

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.R.C.No.271 of 2019

R.V.Kumar

...Petitioner

-Vs-

State rep. by
Inspector of Police,
Railway Protection Force,
Southern Railway,
Villupuram
Cr.No. 1/2004

....Respondent

This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. to re-appreciate the evidence available on record and may be set aside the conviction given by the Learned Additional Sessions (FTC) against the conviction and sentence passed by the Learned Judicial Magistrate No.I, Villupuram in C.C.No. 193 of 2005 dated 12.11.2014 and may be acquitted the accused and allow the revision petition to meet the ends of justice.

For Petitioner : M/s.A.Arasu Ganesan

For Respondent : Mr.R.Ravichandran
Government Advocate (Cr1.Side)

सत्यमेव जयते

O R D E R

This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C. to set aside the conviction given by the Learned Additional Sessions Judge (FTC), Villupuram in C.A.No. 53 of 2014 dated 28.11.2018 against the conviction and sentence passed by the Learned Judicial Magistrate No.1, Villupuram in CC NO.193 of 2005 dated 12.11.2014.

2. The petitioner is an accused. The respondent police registered a case against the petitioner/accused for an offence under Section 3(a) RP(U.P) Act and after conclusion of trial before the Trial Court, the learned Judicial Magistrate-I,

Villupuram convicted the petitioner and sentenced him to undergo simple imprisonment till rising of the Court and also to pay a fine of Rs.1000/-, (Rupees One Hundred) only in default to undergo imprisonment for one month. The petitioner preferred an appeal against the order of the trial Court in C.A.No.53 of 2014 before the Court of Additional Sessions Judge(FTC), Villupuram, and the appeal was dismissed by confirming the order of conviction and hence, the petitioner/accused has preferred the revision before this Court.

3. The learned counsel for the revision petitioner would submit that the respondent police has not proved the case beyond any reasonable doubt that the material objects belong to the Railway. But, all other witnesses PW3, PW4 and PW5 categorically stated that no symbol or mark of the Railway Department was found on the seized property as the same belongs to railway and the confession was recorded, hence the recovery has not been proved. There is no independent witnesses for recovery. The revision petitioner was employed as a Technical Grade III./TN and T/E.530 in Railways and therefore, foisted a false case against the petitioner. The respondent failed to prove the case against the petitioner beyond reasonable doubt. But, Both the Courts below had erred in concluding that the petitioner has committed the offence.

4. The learned Government Advocate (Crl.Side) would submit that the competent Officer of RPF also deposed that the material objects were recovered from the petitioner/accused.

5. Heard both sides and perused the materials available on record.

6. The case of the prosecution is that the accused has stolen two copper tubes in folded forms in Railway and carrying on the same in one white colour polythene bag on his back. The case of the revision petitioner is that on the day of alleged occurrence, PW1, PW3, PW4 and PW5 were doing secret surveillance at the place of seizing materials, but their evidence are totally contradictory and inconsistency to each other. It is further case of the petitioner that seized articles could be very much available in the open market and which can be used generally in air condition, fridge, gas connections, etc. and there are no proof produced by the Railway that the seized/recovered material objects are exclusively belong to the Railway. The learned counsel for the petitioner would submit that the cognizance was taken on the report of the officer of the R.P.F., who is not the police officer within the meaning of the code. Mere unlawful possession of the property of any railway administration is not an offence and hence, prayed for allowing this Revision.

7. On a perusal of the records and the materials, it is seen that P.W.1 had deposed that there was some mark on the seized property that the same belongs to the Railway, but all other witnesses PW3, PW4, PW5, PW6 and PW 10 have categorically deposed that no symbol or mark was found on the seized property as the same belongs to Railway. PW6 deposed that he made a complaint only on 14.05.2004 in respect of the missing of the above said articles, the accused was arrested on 14.02.2004. If he has made a complaint on 14.05.2004, they should have immediately informed to the superior officer to the petitioner or even at the time of recovery or at the time of arrest of the petitioner. Recovery was not made in the presence of independent witnesses. Hence, the case of the respondent that the accused has stolen the railway material objects and the same were seized, while the accused was carrying on the same in the white colour polythene bag is not believable. No employee would carry the stolen property during the working hours. The prosecution has not proved the case beyond reasonable doubt, since absolutely there is no material to show that whether the seized materials belong to railway.

8. Under the above circumstances, this Criminal Revision is allowed and the Judgments of the Courts below are hereby set aside. The fine amount, if any, paid by the revision petitioner is ordered to be refunded.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmm

To

1. The Inspector of Police,
Railway Protection Force,
Southern Railway,
Villupuram
Cr.No. 1/2004
2. The Learned Additional Sessions Judge (FTC),
Villupuram
3. The Learned Judicial Magistrate No.1,
Villupuram

Copy To:

The Section Officer,
Criminal section,

+1cc to Mr.A.Arasu Ganesan, Advocate, S.R.No.36545

Cr1.R.C.No.271 of 2019

RR(CO)

RRS (27/06/2019)



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