



BAIL SLIP

The Petitioner in CRL.RC.No.840 of 2012 viz., Rajasekar, S/o.Paulraj Nadar was directed to be released on bail as per the order of this Court dated 16.07.2012 and made in MP.No.1/12 in Crl.RC.No.840 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.840 of 2012

Rajasekar

.. Petitioner

Vs.

Union of India,
represented by The Assistant Sub-Inspector of Police,
Railway Protection Force,
Nagapattinam.
(Cr.No.5 of 2002)

.. Respondent

Prayer:-

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to call for the entire records in C.A.No.21 of 2010 on the file of the District and Sessions Court, Nagapattinam in Judgment dated 8.2.2012, in which confirmed the judgment made by the Judicial Magistrate Court No.1, Nagapattinam in C.C.No.57 of 2003 dated 27.1.2009 seeking to set aside the same and acquit the revision petitioner.

For Petitioner : Mr.D.Gubendra Gunabalan

For Respondent : Notice served - No appearance

O R D E R

This Criminal Revision has been filed to set aside the judgment dated 08.02.2012 made in Crl.A.No.21 of 2010 passed by the learned District and Sessions Judge, Nagapattinam, confirming the judgment dated 27.01.2009 made in C.C.No.57 of 2003 passed by the learned Judicial Magistrate No.1, Nagapattinam.



2. The case of the prosecution is that on the basis of search warrant, the respondent conducted a search in the accused's old iron scrap shop and found that the accused was in possession of 5 Railway MG new brake blocks 23.05 c.m length and 7 c.m breadth and one rail piece in 87 c.ms length and the accused could not give any satisfactory explanation for the same. The respondent seized the above materials from the accused and registered a case in Crime No.5 of 2002 for the offence under Section 3(a) of Railway Properties (Unlawful Possession) Act. After completing the investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No.1, Nagapattinam. After hearing the arguments, the learned Magistrate convicted the accused for the offence under Section 3(a) of Railway Properties (Unlawful Possession) Act and sentenced him to undergo 3 months Simple Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month Simple Imprisonment by order dated 27.01.2009. Challenging the said judgment, the accused filed an appeal in CrI.A.No.21 of 2010 before the learned District and Sessions Judge, Nagapattinam. On 08.02.2012, the learned Sessions Judge, after considering the oral and documentary evidence elaborately, came to the conclusion that the prosecution has proved its case beyond reasonable doubts and dismissed the appeal and also observed that the minimum punishment for the offence under Section 3(a) of Railway Properties (Unlawful Possession) Act shall be one year, whereas, the learned Magistrate awarded only 3 months Simple Imprisonment. The learned Magistrate has not awarded the minimum sentence and the State has also not filed any appeal against the judgment for enhancement of the punishment. Therefore, the learned Sessions Judge held that there was no other option except to confirm the punishment awarded by the trial Court. The learned Sessions Judge pointed out that without any appeal or revision, the Appellate Court cannot go beyond the scope of the appeal. There against, the accused has preferred the present revision before this Court.

3. The learned counsel for the revision petitioner would submit that the petitioner/accused was running only old iron scrap shop and he has not possessed any property as alleged by the prosecution. The recovery has not been proved in the manner known to law. The mahazar witnesses have turned hostile and they have not supported the case of the prosecution. No witness have spoken about the person, who sold the said property to the revision petitioner. Once the possession of the property has not been proved, the benefit of doubt has to be extended to the revision petitioner/accused. Both the Courts below failed to consider the said fact. The prosecution has failed to prove its case beyond reasonable doubts, which warrants interference.



4. It is the case of the respondent that the revision petitioner himself admitted unlawful possession of Railway property and made confession statement before the Competent Authority. Subsequently, the recovery was also effected. Once the unlawful possession of Railway Property is established, it is a presumption that the revision petitioner purchased the stolen property belongs to the Railway. Further, the minimum sentence for the aforesaid offence is one year, whereas, the learned Magistrate has awarded only 3 months, which warrants interference.

5. Heard the learned counsel appearing for the revision petitioner and also perused the entire materials available on record.

6. The case of the prosecution is that the respondent conducted a search at the accused's old iron scrap shop and found that the accused was in possession of 5 Railway MG new brake blocks 23.05 c.m length and 7 c.m breadth and one rail piece in 87 c.ms length and the accused could not give any satisfactory explanation. The respondent seized the above materials. Admittedly, the revision petitioner was running old iron scrap shop. The recovery of Railway properties has been made during the search conducted in the revision petitioner's shop. Once the recovery has been proved, it is a presumption that the revision petitioner purchased the stolen property belonging to the Railway. On reading of the entire evidence, it is seen that the prosecution has established its case. Though the learned Magistrate found that the revision petitioner/accused committed the offence punishable under Section 3(a) of Railway Properties (Unlawful Possession) Act, the minimum sentence for the said offence shall be one year, the learned Magistrate failed to consider the scope of the provisions and to award the minimum sentence and awarded only 3 months. The State has also not filed any appeal against the said judgment. The Appellate Court has also rightly pointed out that the Appellate Court cannot go beyond the scope of the appeal, since the State has not filed any appeal for enhancing the sentence. The Appellate Court, as the final Court of fact finding, elaborately considered the oral and documentary evidence, confirmed the conviction awarded by the learned Magistrate.

7. This Court, being the Revisional Court, cannot sit in the arm chair of the Appellate Court and cannot reassess or re-appreciate all the evidence. This Court does not find any perversity in the order passed by the Courts below and there is no reason to interfere with the judgment of the Appellate Court.



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8. Accordingly, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Judicial Magistrate No.1,
Nagapattinam.
2. Do Through The Chief Judicial Magistrate,
Nagapattinam.
3. The District and Sessions Judge,
Nagapattinam.
4. The Assistant Sub-Inspector of Police,
Railway Protection Force,
Nagapattinam.
5. The Public Prosecutor,
High Court, Madras

Copy To
The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.D.Gubendra Gunabalan, Advocate, S.R.No.50835

Cr1.R.C.No.840 of 2012

VD(CO)
CS/04/09/2019