Sub Inspector of Police,
Railway Protection Force,
Mylapore, Chennai.

(Crime No.4 of 2006)

... Appellant/Complainant

/Vs/

Perkumans

... Respondent/Accused

PRAYER: Criminal Appeal filed under section 378 of the Criminal Procedure Code, to allow this appeal and set aside the judgement of acquittal of the respondent/accused passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai-15 in C.C.No.2213 of 2009 dated 18.08.2009.

For Appellant : Mr.K.Prabakar
Additional Public Prosecutor

For Respondent : Mr.K.Balasubramanian

J U D G M E N T

This Criminal Appeal has been filed by the appellant/complainant against the judgement dated 18.08.2009 in C.C.No.2213 of 2007 passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai-15, acquitting the respondent/accused for the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

2. The case of the prosecution is that PW.1/Chiranjeevalu, Sub Inspector, Railway Protection Force, Mylapore, Chennai on information received on 20.12.2006, conducted a search at M/s.Sulochana Waste Paper Mart run by the respondent/accused, No.185, 12th lane, Canal Bank Road, Ranganathapuram, Indira Nagar, Chennai-20. After getting a search warrant from the Court, the search was conducted on the same day at the shop of the respondent/accused between 05.00 p.m., and 05.20 p.m., in the presence of the independent witnesses S.Paulraj and

J.Kumaran and in the presence of the respondent/accused, during the search, the following articles belonging to the Railways were recovered from the above said shop viz., (i) 2 Nos. of fish plates, (ii) 12 Nos. of pandrol clips and (iii) 8 Nos. of screw spikes. Since, the respondent/accused was not having any explanation and any receipts for having in possession of the Railway properties, the case was registered against him and final report was filed for the offence under Section 3(a) of the said Act.

3. PW.1 to PW.6 were examined on behalf of the prosecution and Exs.1 to 9 were marked and M.Os.1 to 3 were marked on the side of the prosecution. On behalf of the defence, the respondent/accused did not let in evidence. The Trial Court finding that the appellant/complainant had not given any documentary proof to show that the properties which were recovered from the respondent/accused belonged to the Railways and that since no complaint had been given by the Railways to take action to recover the properties stated to have been stolen from the Railways and that since no complaint was received by the appellant/complainant regarding that the respondent/accused had committed theft and was illegally in possession of railway properties, had acquitted the respondent/accused.

4. The learned Additional Public Prosecutor appearing for the appellant/complainant would submit that the learned Trial Judge had acquitted the respondent/accused based on misconception and misinterpretation of law. He would further submit that when the prosecution has proved the case by letting in evidence to show that the properties belong to the Railways and that they were recovered from the possession of the respondent/accused, the burden shifts on the respondent/accused to prove that the property came into his possession lawfully, whereas, the Trial Court has wrongly assumed that the burden is on the prosecution to prove the case. He would further submit that as per Section 3 of the Railway Property (Unlawful Possession) Act, 1966, burden is cast upon the respondent/accused to prove that the railway property came into his possession lawfully. No evidence had been let in by the respondent/accused to show that the possession of the Railway property was by lawful means. He would further submit that the learned Trial Judge failed to take into consideration Ex.P3 based on which the properties belonging to the Railways were recovered.

5. The learned Additional Public Prosecutor would further submit that all the witnesses have cogently supported the case of the prosecution. He would also submit that the prosecution has let in evidence through PW.6, a Junior Engineer of Railways, who was spoken about the properties being manufactured at the

Railway Engineering Work Shop at Arakkonam and that they are not available in the local market and he had also certified by Ex.P8 that the properties exclusively belong to the Railways and no evidence had been let in by the respondent/accused to deny that the properties do not belong to the Railways.

6. Section 3 of the said Act provides the penalty for unlawful possession of railway property and he would submit that the essential requirements of the Section 3 are that (i) the property in question should be railway property, (ii) it should reasonably be suspected of having been stolen or unlawfully obtained and (iii) it should be found or proved that the accused was or had been in possession of that property and when these three essential requirements of the Section are proved by the prosecution, the respondent/accused has to be convicted.

7. On a perusal of evidence it is seen that during the search conducted at the premises of the respondent/accused, he was found to be in possession of railway property. Further, PW.5 who is the owner of the premises, had deposed that the respondent/accused was occupier of the premises having taken the premises on rent from her and search was conducted in the presence of independent witnesses PW.3 and one Paulraj. PW.3 had spoken about the properties that were recovered from the possession of the accused and that the respondent/accused has also given a confession regarding the same and that the confession was marked as Ex.P6. PW.6 had deposed and certified that the properties belong to the Railways.

8. The learned counsel appearing for the respondent/accused would submit that it is the specific case of PW.6 that there was no mark of the Railways on the properties were which recovered and that there is no complaint from the Railway Authorities regarding the theft of such goods. He would further submit that PW.3 has not stated about the identity of the respondent/accused.

9. Per contra, the learned Additional Public Prosecutor would submit that the prosecution has proved by cogent evidence that the respondent/accused was the proprietor of M/s.Sulochana Waste Paper Mart and that PW.6/Valarmathi had stated that the respondent/accused was tenant in the premises and State of Maharashtra Vs.Vishwanath Tukaram Umale and others reported in 1979 (4) SCC 23, the Hon'ble Apex Court, held that when the above said three necessary ingredients are proved, the burden shifts on the respondent/accused.

10. The learned Additional Public Prosecutor would further submit that this Court in earlier decisions has held that just because there is no mark of the Railways on the case properties

it does not follow that they are not Railways properties. He would also submit that the learned Trial Judge committed error by acquitting the respondent/accused. When the prosecution has proved that the properties belong to the Railway and that it was found in possession of the respondent/accused and that the respondent/accused having not let in evidence to prove that it came to his possession by lawful means, the Trial Judge ought to have convicted him.

11. In the case of State of Maharashtra Vs. Vishwanath Tukaram Umale and others reported in 1979 (4) SCC 23, the Hon'ble Apex Court has held as follows:-

"4. Section 3 of the said Act provides the penalty for unlawful possession of railway property, reads as follows:-

"Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully 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;

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine 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 two years and such fine shall not be less than two thousand rupees.

The essential requirements of the Section therefore are that (i) the property in question should be railway property, (ii) it should reasonably be suspected of having been stolen or unlawfully obtained and (iii) it should be found or proved that the accused was or had been in possession of that property. It is not in dispute before us that the property in question was railway property within the meaning of Section 2(d) of the Act. It is also not in dispute before us that it was reasonably suspected of having been stolen or unlawfully obtained. Section 3 were shown to exist at the time when the question of framing the charge came up for

consideration. The question which remained for consideration was whether it could be said that the accused were found or were proved to have been in possession of the railway property. It was therefore, permissible for the prosecution to establish, either that the accused were "found" to be in possession of the railway property, or that they were proved "to have been" in possession thereof."

12. Now coming to the facts of the case the prosecution by letting in cogent evidence had satisfied the requirements headed under Section 3 of the Railway Property (Unlawful Possession) Act. The respondent had not discharged the burden by proving that the railway property came into his possession lawfully. The above judgement has been followed in Omprakash Vs.State of Uttarpradesh reported in 2008 (2) SCC 236.

13. This Court is of the view that the learned Trial Judge had on wrong appreciation of facts and law, acquitted the respondent/accused and necessarily the order of acquittal passed by the learned Trial Judge has to be set aside.

14. Now having found the respondent/accused guilty of the offence under Section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966, this Court has to decide the question of sentence, in light of the benefit of acquittal rendered in favour of the respondent and the time gap of 12 years from the date of occurrence.

15. The learned counsel for the respondent/accused would submit that the respondent/accused is a first offender and that he has not involved in any offence thereafter and that he has enured benefit of acquittal and eight years have lapsed and that after acquittal, the respondent has not been brought to any adverse notice and that he is also living with his family and he has got two children and he has take care of his family. He would also submit that in a similar matter, while this Court setting aside the order of acquittal, had directed invocation of provisions of the Probation of Offenders Act and ordered release of the accused under Section 4 of the Probation of Offenders Act while imposing payment of fine amount and would pray for invocations of the Provisions of the Probation of Offenders Act. He would rely on the judgement of the Hon'ble Apex Court in Nirmal Lal Gupta Vs.State of Orissa reported in 1995 Supp (2) SCC 713 and he would also rely on the judgements of this Court reported in State by the Sub Inspector Vs.Ravunni reported in 1999 (1) MWN (Cr.) 72 and State by Public Prosecutor Vs.Rathinavelu reported in 1972 SCC Online Mad 275: 1973 Cri LJ 354, wherein, the Courts have released the accused invoking the provisions of the Probation of Offenders Act.

16. Considering the facts and circumstances of the case and that the occurrence had happened during the year 2006 and the respondent/accused having enured benefit of acquittal, this Court is of the opinion that since there is no bar under the Railway Property (Unlawful Possession) Act, 1966, to invoke the provisions of the Probation of Offenders Act instead of sentencing him with imprisonment as specified under Section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966, that the respondent/accused may be given benefit of Probation of Offenders Act and be directed to pay fine and the respondent/accused shall be released under Section 4 of Probation of Offenders Act. Therefore, I direct the petitioner to be released on probation of good conduct, on his entering into a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) with one surety to appear and receive sentence when called upon during a period of one year and in the meantime to keep the peace and be of good behaviour.

17. For the reasons stated above,

(i) the order of acquittal dated 18.08.2009 of the learned XI Metropolitan Magistrate, Saidapet, Chennai-15 in C.C.No.2213 of 2007 is set aside.

(ii) The respondent/accused is convicted for the offence punishable under Section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966.

(iii) The respondent/accused is directed to be released under Section 4 of the Probation of Offenders Act on him appearing before and executing a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) with one surety for a like sum to the satisfaction of the learned XI Metropolitan Magistrate, Saidapet, Chennai-15 to keep peace and be of good behaviour for a period of one year and to receive sentence as and when called upon to do so.

(iv) the respondent/accused is directed to pay a fine of Rs.2,000/- (Rupees Two Thousand only) within a period of one month from the date of receipt of a copy of this order failing which he shall suffer simple imprisonment for three months.

18. In the result, the Criminal Appeal is partly allowed with the directions stated above.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The XI Metropolitan Magistrate,
Saidapet, Chennai-15.
2. The Sub Inspector of Police,
Railway Protection Force,
Mylapore, Chennai.
3. The Public Prosecutor,
High Court of Madras.
4. The Section Officer,
V.R.Section, High Court of Madras.

+1cc to Mr.K.Balasubramanian, Advocate Sr.17397

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srg 28/03/2019



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