



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE OF RESERVATION: 11.02.2020

DATE OF PRONOUNCEMENT: 18.02.2020

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CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A. (MD)No.303 of 2014

Union of India, rep. by
The Inspector of Police,
RPF/Goc.Workshop (Trichy)
Crime No.8 of 2000

.. Appellant/Complainant

Vs.

1.M.Aloysius

2.Anwar Hussain (died)

.. Respondents/A1 and A2

PRAYER: Petition filed under Section 378 of Criminal Procedure Code, to set aside the judgment of acquittal of the respondents/accused A1 and A2 passed by the Court of the Judicial Magistrate No.II, Trichirappalli in C.C.No.824 of 2003 dated 15.07.2013.

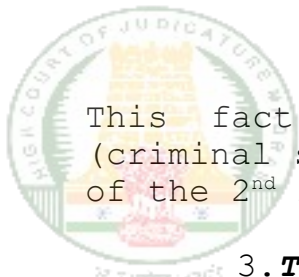
For Appellant : Mr.K.Suyambulinga Bharathi,
G.A., (Crl. Side)

For Respondent : Mr.P.Vijayaraja for R1
Mr.J.Sulthan Basha for
M/s.Ajmal Associates for R2
(A2 Abated)

JUDGMENT

The respondents/A1 and A2 were charged for the offences under Sections 3 (a) of Railways Property (Unlawful Possession) Act, 1966. The trial Court viz., the Judicial Magistrate No.II, Trichirappalli, by its judgment dated 15.07.2013 in C.C.No.824 of 2003 found the respondents/accused not guilty for the said offence and acquitted them. Against the said judgment of acquittal, the present appeal is filed.

2.The learned counsel appearing for the 2nd respondent, on 28.01.2020 informed that during pendency of the appeal, the 2nd respondent/A2 passed away on 10.07.2016, death certificate produced.



This fact was not denied by the learned Government Advocate (criminal side) also. In view of the same, appeal abates in respect of the 2nd respondent/A2.

3.The case of the prosecution, briefly stated, are as follows:

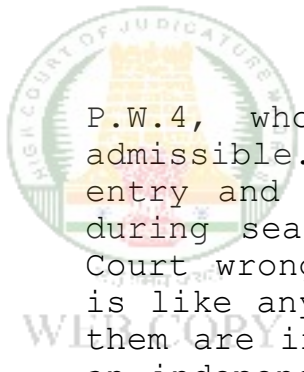
On 03.11.2000 at about 3.30 p.m., P.W.1, Assistant Sub Inspector of Police, Railway Protection Force, Golden Rock Workshop, was on duty at West Gate, conducted physical search on the 1st respondent, a railway employee and he was found in possession of 2 nos. of Railway Brass Control Valve bodies bearing Railway marks concealed under the seat of his bi-cycle. After following legal process, the brass valves were seized under a cover of mahazer, attested by the other RPF witnesses, since no private individual were available. Thereafter, in the presence of superior officers of the 1st respondent, the 1st respondent gave a voluntary confession statement, which was recorded on the same day. P.W.2 Chandrasekaran, Inspector of RPF, after conducting enquiry registered a case in GOC(W), RPF Post crime No.8 of 2000 under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966 and after giving advance intimation to the learned Judicial Magistrate No.2, Trichy, search was conducted on 04.11.2000 between 06.00 a.m. and 08.00 a.m. in the residence of A1 in presence of witnesses and seized 46 nos. of Railway Cylindrical Roller bearing and other various Engineering and Mechanical materials under a search list. Further, on the disclosure of R1, a search was conducted in the shop of the 2nd respondent on the same day between 11.00 a.m. and 11.30 a.m., seized the railway roller bearings and other items. After completion of enquiry, a complaint was filed before the Judicial Magistrate No.2, Trichy and a case was taken as C.C.No.824 of 2003.

4.Before the trial Court, on behalf of the prosecution P.Ws.1 to 32 examined, Exs.P.1 to P.53 exhibited and M.O.1 to M.O.18 marked. On completion of the examination of the witnesses on the side of the prosecution, the accused were questioned under section 313 Cr.P.C., as to the incriminating circumstances and they denied them as false. On behalf of the defence, no witness was examined and no document was produced.

5. Considering the evidence available on record, the learned Judicial Magistrate No.2 found the accused not guilty for the offence under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966 and acquitted them as stated above. Challenging the judgment of acquittal, the appellant/State has preferred this appeal.

6.The learned Government Advocate (criminal side) appearing for the State/Appellant has made the following submissions:

(i)The trial Court erred in not considering the evidence of



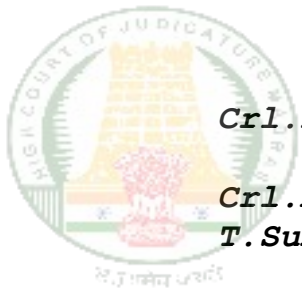
P.W.4, who attested the confession statement of A1, which is admissible. The railway workshop is a closed place with restricted entry and exit and hence, no independent witnesses were available during search and seizure made on the 1st respondent. The trial Court wrongly proceeded on a premise that Railway Protection Force is like any other police wing and confession and statement given to them are inadmissible. Failing to look in to the fact that RPF is an independent agency and statement given before them can be relied and acted upon.

(ii) It is for the 1st respondent to prove as to how the railway property came into his possession by lawful means. The discrepancy found in the stock register bound to happen in large industries, where large quantities of materials are being utilised in various places and reconciliation of the stock register would take sometime. The trial Court failing to look into this aspect, placed heavy reliance of the discrepancy in the stock register.

(iii) There is no materials to show that there was any animosity against the respondents by the appellant. P.W.1 is the Assistant Sub Inspector of Railway Protection Force and on 03.11.2000, while he was posted at West gate, he found the 1st respondent rolling out his bi-cycle towards the gate, on suspicion, the person as well as the cycle were searched. During the search, M.O.1 and 2 railway control valves were found concealed under M.O.3 and the same was recovered through mahazer Ex.P1 in the presence of witness and thereafter, in the presence of P.W.4, his higher official, 1st respondent had given confession Ex.P2, on the same place, Ex.P3 observation mahazer was recorded and the statement of P.W.1 is Ex.P4. Thus, it is proved that on 03.11.2000 at about 3.30 p.m., inside the workshop, 1st respondent was possession of 2 valves, which are the railway properties without lawful means. This was fortified by the admission of the 1st respondent.

(iv) Thereafter, pursuant to which, a case was registered and thereafter, a search was conducted between 6.00 a.m. and 8.00 a.m in the house of R1 in the presence of P.W.7, P.W.8, P.W.30 and P.W.38. During the search, M.Os.4 to 17 were recovered from the 1st respondent, further leading to A2's shop, from where, M.O.18 was recovered, A2 had also given confession. Thus, the railway properties from the possession of A1 and A2 were seized in presence of witnesses and through mahazer. Thereafter, the articles were forwarded to the Court and the seized articles were certified by the railway officials that the seized articles are railway properties. The respondents/accused had not produced any material to show as to how they came into possession of the railway properties by lawful means and had not dislodged the presumption against them. This factor has not been looked into by the trial Court and acquitted the respondents, which is perverse. In support of his contention, he relied upon the following decisions:

<https://hcservices.ecourts.gov.in/hcservices/judgment> of this Court dated **19.06.2009** made in



Crl.R.C.No.840 of 2012 - Rajasekar Vs. Union of India;

2.Judgment of this Court dated **23.10.2009** made in
**Crl.A.(MD) No.171 of 2013 - State rep. by Vs.
T.Subramanian.**

Thus, the learned Government Advocate (criminal side) prayed for allowing of the appeal.

7.The learned counsel appearing for the 1st respondent made the following submissions:

(i)It is admitted by P.W.1 and other witnesses that the duty time of the 1st respondent is till 4.30 p.m. and the initial search and seizure were made on 03.11.2000 at about 3.30 p.m., within the duty time. It is also to be noted that during the duty time, without any gate pass, a person cannot leave the workshop, no gate pass was found or secured from 1st respondent. The 1st respondent had not proceeded to the exit gate and no witness other than P.W.1 were examined in this aspect.

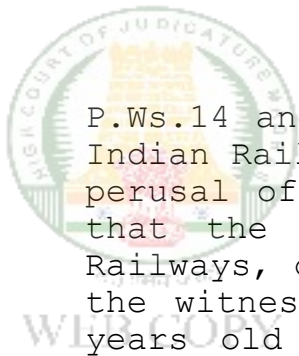
(ii)Having M.Os.1 and 2 within the workshop would not amount to possession of railway property without lawful means. Further, during the house search, the articles shown as seized from the 1st respondent, all the witnesses have stated that the M.Os. are normally available in the market and there is no marking of "Indian Railways" (I.R.), denoting the properties belong to Indian Railways and no marks are found in any of the M.Os. viz. M.Os.1,2,4 to 17.

(iii)The recovery witnesses have not supported the case of prosecution. Further, one of the recovery witness stated that the recovery and search was made between 6.00 a.m. and 8.00 a.m. P.W.7 admits that at 07.00 a.m., he attended the workshop, signed the register, the other witnesses have neither certain nor supported the seizure and recovery, hence, they cannot be present in both the places at the same time and the recovery itself is a fabricated one.

(iv)Further, P.Ws.9 to 11 have clearly stated that there are discrepancies in the stocks with the stock registers and hence, the missing articles recovered could not be correlated with the stock registers to show that M.Os.1 and 2 were found missing.

(v)Some of witnesses have stated that the valves are used only in steel locomotives, which has not been used for the past 20 - 25 years. The materials objects seized from the 1st respondent's residence are 8 to 10 years old, which are available in the open market and there is no identification mark of Indian Railways.

(vi)There are contradictions between the evidence of P.Ws.1 to 5. P.W.3 admits that the properties are available in the open market. P.Ws.9 to 11 state that there is no missing of articles.



P.Ws.14 and 15 state that in material objects, there is no mark of Indian Railways. The trial Court going into all these aspects and a perusal of the materials found that the prosecution had not proved that the M.Os. had any specific identification mark of Indian Railways, denoting that the properties belong to Indian Railways and the witnesses have admitted that the material objects are 20 - 25 years old which are available in the open market. Further, the trial Court given finding that the search and seizure are not proved. Added to it, the RPF had animosity against the 1st respondent, since he had been acquitted in a earlier case and there was every possibility of 1st respondent being implicated in this case. Considering all these facts, the trial Court on proper appreciation of the evidence and materials found that the prosecution had failed to prove its case and rightly acquitted the respondents/accused, which need not be interfered with. In support of his contention, he relied on the following decisions of the Hon'ble Supreme Court of India:

1. (2013) 12 Supreme Court Cases 689 - Chinnam Kameswara Rao Vs. State of A.P., wherein, the Hon'ble Apex Court has held as follows:

"13.What, therefore, needs to be examined in the light of the settled legal position is whether the view taken by the trial Court acquitting the accused was a reasonably possible view. If the answer is in the negative nothing prevents the appellate court from reversing the view taken by the trial court and holding the accused guilty. On the contrary, if the view is not a reasonably possible view the appellate court is duty-bound to interfere and prevent miscarriage of justice by suitably passing the order by punishing the offender. We have in that view no hesitation in rejecting the contention that just because the trial court had recorded an acquittal in favour of the appellants the appellate court had any limitation on its power to reverse such an acquittal. Whether or not the view was reasonably possible will be seen by us a little later when we taken up the merits of the contention urged by the appellant regarding involvement of the accused persons in the commission of the crime."

2. (2007) 2 Supreme Court Cases (Cri) 325 - Chandrappa Vs. State of Karnataka, the Hon'ble Supreme Court of India has held as follows:

"44.In our view, if in the light of above circumstances, the trial Court felt that the accused could get benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. Hence, even though we are of the opinion that in an appeal against acquittal, powers of the appellate court



are as wide as that of the trial court and it can review, reappraise and reconsider the entire evidence brought on record by the parties and can come to its own conclusion on fact as well as on law, in the present case, the view taken by the trial court for acquitting the accused was possible and plausible. On the basis of evidence, therefore, at the most, it can be said that the other view was equally possible. But it is well established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial court, it ought not to be disturbed by the appellate court. In this case, a possible view on the evidence of prosecution had been taken by the trial court which ought not to have been disturbed by the appellate court. The decision of the appellate court (the High Court), therefore, is liable to be set aside."

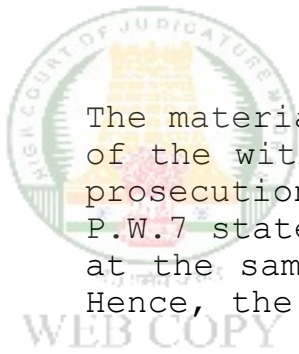
Thus, he prayed for dismissal of the appeal.

8.Heard Mr.K.Suyambulinga Bharathi, the learned Government Advocate (criminal side) appearing for the appellant/State and Mr.J.Sulthan Basha, the learned counsel representing counsel appearing for the 1st respondent and also perused the materials available on records.

9.Considering the rival submission and perusal of the materials, it is seen that the 1st respondent was stopped and checked by P.W.1, which happened within the workshop at 3.30 p.m and the duty time of the 1st respondent was upto 4.30 p.m. Further P.W.1 had not taken any steps to find out whether the 1st respondent had any gate pass, to move out ahead of the duty time.

10.No independent witnesses have been examined. The witnesses to the seizure are all RPF personnel. There was no distinct identification mark to prove that the valves seized are of Indian Railways. Further, the respondent's superior officer P.W.4, before whom, the confession stated to have been given, state that before he reached, RPF enquiry had been completed and in his presence, no confession has been given. However, he signed the confession, which has already been recorded. Therefore, no credence could be given to Ex.P2. Further states that no person can go out without gate pass before the duty time.

11.On the next day, search was conducted at the residence of A1 between 6.00 a.m. and 8.00 a.m. and the articles found therein have been marked as M.Os.4 to 18. Recovery witnesses, who had examined had clearly stated that in the said material objects, there is no seal or specification to show that these material objects belong to Indian Railway. M.O.s 1 and 2 were of 20 to 25 years old and the remaining material objects M.Os.4 to 18 are of 8 to 9 years old.



The materials objects are easily available in the open market. Some of the witnesses to the seizure have not supported the case of the prosecution and the witnesses admit that the articles were old. P.W.7 stated to be present during the search and seizure admits that at the same time, he attended office and had signed the registers. Hence, the search is doubtful as well as recovery.

12.Further, it is admitted fact that no independent witnesses were examined to prove the fact that seizure and recovery. The 1st seizure had taken place inside the workshop and taking materials for job inside the workshop is not an offence. The stock registers are contradictory to each other and witnesses from the Stores have not stated that there had been any shortage of materials. Confession statement has not been proved and the recovery are highly doubtful and the materials produced have not been proved to be that of the Indian Railways. The trial Court on consideration of all these aspects found that the prosecution had not proved the case beyond the reasonable doubt as against the accused and acquitted the respondents/accused, which need not be interfered with. This Court finds there is no perversity or any reason to interfere with the findings of trial Court judgment of acquittal.

13.Accordingly, this criminal appeal is dismissed. The judgment of acquitted dated 15.07.2013 made in in C.C.No.824 of 2003 passed by the learned Judicial Magistrate No.II, Trichirappalli is hereby confirmed.

Sd/-

Assistant Registrar (CS-II)

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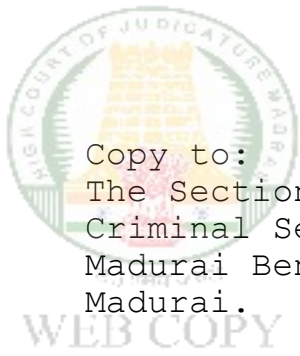
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Sub Assistant Registrar(CS)

Arul

To

- 1.The The Inspector of Police,
RPF/Goc.Workshop (Trichy).
- 2.The Judicial Magistrate No.II,
Trichy.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to:
The Section Officer, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, (SR-6996[F] dated 19/02/2020)

Judgment
Crl.A. (MD) No.303 of 2014
18.02.2020

JMN(26.02.2020) 8P : 7C