

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Form No. J(1)

Present: **The Hon'ble Justice Biswajit Basu**

Government Appeal No.6 of 1987

State of West Bengal

- Appellant/Petitioner

-versus-

Santosh Kumar Karmakar

Mr. Bidyut Kumar Roy,

Ms. Sima Biswas,

... for the Appellant/Petitioner

Mr. Kallol Mondal,

Mr. Krishan Ray,

Mr. Souvik Das,

Mr. Anamitra Banerjee,

... for the respondent.

Heard on : April 26, 2022.

Judgment on: April 26, 2022.

The Court :

Biswajit Basu, J. :

1. This is an appeal by the State of West Bengal against the order of acquittal dated February 28, 1986 passed by the 6th Court of learned Judicial Magistrate, Midnapore (Undivided) in U.R. Case No. 204/81 (T.R. No. 173/82).

2. The respondent was charged with an offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 on the

allegation that huge quantity of Railway goods were recovered from his possession. The respondent denied the said allegation. His specific defence was that the godown wherefrom the said goods were recovered did not belong to him.

3. The learned Magistrate acquitted the respondent from the charge holding that mandatory provisions of Section 165 and 166 of the Code of Criminal Procedure, 1973 in conducting the search was not followed, the seizure list was prepared in violation of the provision of Section 100 of the Code. The identification of the accused by the P.W.₂ was not believed by the learned Magistrate as the said witness claimed that he saw the accused from behind. The learned Magistrate in the impugned judgment has held that there is clear doubt about the actual place of search and seizure of the articles since the P.W.₅ in his evidence stated that the search was conducted in the godown of one Suresh Karmakar and not in the godown of the accused Santosh Karmakar.

4. Mr. Bidyut Kumar Roy, learned counsel for the appellant submits that the learned Magistrate has acted illegally and with material irregularity in holding that the search in the godown of the accused/respondent was not made in accordance with the provisions of Section 165 and Section 166 of the Code of Criminal Procedure as it was established beyond doubt that the raid and search was duly

conducted in the godown of the accused under the supervision of the Sub-Divisional Police Officer.

5. Mr. Kallol Mondal, learned counsel for the respondent on the other hand submits that the alleged place of occurrence was within the jurisdiction of Kharagpur (Town) Police Station but the Police Officer who conducted the said search was not of the said police station but of the G.R.P.S. Kharagpur, but there is no evidence on record to show that the Officer-in-charge of the G.R.P.S. Kharagpur duly intimated the Officer-in-charge of the Police Station within whose jurisdiction the said godown is situated about the said search and took his approval or sent a list of seized articles to him, such irregularities in conducting the search, offends the mandatory provisions of Section 165 and Section 166 of the Code of Criminal Procedure, as rightly held by the learned Magistrate.

6. Mr. Mondal further submits that the P.W.₅ in his evidence has stated that on the call of Officer-in-charge, G.R.P.S. Kharagpur, the said witness went to Nayapara, Choto Ayama at Suresh Karmakar's iron shop where the police officer who was conducting the search, the P.W.₂ showed him the seized articles as railway properties. He refers to the evidence of P.W.₄ where the said witness stated that the police took him to the place of occurrence, which was railway area. Mr. Mondal concludes his argument by submitting that on these

evidences on record, the learned Magistrate has rightly held that the prosecution has miserably failed to prove that the seized articles were recovered from the possession of the respondent, therefore the order under challenge does not call for any interference.

Heard the learned counsel for the parties, perused the materials-on-record.

7. The prosecution case is that, on June 18, 1981, Officer-in-Charge, G.R.P.S., Kharagpur along with others went out for search of alamat in connection with G.R.P.S. Case No. 7, dated June 18, 1981 under Sections 379/353 of the Indian Penal Code under the supervision of S.D.P.O., Kharagpur at the godown of accused Suresh Karmakar at Choto Ayama, which is under the jurisdiction of KGP(T)P.S. On search, in presence of local witnesses, huge quantity of Railway goods were recovered from the said godown and which could not be converted with the said case and as those were absolutely Railway properties, those articles were handed over to the Officer-in-Charge, Railway Yard, RPF post for necessary action, the accused Santosh Karmakar fled away from the place of occurrence. The Officer-in-Charge, Railway Yard, took up the case and Mr. C.R. Nandy, S.I. of RPF investigated the case and initiated the said proceedings against the accused.

In defence, the accused on examination under Section 313 of the Code denied all the charges. The defence case is that he had no godown at Choto Ayama and nothing was recovered from his possession as alleged.

8. The Learned Magistrate in deciding the case, considered the following points:

- i. Are the alleged seized properties absolutely belonged to Railway?
- ii. Whether the seized alamats were recovered from the possession of accused as alleged?
- iii. Whether these articles reasonably been suspected as stolen articles and accused person fails to account for?
- iv. Is the accused persons liable for charge under Section 3(a) of R.P.(UP) Act?

9. The prosecution cited as many as nine witnesses. P.W.₈, however, was declared hostile witness. P.W.₁ is one of the members of the search party. P.W.₂ is Mansur Ali Mir, S/I of concerned Police Station who conducted the search and prepared the seizure list. P.W.₃ is a technical expert who examined the seized alamats and gave opinion that all the seized materials are absolutely Railway property. P.W.₄ and P.W.₅ are the witnesses to the seizure list. P.W.₆ is the Enquiry Officer. P.W.₈ and P.W.₉ are the driver and Khalashi of the

Truck by which the said alamats were brought to the office of RPF Post Railway Yard from the godown wherefrom those alamats were seized. P.W.⁷ was a technical expert who examined some of the seized alamats.

10. The learned Magistrate found that the search and seizure of the godown wherefrom the said railway properties were allegedly seized is situated within the jurisdiction of Kharagpur (T) Police Station but the search and seizure was conducted by the Officer-in-Charge of G.R.P.S., Kharagpur (local) Police Station without giving any information to the Officer-in-charge of the Police Station within whose jurisdiction the said godown is situated and held that such irregularity had vitiated the entire process of search and seizure as it offended the provisions of Sections 165 and Section 166 of the Code.

11. Section 166 of the Code mandates that if the place to be searched is beyond the limit of concerned police station then the officer-in-charge of the other police station where the search is to be made, has to be requested to make or cause to be made the search within the limits of the said police station, no doubt in certain exigencies when the police officer, who takes up the search, has reason to believe that delay would be caused by requiring the officer-in-charge of the other police station to cause the search, resulting in destruction or concealment of evidence of the commission of offence,

he may then himself search or cause to be searched any place even outside his own jurisdiction but in doing so, the said police officer has to record reasons in writing before proceeding to make such search in the limits of another police station.

12. In the present case, there is no material-on-record to suggest that the Officer who conducted the search and seizure had followed the said mandate of Section 166 of the Code, therefore, the learned Magistrate has rightly held that the search and seizure was vitiated for non-compliance of the provisions of Section 166 of the Code. That apart, the provision of Section 100 of the Code in preparing the seizure list has not been strictly followed as signature of respectable persons of the locality as independent witnesses of the said list were not obtained.

13. The prosecution did not prove the identity of the accused beyond reasonable doubt. The learned Magistrate has rightly refused to believe the evidence of the Investigating Officer, the P.W.₂ who claimed that he saw the accused from behind when he was fleeing away from the place of occurrence. No T.I. parade to identify the accused was conducted, therefore the finding of the learned Magistrate that the identity of the accused has not been proved, cannot be faulted. Moreover, the prosecution has failed to prove

beyond reasonable doubt that the godown wherefrom the articles were seized belonged to the accused.

The learned Magistrate, therefore, has rightly held the respondent is not guilty of the offence charged with. Therefore, the order of acquittal of the accused from the charge under Sections 3(a) of the Railways Property (Unlawful Possession) Act, 1966 does not call for any interference.

The Government Appeal No. **6 of 1987** is therefore **dismissed** without any order as to costs.

Let the Lower Court Records be sent down to the Court below forthwith.

Criminal Section is directed to supply the urgent Photostat certified copy of this judgment and order, if applied for, to the parties as early as possible.

(Biswajit Basu, J.)

P.Jana