

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

CORAM:

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

Criminal Appeal No. 481 of 2010

State rep.by

The Sub Inspector of Police,

Railway Protection Force,

Avadi Police Station

(Crime No.9 of 2005)

Appellant/Complainant

Versus

1. A.Sulaiman

2. Thamaraiselvan

3. Rajendran

4.Munnalogar

5. A.Vajravel

6. V.Murugalingam

7. Amanullah

...1 to 7 Respondents/Accused A-1
to 4 and 6 to 8

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 in C.C.No.465 of 2005, dated 22.04.2010 on the file of the learned Judicial Magistrate No.1, Tiruvallur District and convict the respondents/accused as charged.

For Appellant : Mr.K.Prabakar

Additional Public Prosecutor

For Respondents: Mr.P.K.Mohan

J U D G M E N T

This Criminal Appeal has been filed by the appellant/complainant against the judgement dated 22.04.2010 made in C.C.No.465 of 2005 on the file of the learned Judicial Magistrate No.1, Tiruvallur, acquitting the respondents/accused for the offence punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

2. The case of the prosecution in brief is that on 18.04.2005, when Tr.G.Kadirvelu, Inspector of Police/RPF/Avadi and his party were carrying on a routine check up, they have detained a lorry near the Railway level crossing gate No.2

between Pattabiram and Pattabiram Military siding Railway Station. On investigation, they have found 21 Nos. of CST-9 link plates and 68 Nos. of Pandrol clips loaded in the lorry unauthorisedly. Therefore, the occupier of the lorry was arrested along with the property (A-1 to A-6). After arrest, based on the confession of A-1, searches were conducted at the shop of A-1/Sulaiman at Korukkupet, Chennai-21 where further 7 Nos. of CST-9 link plates, 27 Numbers of pandrol clips along the sale proceed amount of Rs.55,000/- for sale of 4-1/2 tons of CST-9 link plates were seized under a cover of search list. Yet another search was also conducted at the shop of A-7/Murugalingam at old Washermanpet, Chennai-21 where 9 Number of CST-9 link plates, 5 Number of Brake blocks and 4 Number of ACB plates along with sale proceed amount of Rs.70,000/- for the sale of 6 tons of CST-9 link plates under cover of search list was recovered. Thereafter, the accused 1 to 7 and the seized properties were produced before the learned Magistrate No.1, Tiruvallur on 19.04.2005 and the accused were remanded to Judicial custody. During the Course of investigation, as there was specific overt act attributable on the part of S.Amanullah who is the father of A-1/Sulaiman, he was added as accused A-8 for having owned the shop of A-1.

3. After completion of enquiry, the complaint was filed before the learned Magistrate on 26.07.2005 and the same was taken on file in C.C.No.465 of 2005. During trial A-5, who was employed in the Railway, died and the charge against him was abated on 19.02.2010.

4. In order to prove the charges against the accused, the prosecution has examined P.Ws.1 to P.W.16, marked M.Os.1 to M.O.11 and Exs.P1 to P.38 to prove its case. The respondents/accused did not examine any witness in support of their defence, but marked two defence documents namely, the deposition of P.W.12 and P.W.13 given by them during the Departmental Enquiry.

5. The Trial Court on consideration of the evidence made available, found the accused not guilty and passed an order of acquittal of the accused on 22.04.2010. Aggrieved by the same, the present appeal is filed.

6. The learned Additional Public Prosecutor appearing for the appellant/complainant would submit that the order of Trial Court is perverse. He would further submit that the Trial Court has acquitted the respondents/accused on flimsy grounds without regard to the deposition of PWs.12, 13, 14 and 15, who witnessed the search and recovery and who have attested the Mahazar search list and confessional statement. However, the trial court concluded that their evidence did not support the prosecution

case and that the seized materials do not bear specific Railway Marks and there is no documentary evidence filed to show that these materials object were missing. According to the learned Public Prosecutor, it is not necessary there should be a report from the Railways with regard to the theft of Railway Property. He would further submit that the evidence of PW.1, the complainant and PW.11 and PW.16 with regard to the seizure of the properties from the respondents/accused clearly indicate the manner in which the properties were recovered. Merely, because independent witnesses have not supported the case of the prosecution, the learned Trial Judge is not justified in acquitting the respondent/accused. He would also submit that the evidence of PW.11 and PW.16 are clear, cogent and convincing to prove that the respondents/accused were in possession of the properties unlawfully which is an offence as per the Railway Property (Unlawful Possession) Act, 1966.

7. The learned Additional Public Prosecutor would further submit that when recovery of the Railway Properties were made from the respondents/accused, the burden shifts on the respondents/accused and they have to prove the manner in which they came to possess the Railway Properties by lawful means. He would further submit that though the respondents/accused have denied the recovery and confession and no claim has been made by the respondents/accused with regard to the cash stated to have been recovery from them, the Trial Court erred in directing the money to be returned to the respondents/accused which is illegal.

8. Per contra, the learned counsel appearing for the respondents/accused would submit that none of the independent witnesses have supported the case of the prosecution. In fact PW.12 and PW.13 were examined during the Departmental Enquiry in respect of some of the respondents/accused, who were Railway Employees and that even during the Departmental Enquiry they have not supported the case of the prosecution and the statement given at the time of the Departmental Enquiry were also marked as defence D1 and D2.

9. The learned counsel for the respondents/accused would further submit that before the presumption shifts on the respondents/accused, the prosecution has to prove the foundational fact that the Railway Properties were recovered from the possession of the respondents/accused and only when the foundational fact is proved, the burden will shift on the respondents/accused. He would further submit that PWs.12, 13, 14 and 15 have not even identified the respondents/accused. Though it has been contended that the confession statement and the statements from the witnesses recorded by the Railway Protection Force Officer is admissible in evidence, a duty has cast upon

the complainant to establish that the confession statement and the statements were recorded in the manner known to law. Further, the learned Trial Judge, finding that the recovery, confessions and the statements had not been recorded in the manner known to law, has acquitted the respondent/accused. There is no illegality or perversity in the finding of the learned Trial Judge in acquitting the respondents/accused. He would further submit that it is settled of law that when there are two views possible the one which is in favour of the respondents/accused should be taken into consideration. Moreover, the respondents/accused ensured the benefit of acquittal and when there is no illegality, this Court shall not interfere in the order of acquittal.

10. At this juncture, the learned Additional Public Prosecutor would submit that the order passed by the learned Trial Judge, in respect of disposal of the cash seized from the respondents/accused is illegal. From the initial questioning and also during the questioning under Section 313 Cr.P.C, the respondents/accused have denied about the recovery of the cash from them and no other materials have been produced by them to show that the cash belongs to them and thereby, the finding of the learned Trial Judge with regard to the return of cash to the accused has to be set aside and the amount may be directed to be confiscated to the state.

11. Heard both sides.

12. I have gone through the materials available on record. PW.12 and PW.13 are the witnesses for drawing of Mahazar. They have neither identified the accused nor they were treated as hostile. Further, there is no evidence to show that the properties were recovered from the respondents/accused and thereby, the foundational fact with regard to the recovery and seizure is doubtful. Further, PW.14 and PW.15 were examined as witnesses regarding the search conducted at the shop of A-1 and A-7 and during their evidence in Court they have not stated anything about the recovery of the Railway Properties having been made from the shop of A-1 and A-7. PW.12 and PW.13 who are projected as witnesses in respect of confessional statements have also not supported the case of the prosecution.

13. Further, it is the categoric evidence of PW.1 that no statement or confession has been obtained from A-8, with regard to the recovery of cash and thereby, falsifying the case of complaint. Further, it is the categoric evidence of PW.3/Abdulkadar, who is the owner of the lorry that the lorry was taken with the staff belonging to the Railway Protection Force from his lorry shed from Washermanpet as empty without any goods and thereby, suggesting that after the empty lorry was

taken from PW.3, the respondents/accused were fixed in this case. Though he has identified the properties belonging to the Railways, he has not stated that the properties for which, he had issued the certificate and the case properties are not one and the same and thereby, creating a doubt in the prosecution case. Further, no evidence had been let in to prove that the lorry was weighed at Murugappa Weigh Bridge and Perfect Weigh Bridge. In such circumstances, this Court is of the opinion that the appellant/complainant has not proved the case beyond reasonable doubt and therefore, the Trial Court is right in acquitting the respondents/accused.

14. With regard to the order of the learned Trial Judge regarding disposal of the property the points urged by the learned Additional Public Prosecutor has force. Right from the registration of the case till the questioning under Section 313 Cr.P.C, the respondents/accused have not claimed the cash or stated anything about the cash. It is a total denial by the respondents/accused through out the case and no material had been put forth before the Trial Court to show that the cash belongs to them or that the cash was seized from the possession of the respondents/accused. In such circumstances, the order passed by the learned Trial Judge with regard to the return of cash cannot be sustained. In this context, useful reference can be made to Section 452 Cr.P.C which reads as follows:-

" 452. Order for disposal of property at conclusion of trial.

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub- section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court, if the order made under sub- section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub- section (1), direct the

property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of subsection (2), an order made under sub- section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term" property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

15. In the light of the above statutory provision and the fact that the accused never pleaded that cash has been recovered from them, this Court is of the opinion that the Trial Court ought not to have directed the amounts to be paid to the accused (Viz., Rs.55,000/- to A1 and Rs.20,000/- to A7) when especially to claim has been made by the accused that the cash either belongs to them or that it was recovered /seized from their custody.

16. In view of the same, the portion of the order of the Trial Court directing the return of cash of Rs.55,000/- to A-1 and Rs.70,000/- to A-7 has to be set aside and thereby, the amount of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand only) lying in the custody of the Trial Court in C.C.No.465 of 2005 is confiscated and has to be paid to the Government of Tamil Nadu.

17. With the above observations the appeal is disposed of. The order of acquittal passed by the Court below stands confirmed. However, the orders passed with regard to disbursement of the cash to the respondents/accused is set aside and the amount is ordered to be confiscated to the state.

Sd/-
Assistant Registrarbn

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.1,
Tiruvallur District.
2. -Do- Thro the Chief Judicial Magistrate,
Thiruvallur District.

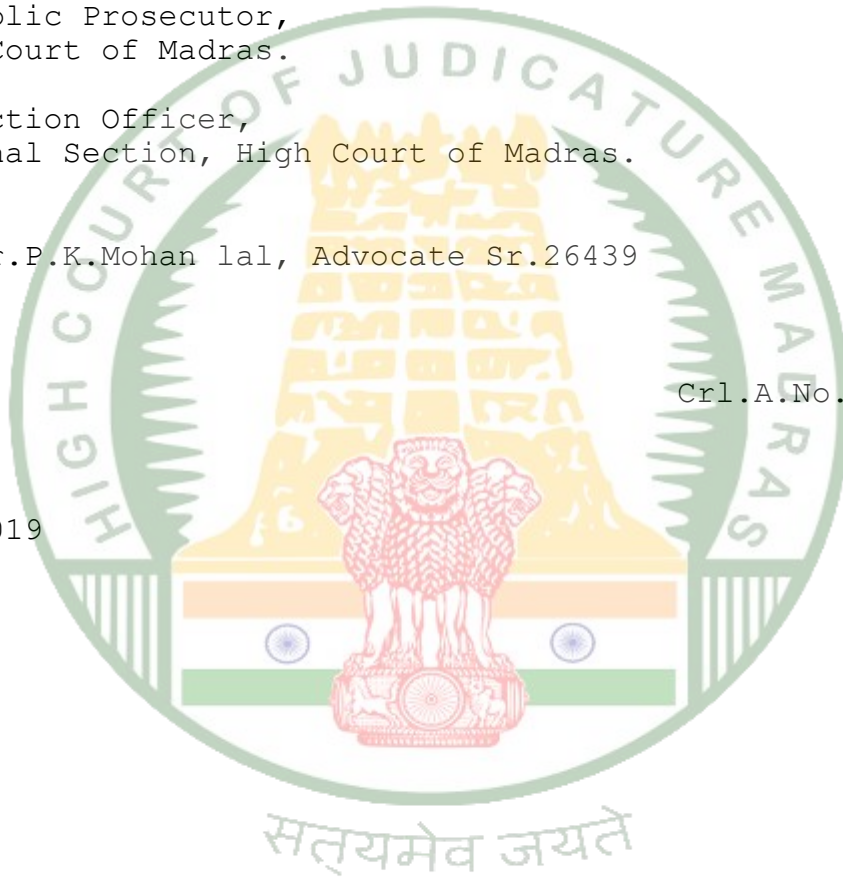
Copy to

1. The Public Prosecutor,
High Court of Madras.
2. The Section Officer,
Criminal Section, High Court of Madras.

+1cc to Mr.P.K.Mohan lal, Advocate Sr.26439

Cr1.A.No.481 of 2010

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srg 6/6/2019



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