

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 226 OF 2004

The State of Maharashtra ..Appellant
V/s.

Amirali Mohanbhai Daradia ..Respondent

Mr. S.H. Yadav, APP for the Appellant/State
None for the Respondent.

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CORAM : C.V. BHADANG, J.

DATE : 06 DECEMBER, 2021

JUDGMENT

1. By this Appeal, the State is challenging the acquittal of the Respondent from the offence punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966

2. The prosecution case is that on 19.05.1994 a truck bearing No. MST-7171 had met with an accident beyond Virar on Mumbai-Ahmadabad Highway. That truck was found carrying railway property namely 11,880 metric tons of break blocks. Precisely according to the prosecution, the truck was found carrying 7 tons of new break blocks and about 3 tons of old break blocks. Upon receipt of the said information, the officers visited the spot and

found that the Respondent was shifting the break blocks from the truck which had met with the accident in another truck bearing No. MRL-7125. The truck was brought to Railway Police Force (RPF) Matunga and a panchnama was drawn in the presence of panchas. On the basis of the complaint lodged by ASI Dubey PW-3, attached to the Crime Branch, an offence came to be registered and after investigation, the Respondent was chargesheeted before the learned Metropolitan Magistrate at Mumbai.

3. The learned Magistrate framed charge under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966. The Respondent pleaded not guilty and claimed to be tried. According to the Respondent, he had purchased the said material in an auction and he has been falsely implicated.

4. At the trial, the prosecution examined in all five witnesses namely PW-1 Kunwarpal Singh, PW-2 Arunkumar Nigam, PW-3 Hiraral Dubey, PW-4 Madhukar Rama Patil and PW-5 Damodar Trimbak. The Respondent examined himself in his defence and he produced invoice at Exh. D-2 about purchase of 30 tons of the railway property in an auction as scrap material.

5. The learned Metropolitan Magistrate by a Judgment and Order dated 17.11.2003 in Criminal Case No. 155/S/1994 has acquitted the Respondent. Hence, this appeal.

6. I have heard the learned APP Mr. Yadav for the Appellant. None appears for the Respondent. With the assistance of the learned APP, I have gone through the record.

7. It has come on record that truck bearing No. MST-7171 had met with an accident beyond Virar and said truck was found to be carrying property which is subject matter of the present prosecution which are essentially the Railway break blocks. According to the prosecution, the Respondent was found loading the said property from the ill fated truck to another lorry bearing No. MRL-7125. This incident had happened on 19.05.1994. The truck in which the property was being loaded was brought to RPF Matunga and a panchnama was drawn. The prosecution has produced a certificate dated 01.07.1994 (Article – A) which is signed by Mr. D.D. Lakade, Shop Superintendent of Iron Foundary of Parel Workshop, which is also signed by PW-2 Arunkumar Nigam (Exh. P12). It shows that the property was examined and was found to be break blocks both new and old ones. Even the new ones were found to be having

cracks. Although, it is the prosecution case that the new blocks are not auctioned. The certificate shows that they were damaged and were having cracks and the Respondent has claimed that he had purchased the property in an auction. In support of the said defence, he had entered into the witness box and had produced the invoice Exh. D-2. The prosecution evidence shows that the driver and the cleaner as well as the owner of the truck have not been examined in order to show as to how and at whose instance the property was being transported.

8. It has come in the prosecution evidence that the Respondent was a scrap dealer at Khar and was purchasing the railway properties at the auction. It has also come on record as admitted by PW-2 that there was no report or a memo about theft from any of the railway workshops. The Respondent had not only entered the witness box, but had produced the invoice about purchase made by him at the auction. Noting has come in the cross-examination of Respondent, except a bare suggestion that he had produced a false document in support of his defence. However, there is nothing on record to show that the said invoice was got examined from the competent officer of the Railways and those, who were incharge of the workshop and the railway property to show that it was false and

fabricated. In my considered view, apart from fact that the prosecution has failed to establish the charge beyond reasonable doubt, the Respondent has also probabalised the defence of purchase of the property at Railway auction. Thus, the view taken by the learned Metropolitan Magistrate is a plausible view which does not require interference in an appeal against acquittal.

9. The appeal is without any merit and is accordingly dismissed.

(C.V. BHADANG, J.)