



Crl.R.C.No.350 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 21.06.2022

Pronounced on : 28.06.2022

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.350 of 2016

G.Elango,
S/o.M.Govindaraj,
No.23, New Street,
Ayanavaram,
Chennai.

... Petitioner/Accused

/versus/

The State by Inspector of Police,
Railway Protection Force,
AC.Loco/Arakonam,
(Crime No.01/2007)

... Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Sections 397 and 401 of Code of Criminal Procedure Code, 1973, against the order dated 12.01.2016 made in Crl.A.No.12 of 2015 on the file of the II Additional District and Sessions Court, Vellore at Ranipet against C.C.No.222/2007 on the file of the Judicial Magistrate, Arakkonam, dated 13.02.2012.

For Petitioner : Mr.R.Sankarasubhu, for
Mr.D.Dhayalan

For Respondent : Mr.N.S.Suganthan,
Government Advocate (Crl.Side)

ORDER



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The Revision petitioner is a railway employee was accused for the theft of railway property and tried for offence under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966 along with one James (died pending trial and charge got abated against him).

2. On behalf of the complainant, 7 witnesses were examined, 23 Exhibits and 3 material objects were marked.

3. The Trial Court held the accused/revision petitioner guilty. Convicted and sentenced to under 6 months Rigorous Imprisonment and to pay fine of Rs.1,000/ in default to undergo 2 months simple imprisonment.

4. On appeal by the accused/revision petitioner, the Appellate Court confirmed the Trial Court judgment of conviction and sentence. Challenging the correctness and legality of the concurrent judgments of the Courts below, the accused seeks revision.

5. The case of the complainant as spoken through its witnesses is that,



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on 04/06/2007 at about 11.45 am, while P.W-1, Sri.G.Jayapal, Sub-Inspector/
RPF/ACLOCO/Arakkonam along with P.W-3, N.Chittibabu, HC/357/ACLOCO/
Arakkonam and Sri.Sadiq Basha, Constable ACLOCO (not examined) on duty at
Gate-C of the LOCO shed saw the accused moving fast out of the Gate covering
something. On suspicion, he was intercepted and searched. They found 21
numbers of bronze, 7 numbers of A-9 SA 9 Cab and 1 number of horse air filter
which are marked as M.O-1 to M.O-3, wrapped around his waist and in his pant
pockets. The accused/petitioner is a Grade-I fitter, working in M-2 Section at
ACLOCO, Arrakkonam, had no gate pass to possess M.O.1 to M.O.3, which are
the railway properties. The matter was informed to P.W.7, Shri.Ashok Kumar
Meena, the Section Officer at ACLOCO and the Superior Officer of the accused. In
the presence of P.W-7, recovery mahazar (Ex.P-1) was drawn. The accused gave a
confession statement admitting his guilt. Based on his confession, P.W-1, P.W-3
and PW-7 along with the accused went to the LOCO shed and inspected the
cupboard from where the property was stolen. In the presence of P.W.4,
K.Surendran, Senior Section Officer at LOCO Shed, M-2 Section, Observation
mahazar (Ex.P-3) was prepared. The gap and vacant space in the cupboard
indicating that M.O-1 to M.O-3 were lifted from that place were noted.



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6. P.W-4 has examined the material objects recovered from the accused and given a report marked as Ex.P-15. P.W-5, Raghu Babu, Senior Section Officer at ACLOCO Modification Section has valued the material objects worth Rs.4401/- About the missing of property, he has given the missing report marked as Ex.P-5. The stock list Ex.P-9 and Stock Register (Bronze Filter) Ex.P-10 marked to show that the material objects were given to the Maintenance Section and from maintenance Section, same has been removed and found in possession of the accused.

7. The defence of the accused is that, nothing was recovered from his possession as alleged in the complaint. The M.O-1 to M.O-3 are not proved to be Railway property. The contradiction regarding the time of recovery, belies the case of the complainant. It is not possible to carry materials weighing more than 25 kgs in hip and pant pocket. No independent witness for recovery examined by the complainant though the scene of recovery in C-Gate of ICF where there will be lot of independent witnesses. The evidence of P.W-7 has to be ignored since he is not conversant with Tamil language and cannot be a real witness to documents drawn



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in Tamil, having signed the document without knowing the content of the document.

8. The Trial Court as well as the Appellate Court overruled the above defence, held the petitioner guilty and sentenced him to undergo 6 months R.I and to pay fine of Rs.1000/-.

9. The perusal of records indicates, Ex.P.1 mahazar states that the accused while try to pass through ACLOCO 'C' gate in suspicious manner, he was intercepted by P.W.1-Jayabal, Sub Inspector, P.W.2-N.Chittibabu, Head Constable and Sathick Basha, Constable found something conceal on the either side of the waist. On conducting the search, from his hip and two pockets of the pant M.O.1 to M.O.3 were found concealed. In this mahazar, the accused has also signed along with the witnesses.

10. The Learned Counsel for the petitioner/accused submitted that, it is improbable to conceal M.O.1 to M.O.3 in the body and pant pockets. To verify whether M.O.1 to M.O.3 were concealed by the accused in the manner found in



the mahazar, this Court called for the production of M.O.1 to M.O.3 and on its production physically examined the same and found that, it is possible that M.O.1 to M.O.3 would have been concealed in the pant pocket and around the hip.

11. On scrutiny of the mahazar, this Court finds that, it only mention about the three material objects recovered from the pant pockets. But these three material objects are three different kinds namely 21 numbers of bronze filter, 7 numbers of A-9 SA 9 Cab and 1 number of horse air filter, which material objects were kept in the part of which body, is not specifically stated in the mahazar.

12. Section 3 (a) of Railway Property (unlawful possession) Act, 1966, which reads as below:-

Penalty for theft, dishonest misappropriation or unlawful possession of railway property:-

Whoever commits theft, or dishonestly misappropriates or is found, or is proved] to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable.

(a) for the first offence, with imprisonment for a term



which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

13. In this case, M.O.1 to M.O.3 after due examination has been certified as railway property by P.W.4 K.Surendran and same is marked as Ex.P.15. After examination of the material, he has certified as below:-

- “1. 21 Nos of Sintered bronze filler elements.*
- 2. 07 Nos of modified filler cap.*
- 3. 01 No of unmodified horse hair type fillers.*

S.No.1:- 1 examined 21 Nos of sintered bronze filter made up of bronze having cylindrical shape covered at one end with 8MM dia hole for fitment at end and other end open with internal dia and 24mm and external dia 30mm and length of 46 mm.

S.No.2:- 1 examined 7 Nos. of modified filter caps having square head of 25mm on the square head 3 Nos having engraved marks as 1103 another 1 Nos 0106 another 1 No 1106 and other 2 Nos no engraved marks and



seating feather dia of 52mm and male thread length of 26mm with split threading and air entering holes of 6mm dia at four equidistant locations in between. A9 & SA9 caps where the location of AC Loco cabs called as A9, SA9 caps are the same caps and the technical name was modified filter caps.

S.No.3:- I examined 01 No of un modified horse hair type made up of brass with head dia of 25mm and seating feather dia of 52mm and horse hair cartridge of length 66mm filled with horse hair fitter split threaded at seating feather area at a length of 26mm with air entering holes of 6mm at four equidistant locations in between and commonly called as horse hair filter.

I carefully examined the case property and certify that Sl.Nos.1, 2 and 3 are in serviceable condition. These items were purchased from approved suppliers of Railways which are e exclusively manufactured for Indian Railways as per RDSQ drawings/Design specifications.

All the above items are used in Electric locomotives WAM4, WAG5, WAP1 and WAP4 types and these filters and filter elements are used to filter compressed air in pneumatic system of BG AC loco motive including brakes



horns, EP contractors and tap changer etc., and filter elements and caps fitted in T' type housing made up of cast iron ie., pneumatic pipe lines. These strainers are exclusively used for Indian Railways. All the three items examined by me is Railway property and belongs to Indian Railways."

14. P.W.4 has been subjected to cross examination and his evidence stands impeached. In the cross examination, he has stated that, 29 items seized from the accused were not manufactured by railway directly but procured from private organization. But, he is not aware from which private organization those components were purchased. However, P.W.4 has specifically stated that, these components are specifically designed for railway and their components were used in the rail engine.

15. The petitioner being a railway employee and placed in Maintenance Section as Fitter, had access to this property and has stolen it from the cup Board and try to take it away. The evidence placed does not create any doubt about the nature of the property. More so, on examination of material objects physically, this Court is convince that they are railway's property having



their own uniqueness and made specifically for rail engine.

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16. Regarding competence of P.W.7 Ashok Kumar Meena, for being signatory to the mahazar, which is written in Tamil language. There is no suggestion put to him that, he is not conversant with tamil and therefore, because the said witness is non-tamilian, cannot infer that, he was not conversant with tamil and had signed the mahazar without knowing the content of the mahazar.

17. Insofar as the non-examination of independent witness G.Jayabal (P.W.1), who search the accused and prepared the mahazar had in the cross examination stated that the 1st accused being a railway servant, the other railway servants refused to be witness and this explanation is plausible and acceptable explanation.

18. The judgements relied on either side consistently emphasis that, any person found in possession of railway property should prove the lawful possession of the same. At the same time, it is the duty of the prosecution to prove that the property seized from the possession of the accused and said property



belong to railway.

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19. *Kashmiri Lal -vs- State of Uttar Pradesh* reported in 1970 AIR

1869, the Hon'ble Supreme Court has held as below:-

“.....In our view although the prosecution is not called upon to prove that the goods belonged to any particular railway administration it has to establish that the articles were the property of a railway administration. Evidence to the effect that the goods conformed to the Railway Standards falls short of such proof. In most cases the burden of proof in this respect may be discharged by leading evidence about the identifying marks on the goods or some peculiarity of the goods not to be found in cases of non-railway goods. Again the mere description of the goods as new would not fulfil the requirements of Section 2(b). Some evidence will have to be led to the effect that the goods of the kind were being actually used by a railway administration and that the goods were in a serviceable condition. In the case of goods which had not been put to use evidence would have to be led to establish that they had been manufactured for such use.”



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20. Since there is no identification mark found in the goods, the Learned Counsel for the petitioner submitted that the complainant has not proved that M.O.1 to M.O.3 are railway goods. As pointed out earlier, this Court to satisfy itself has called for production of M.O.1 to M.O.3 from the complainant, which was returned to them after trial.

21. This Court, on examining the material objects, certain numbers and marked made on it though not mark of railway is satisfied that these materials on examination by the expert been certified as railway property supplied on specification. When descriptions of the goods been proved to be a railway property through witnesses who are familiar with the components and same is serviceable in condition. No further evidence required regarding the ownership of M.O.1 to M.O.3.

22. The Learned Counsel for the revision petitioner rely upon the judgment of this Court *In Re, B.Mohan* reported in *1987 Crl.L.J 1390*, in which



Hon'ble High Court has held as below:-

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“5. The only ground urged before me by the learned counsel for the petitioner is that it has not been properly proved that the property seized from the accused was the railway property. Under the Railway Property (Unlawful Possession) Act, 1966, special provisions have been introduced in order to protect the railway property. The Railway Protection Force has been given powers to arrest as well as to summon persons, and effect searches. Above alliance a person has been found in possession of railway property, reasonably suspected of having been stolen or unlawfully obtained, the burden shifts on him to show that he came into, possession lawfully. Therefore, the whole investigation and the whole trial are based on the special provisions of the Act. But, for these exorbitant provisions to come into play, the prosecution has necessarily to prove beyond reasonable doubt that the property in possession of the accused is railway property. The Courts below came to the conclusion that it is railway property, because there was a report on 23-2-1980 that copper wire belonging to the railways was stolen and on 25-2-1980, the property was seized from the accused.”

The learned counsel appearing for the Public Prosecutor add that there is also another element viz., that



from the retracted statement of the accuse Ex.P.3, it can be gathered that the property was purchased by the accused on 23-2-1980. No doubt, the similarity in dates would suggest that the property found in possession of the accused is the same as the one stolen from the railways. But, for the conviction under S. 3 of the Act, something more is needed. It should be proved beyond reasonable doubt that the property recovered from the accused is the railway property, much more so on account of the shifting of the burden of proof on the accused embodied in S. 3 of the Act. In this case, as observed by the appellate court itself, the prosecution could have indicated the length of the railway wire which was found cut and examined whether the bundle of wire in possession of the accused was of the same length.

It would be dangerous to base a conviction under S. 3 of the Act merely on the fact that the date of disappearance and the date of purchase happened to be the same without being satisfied with the dates between the articles missing and the articles purchased by the accused. There is still a certain amount of doubt lingering, the benefit of which should go to the accused.”

23. In the case cited supra by the Learned Counsel for the revision



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petitioner, the specification of the goods recovered not properly mentioned and failure to mention the length of the wire recovered were considered to be fatal to the prosecution and benefit of doubt was extended to the accused. Whereas, in this case, there is no doubt in the description of the material objects were seized.

24. It is true that the prosecution has marked certain statements of persons, who were not examined as witnesses. The untested statement of those witnesses which are marked as Ex.P.12 to Ex.P.14, Ex.P.16 and Ex.P.17 and Ex.P.20, even it is ignored for consideration, the evidence of P.W.1, P.W.3 and P.W.4 proves the recovery beyond doubt. The evidence of P.W.4 and the case property marked as Ex.P.15, proves that the property recovered are railway property.

25. In the said circumstances, the complainant having proved the illicit possession of the railway property by the accused and affirmed by the Courts based on the evidence, this Court finds no improbability in the said finding.

26. Section 3 of Railway Property (Unlawful Possession) Act, 1966,



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says, for any offence of theft, dishonest, misappropriation or unlawful possession of railway property, the imprisonment for the first time offence, the imprisonment shall be extend to 5 years or with fine, or with both. But, in the absence of special and adequate reasons to be mentioned in the judgment, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees.

27. In the case in hand, the trial Court found accused guilty for an offence under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966 and sentenced to undergo R.I for 6 months and to pay fine of Rs.1000/- in default to undergo 2 months S.I.

28. On revision, this Court finds that there is a special reason to record and impose sentence of the period of imprisonment already under gone with fine. The property alleged to have been theft is valued Rs.4401/- as per the P.W.5 Raghu Babu. The occurrence took place in the year 2007. It is stated that the petitioner herein due to the criminal prosecution has been suspended from service. Therefore, having sufficiently been suffered for his offence, the period of imprisonment during the pretrial arrest is suffice and no further imprisonment is



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required. The period of imprisonment undergone by the accused shall be the terms of punishment.

29. For the aforesaid reason, this Court finds that there is no error or illegality in the finding of the courts below. Hence, Criminal Revision Petition is dismissed.

28.06.2022

Index :Yes/No.
Internet :Yes/No.
Speaking order/Non-speaking order
bsm

To,

1. The II Additional District and Sessions Court, Vellore at Ranipet.
2. The Inspector of Police, Railway Protection Force, AC.Loco, Arakonam,
3. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery order made in
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