



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order
27.07.2021

Date of Pronouncing Order
05.08.2021

WEB COPY

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.322 of 2015

The State Rep.by
The Public Prosecutor,
High Court, Madras.
[RPF, Villupuram
Crime No.9 of 2012]

...Appellant/Complainant

Vs.

Vinothkumar

...Respondent/Accused

PRAYER : Criminal Appeal is filed under Section 378 of Criminal Procedure Code, to allow this appeal and set aside the judgment of acquittal of the respondent/accused passed by the Judicial Magistrate No.I, Villupuram in C.C.No.522/2012, dated 06.09.2014.

For Appellant : Mr. R. Vinoth Raja,
Government Advocate

For Respondent : Mr. K. Murugesan
Legal Aid Counsel

J U D G M E N T

The matter is heard through "Video Conference".

2. State is the appellant herein. The Railway Protection Force (RPF), Villupuram has registered a case in Crime No.9 of 2012 and filed a charge sheet and the same was taken file on C.C.No.522 of 2012, on the file of Judicial Magistrate, No.I, Villupuram, wherein, the accused was charged for the offence under Section 3(a) of Railway Property [Unlawful Possession] Act, 1966 in short "RPUP Act". After trial, the respondent was acquitted and hence, the appeal by the State.

3. The case of the prosecution is that
(i) on 22.10.2012 at about 03.30 hours, while Tr. K.Duraiswamy, Inspector/RPF/Villupuram along with Tr.V.Selvamurugesan, Head Constable No.18/RPF, Tr.Baskaran Head



Constable No.158/RPF, Tr.R.Muthu, Constable 173/RPF and Tr.B.Binu Constable 290/RPF of Villupuram were on confidential watch between Athichanur and Thirukoilur Railway Stations, noticed that the respondent / accused - K.Vinothkumar, S/o. Krishnan moving from West to East, towards Thirukoilur Railway Station duly carrying one white colour polythene bundle on his left shoulder. On suspicion, he was detained and his polythene bundle was examined in the presence of accompanying R.P.F. Staff as witnesses, viz., 1) Tr. V.Selvamurugesan, Head Constable and 2) Tr.R.Muthu, Constable/RPF, as there were no independent witnesses available at that time and at that place.

(ii) The polythene bundle was found to contain 7 nos, of Railway pandrol clips with illegible marks and 1 no. of fish plate, having length about 2 feet with railway marks, valued Rs.850/-. The accused was having no authority to possess the same lawfully. Hence, the Railway properties along with polythene bag were seized under a cover of mahazar attested by the said witnesses. Confessional statement of the accused was recorded in the presence of same witnesses and the accused was arrested. The accused along with seized properties were brought to Villupuram R.P.F. Post and a case in Crime No.9/2012 under Section 3(a) of Railway Property [Unlawful Possession] Act, 1966 was registered against the accused.

(iii) Tr.K.Duraiswamy, the Inspector / RPF / Villupuram conducted the investigation in this case and filed a complaint before the Judicial Magistrate Court No.I, Villupuram on 15.11.2012. In the course of trial, the prosecution witnesses 1 to 4 were examined marked 8 Material Objects and exhibited 6 documents on the side of the prosecution.

4. After completion of the trial, the Judicial Magistrate Court No.I, Villupuram acquitted the respondent/accused of the charge framed against him in C.C.No.522/2012 dated 06.09.2014. Hence, the appeal.

5. The learned Government Advocate (Crl.side), would contend that the possession of the Railway property by the accused is proved in the manner known to law and hence, it is for the accused to rebut the same.

6. Heard, the learned counsel for the respondent/accused.

7. Prosecution has examined 4 witnesses i.e., P.W.1 to P.W.4 and marked Ex.P1 to P6 and marked 8 Material Objects. P.W.4 is the Junior Engineer, who had certified that the properties belongs to the Railway. However, he has stated that he was not aware whether, the case property was seized from the custody of the accused.



8. During trial, in respect of the charge under Section 3 (a) of the Railway Property (Unlawful Possession) Act, the learned Magistrate is to conduct the only enquiry which the Court is called upon to make whether on the material on records there is a reason to suspect that the property found in a possession of the accused can be described either as a stolen property or property unlawfully obtained, whoever may be the person who has stolen it or unlawfully obtained it initially. Prosecution need not to prove that it was actually stolen.

9. It remains to be stated that P.W.4/Junior Engineer, Railways did not know that property was seized from the possession of the accused. The Junior Engineer, Railways is an Expert and can give case property certificate regarding Railway Property. No doubt, it is true that mere possession of the property belonging to the Railway itself is an offence.

10. After perusing the evidence of P.W.1/Duraisamy and P.W.2/Selvamurugesan, the learned Magistrate has come to the conclusion that the evidence given by P.W.1, as to the possession in evidence as to the witnesses, the commission of the offence or caught red-handed. According to its evidence, the accused said to have carrying a white consisting materials. On suspension, it has been seized. P.W.4, have stated that it is a Railway Property and thus, the case of the prosecution.

11. The properties have marked as MO.1 to MO.4. The suggestive case of the defence projected during the cross examination of P.W.1, P.W.2 and P.W.4 assumes significance.

12. Accused has suggested that he is an authorised contractor for servicing the Railway track and in such capacity, he was carrying the material, the same is not disputed by P.W.1 and P.W.2. The further case of the defence is that the accused, who is a contractor, for doing Railway job, he had a dispute with regard to Gangman Dhayalan and other Gate man, which has lead to filing of the false case. The fact that he is also one of the contractor doing job for Railways and Railway track cannot be lost sight. In such a capacity, he might have carried the railway materials.

13. With regard to the seizure, admittedly, there is no independent witness and the reason is also assigned by P.W.1 for the lack of independent witness. Based upon the answer elicited in the cross examination of P.W.1 and P.W.2 that the accused is a contractor doing job for the civil work for the Railways and on the particular day, there was a request between the contractor and two named Gangman during the cross examination of P.W.1 and P.W.2 assumes significance.



14. In view of the above said factual position, the learned Magistrate has taken a view that the seizure has not been proved, in the manner known to law and as the accused, as a contractor, might have carried materials and due to the dispute between the accused and the Gangman, a false case could have been foisted against him and hence, the learned Magistrate has held that the suggestive case of the defence is more probable than the prosecution case and accordingly, took a view that the prosecution has not proved its case beyond reasonable doubt. Accordingly, acquitted the accused from the charge levelled against him.

15. The sum and substance of the submission of the learned Government Advocate (Crl.side) is that an alternate view namely, out of two views, the other view is that the possession of the railway property from the custody of the accused is sufficient enough to lay a conviction under Section 3 of the Railway Act.

16. No doubt, to prove charges mere possession of railway property is sufficient to lay a conviction. In view of the probabilisation of the suggestive case that there was a dispute between the accused and the Gangman in the said Railway station. Furthermore, the accused is not a stranger to the railway department; he is one of the contractor doing the job and hence, out of two views possible, the learned Judicial Magistrate has chosen out of two, as a, one view in favour of the innocence of the accused. Accordingly, held the order of acquittal. Hence, merely because there is another view is possible, which is not a ground for interference of the order of acquittal.

17. The scope of appeal against the order of acquittal under Section 378 of Cr.P.C., is also kept in mind. It is well settled that an order of acquittal need not be interfered with by the Appellate court unless it is shown that an order of acquittal was rendered by the lower Court by considering irrelevant materials or without application of mind to the relevant materials. In fact, the Honourable Supreme Court in (Murugesan and others vs. State through Inspector of Police) 2012 SCW 5627 held that in case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it need not be lightly interfered with. In yet another decision of the Honourable Supreme Court reported in (Hydru vs. State of Kerala) (2004) 13 Supreme Court Cases 374 it was held that an order of acquittal need not be interfered with by the higher Courts unless there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.



18. Accordingly, this Court hold that the view expressed by the learned Magistrate is a positive view. In view of the suggestive case being probobalised during the cross examination of P.W.1 and P.W.2, the said finding rendered by the learned Magistrate acquitting the the accused is hereby confirmed and the criminal appeal is liable to be dismissed.

19. In the result, this Criminal Appeal is dismissed and the order of acquittal dated 06.09.2014 passed by the learned Judicial Magistrate, No.I, Villupuram, in C.C.No.522 of 2012 is confirmed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.I, Villupuram.
2. The Chief Judicial Magistrate,
Villupuram.
3. The Public Prosecutor,
High Court of Madras.
4. The District Legal Service Authority,
Villupuram.
5. The Secretary,
Tamil Nadu State Legal Service Authority,
High Court, Madras.
6. The Section Officer,
Criminal Section, High Court,
Madras.

Crl.A.No.322 of 2015

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