

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.A.No.665 of 2010

The Sub Inspector of Police,
Railway Protection Force, Salem Appellant/Complainant

Vs

1.T.Mariappan
2.N.Pattabi
3.M.R.Mohan @ Babu
4.A.Annamalai
5.C.Annamalai
6.Jayachandran
6

Respondents/Accused 1 to

Prayer:- This Criminal Appeal is filed, against the judgement of acquittal, dated 10.11.2009, made in CC.No.166 of 2007, by the Judicial Magistrate No.1, Dharmapuri, to set aside the same and to convict the respondents/accused, as charged.

For Appellant : Mr.K.Prabakar, APP

For Respondents : Mr.C.Prabakaran

JUDGMENT

This Criminal Appeal is filed, against the judgement of acquittal, dated 10.11.2009, made in CC.No.166 of 2007, by the Judicial Magistrate No.1, Dharmapuri, acquitting the Respondents/accused from the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

2. The Respondents were charge sheeted, for the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966, arraying them as A1 to A6 and alleging that on 03.03.2007 at about 4.00 a.m. when PW.1, Inspector of Police, Railway Protection Force along with other Police Officials, were conducting a search at Morappur Railway Station, they intercepted a Tempo bearing Registration No.TN.29-Z-6228, driven by the 1st Respondent/A1 and accompanied by the 2nd Respondent/A2 and on search of the said vehicle, they found properties

belonging to the Railways and that both the Respondents 1 and 2/A1 and A2 had confessed that A3 to A6, who were working as Railway Labourers, had loaded the properties in question, worth about Rs.33,000/- in the said Vehicle and that both the Respondents 1 and 2/A1 and A2 did not have any valid permit/license to carry those articles and that on a search made in the house of the 3rd Respondent/A3, they also seized further articles in the presence of witnesses under the cover of Mahazar and by such acts, the Respondents have committed the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

3. The case was taken on file in CC.No.166 of 2007, by the Judicial Magistrate No.1, Dharmapuri and necessary charge was framed. The Respondents/accused had denied the charge and sought for trial. In order to bring home the charge against the Respondents/accused, the Prosecution examined PW.1 to PW.11 and also marked Exs.P1 to P15 and MOs.1 to 12. On the side of the accused, no oral or documentary evidence, was let in.

4. On completion of the evidence on the side of the prosecution, the the Respondents/accused were questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused have come with the version of total denial and stated that they have been falsely implicated in this case.

5. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/respondents not guilty and acquitted them from the charges levelled against them, by the impugned judgement, which is challenged in this Criminal Appeal by the Sub Inspector of Police, Railway Protection Force, Salem.

6. This court heard the submissions of the learned counsel on either side.

7. The learned Additional Public Prosecutor for the Appellant would submit that the Trial Court, without analysing the materials in a proper perspective manner and without analysing the presumption asked under the Act, has wrongly acquitted the Respondents/A1 to A6. He would submit that the findings of the Trial Court that there was no complaint with regard to the shortage of the properties, belonging to the Railways or that the properties were misused, cannot be a ground for acquitting the Respondents. He would further submit that though the Respondent/A3 is stated to be a Railway Contractor, he has not proved that the Railway Property came into in his possession by lawful means and that the Appellant has, by letting in proper evidence, proved that the properties belonged to the Railways and that they were recovered from the possession of the Respondents and that the finding of the Trial Court that the certificates were obtained from PW.6, PW.7, PW.8

and PW.9 only after four years is without any legal material.

8. The learned Additional Public Prosecutor for the Appellant would submit that on the date of the occurrence, the Respondents 1 and 2/A1 and A2 were intercepted, while they were transporting the properties, which belonged to the Railways and at that time, they have given a confession that they have taken the properties for the Respondents 4 to 6/A4 to A6, who are the Railway Employees and that the Appellant, by letting in proper evidence, had proved their case and when it has been proved that the materials belonged to the Railways and when it had been recovered from possession of the accused, the burden is cast upon the accused to prove that the properties have been obtained by unlawful means and in such circumstances, the impugned judgement of acquittal suffers from legal infirmity and hence, it is to be set aside and the Respondents have to be convicted.

9. The learned counsel for the Respondents/A1 to A6 would, among other grounds, submit that the Trial Court, finding that the arrest and recovery have not been proved beyond all reasonable doubt by independent witnesses, has acquitted the Respondents/ accused and that there may be proof to show that the properties belonged to the Railways and that the Appellant has not, by cogent evidence and examining the independent witnesses, proved their case beyond all reasonable doubts that the properties were recovered from the possession of the Respondents. He would further submit that the witnesses for arrest and recovery in respect of A1 and A2 are the personnel, belonging to the Railways and that in the absence of independent witnesses, the Trial Court has rightly disbelieved the evidence, regarding arrest, recovery and confession and that in respect of the 3rd Respondent/A3, the Trial Court has given a finding that the Prosecution has not proved beyond reasonable doubt that the materials said to have been recovered was under the possession of the 3rd Respondent/A3.

10. The learned counsel for the Respondents would further submit that the house owner, who was said to have leased out the premises to the 3rd Respondent/A3, has turned hostile and the Village Administrative Officer has also not supported the case of the Prosecution and that the Commissioner of the Municipality, who was examined as PW.11, is only a hearsay witness, who stated that he did not have direct knowledge that the premises was under the possession of the 3rd Respondent/A3. He would further submit that certain confessions were said to have been recorded from the Respondents 5 and 6 in the presence of PW.5 and PW.6, who are the employees of the Railways and that PW.5 and PW.6 have not supported the case of the Prosecution with regard to the confession said to have been

recorded from the accused. He would further submit that the complainant who registered the First Information Report cannot act as Investigating Officer, thereby vitiating the entire investigation and that no independent witness have been examined to prove the case of the Prosecution and in such circumstances, the impugned judgement of acquittal does not suffer from any infirmity or illegality.

11. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction, including the relevant provisions of Law and authorities of various Courts.

12. The allegation against the Respondents/A1 to A6 is that they committed the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966, for having been in possession of the properties belonging to the Railways, unlawfully. Now, the question is as to whether the Appellant has proved its case beyond all reasonable doubts, by reliable witnesses, by fair and proper investigation and also it is to be seen as to whether the evidence of the witnesses is in categorical and specific terms and reliable.

13. Section 3 of the Act deals with penalty for unlawful possession of railway property. The same reads as follows:-

“3. Penalty for unlawful possession of railway property.—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.”

14. The necessary ingredients that are necessary to bring in application of 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.

15. Before going into the question of analysing the said essential requirements of Section 3, the first and foremost question to be considered is as to whether the entire investigation conducted by PW.1, the defacto complainant himself is sustainable in the eye of law or not and in other words, whether an Inspector of the Railway Protection Force is a "Police Officer" and therefore, any investigation done by him and any confessional statement made to him comes within the prohibition of Section 25 of the Indian Evidence Act? Section 25 of the Indian Evidence Act provides that no confession made to a Police Officer shall be proved as against a person accused of any offence.

16. In the case on hand, the fact remains that PW.1, who is the Inspector of the Railway Protection Force, is the complainant and he had intercepted the vehicle in question, seized the materials and also prepared all the mahazars and recorded confession statements and filed the final report. The main contention of the Respondents/ A1 to A6 is that the complainant is the person, who has registered the First Information Report and cannot act as the Investigating Officer, thereby vitiating the entire investigation, in view of Section 8(1) of the Act, which provides for how an enquiry can be made against arrested persons.

17. Section 8 of the Railway Property (Unlawful Possession) Act, 1966, reads as follows:-

"8. Inquiry how to be made against arrested persons.-

(1) When any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7, he shall proceed to inquire into the charge against such person.

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer incharge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898), when investigating a cognizable case: Provided that-

(a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer of the Force that there is no sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person, on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior."

18. In 1980 Supp SCC 433 : 1981 SCC (Cri) 361 at page 433 (U.P. v. Vyas Tewari), it was held as under:-

"..... The impugned judgment of the High Court, dated March 12, 1973, follows an earlier decision of that Court in Durga Prasad v. State [1971 AWR (HC) 17]. That decision was reversed by this Court as per its judgment in State of Uttar Pradesh v. Durga Prasad [(1975) 3 SCC 210 : 1974 SCC (Cri) 828 : (1975) 1 SCR 881]. The matter was again thrashed out by this Court in Balkishan A. Devidayal v. State of Maharashtra [(1980) 4 SCC 600 : 1981 SCC (Cri) 62]. Now, it is settled law that an officer of the Railway Protection Force making an inquiry under Section 8(1) of the Railway Property (Unlawful Possession) Act, 1966 is not a police officer conducting an investigation under the Criminal Procedure Code. This being the true position the ban under Section 162 of the Criminal Procedure Code against the evidential use of statements, including the prohibition against signing of statements recorded in the course of police investigation, is not attracted to statements recorded by an officer of the Force making an inquiry under Section 8(1) of the Act."

19. In 1980 4 SCC 600 (Balakishan A. Devidayal Vs. State of Maharashtra), it was held as under:-

"'39. From the comparative study of the relevant provisions of the 1966 Act and the

Code, it is abundantly clear that an officer of the RPF making an inquiry under Section 8 (1) of the 1966 Act does not possess several important attributes of an officer in charge of a police station conducting an investigation under Chapter XIV of the Code. The character of the "inquiry" is different from that of an "investigation" under the Code. The official status and powers of an officer of the Force in the matter of inquiry under the 1966 Act differ in material aspects from those of a police officer conducting an investigation under the Code."

58. In the light of the above discussion, it is clear that an officer of the RPF conducting an inquiry under Section 8(1) of the 1966 Act has not been invested with all the powers of an officer in charge of a police station making an investigation under Chapter XIV of the Code. Particularly, he has no power to initiate prosecution by filing a charge-sheet before the Magistrate concerned under Section 173 of the Code, which has been held to be the clinching attribute of an investigating "police officer". Thus, judged by the test laid down in *Badku Joti Savant* [AIR 1966 SC 1746 : (1966) 3 SCR 698 : 1966 Cri LJ 1353] , which has been consistently adopted in the subsequent decisions noticed above, Inspector Kakade of the RPF could not be deemed to be a "police officer" within the meaning of Section 25 of the Evidence Act, and therefore, any confessional or incriminating statement recorded by him in the course of an inquiry under Section 8(1) of the 1966 Act, cannot be excluded from evidence under the said section."

20. In the light of the above decisions, it is settled that the enquiry conducted by an officer of the Railway Protection Force under Section 8(1) of the Act cannot be deemed to be an investigation for the purposes of Section 162 of Cr.PC. An officer conducting an enquiry under Section 8(1) of the Act does not possess all the attributes of an Officer-in-charge of a Police Station, investigating a case under Chapter XIV of the Code. Statements made during the inquiry under Section 8(1) of the Act are not on par with the statements made during the course of an investigation, by a Police Officer. In the case on hand, the entire enquiry/investigation is done by PW.1 himself, who is the Railway Police Inspector, who has,

after completion of the entire investigation, filed the complaint. In such circumstances, a fair and proper analysis of the entire evidence is to be done.

21. With regard to the evidence of the witnesses, belonging to the Railway Protection Force, the Honourable Supreme Court, in its decision reported in 1992 36 MLJ CrL 122 (S.A.Babu Vs State), has held that the fact that the witnesses belong to the Railway Protection Force is not by itself sufficient to eschew their testimonies out of consideration and it was further held that the evidence has to be viewed, analysed and applied to the case in adjudication of the guilt or otherwise of the accused as any other witnesses and if there are no infirmities or inherent probabilities or material contradictions in the testimony, then it goes without saying that there is nothing wrong in placing reliance on such testimony and fastening criminal liability upon the accused.

22. While analysing the facts of the case on hand with the above decision, what is to be seen as to whether the evidence of PW.2 and PW.3 are in categoric and specific terms or it suffers from infirmities and inherent probabilities and material contradictions so as to be relied or not. As per the case of the Prosecution, while PW.2 and PW.3 were, on a secret information, having a watch over near Morappur Railway Station on 03.03.2007, they intercepted the Tempo Van driven by the Respondents 1 and 2/A1 and A2 and on inspection, they found that eight ACP Plates, two bearing plates and six discs and on enquiry, they had informed that they had taken it from Morappur Railway Station and that they were not having any receipt for having possession of the same. Thereafter, the Appellant had seized them under a mahazar and affixed identification marks on the properties and taken the Van to the Office and on examination of the Respondents 1 and 2/A1 and A2, they have confessed and it was recorded in the presence of PW.2 and PW.3 and thereafter, the case in Cr.No.2 of 2007 was registered for the offence under Section 3(a) of the Act. In their confession, they have stated that the properties were loaded by one ESM Annamalai and SCP Annamalai and Jeyachandran and that they were asked by them to hand it over to one Babu and received money from him. They have confessed that like wise they have done it two or three times earlier. Thereafter, the Appellant had taken them to a house near Dharmapuri Railway Station and that they have identified the house and the railway properties stored there and thereafter, a search was conducted in the presence of the Village Administrative Officer and the Head Constable, PW.2 and recovered the railway properties worth Rs.29,000/- and thereafter, A3 was arrested and on his confession, A4 and A5 were arrested and the properties were sent to the Court.

23. The case of the Prosecution is that the

properties belonging to the Railways were taken in a Mini Door Tempo by the 1st Respondent, as driver and the 2nd Respondent/A2 as an Assistant and the properties were recovered and they were arrested and on their confession, other accused were arrested and thereafter, recovery was made from the iron scrap shop of A3 and that further averment is that the properties belonging to the Railways were loaded by the Respondents 4, 5 and 6, who were working in the Railways and that since the Respondents were not having any licence or permit to possess those railway properties, the charges were framed for the offence under Section 3(a) of the Act.

24. It is the contention of the learned counsel for the Respondents that the Trial Court had acquitted the Respondents accused on the grounds that no complaint was given by the Railways with regard to the theft of the properties and that the Prosecution has failed to let in evidence with regard to the exact place of recovery of the articles and that the certificates that the properties recovered belonged to the Railways were obtained belatedly and that the Trial Court, finding that there are contradictions in the evidence of PW.7 and PW.6 with regard to the recovery, arrest and confession and thereby doubting it, had acquitted the accused.

25. Further reason for acquittal is that the informant and the complainant are one and the same and that the complainant had not obtained any previous sanction or permission from the Higher Authorities to register the case and file the complaint. Yet another reason for acquittal is that the Prosecution had not proved its case beyond all reasonable doubts that the Railway properties were stolen by the accused. Placing reliance on the evidence of the house owner would not support the case of the Prosecution that the house was let on rent to the Respondent/A3.

26. As stated above, the Inspector of the Railway Protection Force is not a Police Officer. As per Section 8 of the Act, the Inspector of the Railway Protection Force is empowered to enquire the matter and file the final report. As per the decision of the Honourable Supreme Court reported in 1980 Supp SCC 433, cited supra, it is a settled law that the Officer of the Railway Protection Force, making an enquiry under Section 8 (1) of the Railway Property (Unlawful Possession) Act, 1966, is not a Police Officer, conducting investigation under Cr.PC and thereby, there is no power in him filing the complaint.

27. The finding of the Trial Court that there was no complaint from the Railway authorities with regard to the theft of the articles is also erroneous. Further, the Respondents have been acquitted on the grounds that arrest, recovery and confession have not been proved beyond

all reasonable doubts. Though the earlier findings for rendering acquittal, namely, (i) the complainant having registered the case is not authorised to file the final report and (ii) there is no complaint has been given by the Railways in respect of theft of the articles, cannot be accepted, however, further finding for acquittal that arrest, recovery and confession, were not proved by independent and cogent evidence, is not erroneous. I do not find any infirmity or illegality in the finding of the Trial Court that arrest, recovery and confession were not proved by independent and cogent evidence. On this ground alone, the impugned judgement of acquittal does not warrant any interference by this Court.

28 In the result, this Criminal Appeal is dismissed. The impugned judgement of acquittal passed by the Trial Court, is hereby confirmed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Srcm
To:

- 1.The Judicial Magistrate No.1, Dharmapuri,
- 2.The Public Prosecutor, High Court, Madras
- 3.The Sub Inspector of Police,
Railway Protection Force, Salem

Cr1.A.No.655/2010

A.SK(01/07/2019)

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