



Bail Slip

The appellant (Sole accused name Chandran, Male, 42years, S/o.Lakshmanan, was directed to be release on bail as per the order of this court date 26/07/2018 in Crl.MP(MD).3852/2018 in Crl.RC(md) 278/2018 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.01.2022

PRONOUNCED ON: 28.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD) .No.278 of 2018

Chandran ... Petitioner / Appellant/ Accused

Vs.

The Union of India,
represented by the Inspector of Police,
R.P.F. Trichirappalli Goods yard,
Trichirappalli.

... Respondent/Respondent/Complainant

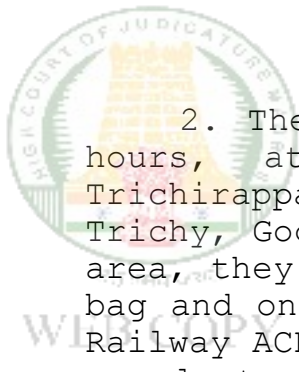
PRAYER: Criminal Revision Petition has been filed under Section 397 (1) r/w 401 of Cr.P.C, to call for the records and to set aside the order of the District and Sessions Judge, Trichirappalli in Criminal Appeal No.22 of 2013, dated 19.08.2015, confirming the order of the Judicial Magistrate No.II, Trichirappalli, dated 29.05.2013, for conviction in C.C.No.194 of 2006, to undergo imprisonment for one year simple imprisonment and he shall pay Rs.2,000/- towards fine and in default shall undergo simple imprisonment for one month for the alleged offence under Section 3(a) of the Railway Property (Unlawful Possession Act, 1966) in C.C.No.194 of 2006 and to acquit the revision petitioner.

For Petitioner : Mr.M.Jeyasekar, Advocate
for Mr.J.Sanjay Vignesh, Advocate

For Respondent : Mr.S.Manohar, Advocate

ORDER

This Criminal Revision Petition is directed against the concurrent judgment of conviction passed in C.A.No.22 of 2013, dated 19.08.2013, on the file of the Principal Sessions Court, Trichirappalli, confirming the judgment made in C.C.No.194 of 2006, dated 29.05.2013, on the file of the Court of Judicial Magistrate No.II, Trichirappalli.



2. The case of the prosecution is that on 04.06.2005 at 02.30 hours, at Electrical Post No.AR 3, near old loco shed, Trichirappalli goods shed, when the Assistant Sub-Inspector of RPF, Trichy, Goods yard, along with six other officials, was watching the area, they saw the revision petitioner/accused carrying a nylon hand bag and on search, they found that the accused was in possession of Railway ACB plates in his nylon bag, that the said accused has given a voluntary statement admitting his possession of railway property and that therefore, a case was registered in Cr.No.3 of 2005, for the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966. On the basis of the confession statement given by the accused, the RPF officials have conducted a search at shop No.173, Goods shed road, Mudaliar Chathiram, Trichy and found that the second accused was in possession of two railway ACB plates. Thereafter, the complaint was filed before the jurisdictional Court and the case was taken on file in C.C.No.194 of 2006. During trial, the prosecution, in an attempt to prove their case, has examined 9 witnesses as P.W.1 to P.W.9 and exhibited 18 documents as Exs.P.1 to P.18 and 3 material objects as M.O.Nos.1 to 3. The accused has adduced neither oral nor documentary evidences.

3. The learned Judicial Magistrate, upon considering the evidences adduced and on hearing the arguments of both sides, has passed the judgment dated 29.05.2013, convicting the revision petitioner/first accused for the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.2,000/-, in default to undergo one month simple imprisonment and acquitted the second accused.

4. Aggrieved by the said judgment of conviction, the first accused has preferred an appeal in C.A.NO.22 of 2013 and the learned Principal Sessions Judge, Trichirappalli, upon perusing the records and on hearing the arguments of both sides, has passed the impugned judgment, dated 19.08.2013, dismissing the appeal and thereby, confirming the judgment of conviction and sentence passed by the trial Court. Aggrieved by the said judgment of dismissal, the first accused has come forward with the present Criminal Revision Petition.

5. Admittedly, there is a concurrent verdict of conviction and sentence against the revision petitioner. The revisional jurisdiction of this Court under Sections 379 and 401 Cr.P.C., is confined to legality, propriety and correctness of the concurrent findings of the conviction entered and sentence imposed on the accused. Moreover, the power and the jurisdiction of revisional Court cannot equate with the power and the jurisdiction of the appellate Court nor the same can be treated as the second appellate jurisdiction. It is pertinent to mention that while exercising the revisional jurisdiction, there is absolutely no scope for re-appreciating the entire evidence again, but at the same time, if the



appreciation of evidence is tainted with perversity, the same can be looked into and interfered with by the revisional Court. Bearing the above legal position, let us consider the present case.

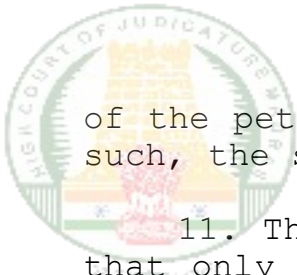
6. Admittedly the petitioner was employed under the railways and as evident from the evidence of P.W.8, the petitioner was working under him as helper. It is further evident from the evidence of P.W.7 that the case property of ACB plates are belonging to the railways.

7. The learned Counsel for the petitioner would submit that mere recovery of the property, cannot be synonymous with discovery of a fact to connect the accused with the alleged offence, that the trial Court has committed an error in acting upon the evidence of police witness which does not inspire confidence and that it will be highly unsafe to rely upon the same in order to convict the accused, when the independent witnesses did not support the prosecution case.

8. The learned Counsel for the petitioner would also submit that there is a reasonable doubt that at the time of commission of offence, the petitioner was in intoxication and incapable of knowing the nature of the act by reason of unsoundness of mind, that he was diagnosed as suffering mental ailment and he is entitled to the benefit of Section 84 I.P.C. and that therefore, the conviction and sentence of the petitioner cannot be sustained.

9. As rightly contended by the learned Counsel for the respondent, the plea of unsoundness of mind was not at all raised at the trial and hence, the petitioner cannot be allowed to take such a new stand at this point of time. No doubt, the petitioner has produced the copy of the discharge summary issued by Athma Hospital and Research centre and whereunder it is evident that the petitioner was admitted on 01.06.2016 and was discharged on 03.06.2016 and was diagnosed as ADS with Psychosis - NOS. It is further evident from the said discharge summary that the petitioner is referred as a known case of alcohol dependent for more than 25 years and he was having alcohol intoxication, behavioral problem, suspicion with his wife and that he was under the alcohol influence at the time of admission in the hospital. It is further evident that since the family members were not willing for treatment, the petitioner was discharged at request.

10. As rightly contended by the learned Counsel for the respondent, the petitioner has not produced any materials or records to show that the petitioner was suffering from mental illness at the relevant point of time. As already pointed out, the petitioner was arrested on 04.06.2005 for possessing the railway ACB plates unlawfully and he was given treatment for three days in June 2016. In the absence of any such plea raised at the trial and in the absence of any evidence to show that the petitioner was suffering from mental illness at the relevant point of time, the present contention



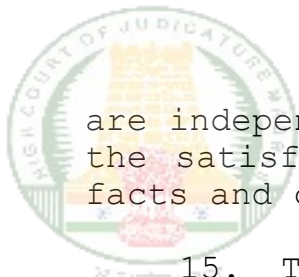
of the petitioner can only be considered as an after thought and as such, the same cannot be entertained at this point of time.

11. The learned Counsel for the petitioner would further submit that only on the basis of the confession statement of the revision petitioner/first accused, the second accused was implicated, that the prosecution has allegedly recovered two railway ACB plates from the second accused and that since the trial Court has come to the decision that the case as against the second accused was not proved, the question of convicting and sentencing the first accused does not arise at all.

12. As rightly argues by the learned Counsel for the respondent, there is absolutely no merit in the above contention. No doubt, only on the basis of the confession statement allegedly taken from the revision petitioner, a search was made in the shop of the second accused and after recovery of two railway ACB plates, the second accused was implicated. But the learned Magistrate, by holding that the confession statement alleged to have been given by the second accused and the consequent recovery allegedly from him, was not proved by the prosecution, acquitted the second accused. But as already pointed out, the petitioner was found in possession of the railway ACB plates, without any permission or records and since he has not offered any explanation for possessing the plates belonging to the railways, the Courts below have rightly decided that the charge as against the revision petitioner was proved. Just because the second accused was not found guilty and was acquitted by the trial Court, it cannot be said that the petitioner is also entitled to get the same judgment of acquittal, as the charges levelled against both the accused and the proving of the same by the prosecution are different.

13. The learned Counsel for the revision petitioner would also submit that the prosecution has miserably failed to prove the place where the alleged offence was committed. But the trial Court as well as the appellate Court have dealt with that aspect specifically and came to the right decision that the witnesses have mentioned the place of occurrence as goods yard and also as loco shed and as such, the above said contradictions will not affect the case of the prosecution.

14. The next contention of the revision petitioner is that the prosecution has not chosen to examine any independent witness and the officials of the complainant police alone were examined. According to the prosecution, at the occurrence place and time, there was no other person available and hence with no other option, the Assistant Sub-Inspector of Police along with his team had intercepted the first accused and recovered the property from him. It is not the specific case of the defence that some other independent persons were present at the occurrence place, but the prosecution has failed to examine them. Even assuming that there



are independent witnesses is ultimately a question which pertains to the satisfaction of the judicial conscience of the Court in given facts and circumstances of the particular case.

15. The trial Court as well as the appellate Court have specifically observed that the evidences of P.W.1, P.W.2, P.W.4 and P.W.9 are sufficient enough to prove the commission of offence. As rightly observed by the Courts below, the contradictions elicited by the defence from the evidence of the prosecution witnesses are not material enough to doubt the prosecution case. Considering the above, this Court is of the view that the appellate Court has properly reassessed the evidence and gave its findings concurring with the trial Court.

16. The learned Counsel for the petitioner would submit that the trial Court itself should have given benefit under Section 3 of the Probation Offenders Act, considering the employment of the accused with the railways.

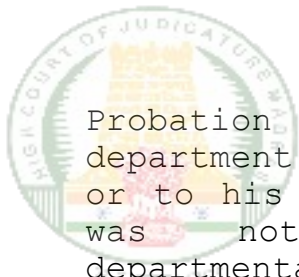
17. Considering the above, this Court has called for a report from the Probation Officer, Trichirappalli, under Section 4 of the Probation of Offenders Act, who in turn forwarded the same to the Probation Officer, Dharmapuri and after enquiry, the Probation Officer submitted a report stating that the accused is not having any previous conviction and that he is regretting his conduct and therefore, he has recommended that it is a fit case for invoking Section 4(1) of the Probation of Offenders Act. Considering the above, the report of the Probation Officer, Trichirappalli, is accepted.

18. As already pointed out, the occurrence was held on 04.06.2005 and the trial Court as well as the appellate Court have passed the judgment in the year 2013 and already 16 years had lapsed since the date of occurrence and 8 years since the date of judgment of the Courts below. It is further evident from the records that the accused was shown to be aged 41 years in the year 2005 and on that basis, it comes to 57 years.

19. It is not the case of the prosecution that the petitioner is having any previous case for property offences or for any other serious offences. As already pointed out, the petitioner was employed under the railways at the time of occurrence.

20. Considering the above facts and circumstances and also the date on which, the occurrence was held and also the age of the accused and upon considering the unblemished records and good character and the conduct of the accused, this Court is inclined to invoke Section 4 of the Probation of Offenders Act.

21. No doubt, Section 12 of the Probation of Offenders Act contemplates that a person found guilty of an offence and dealt with under the provision of Section 3 or Section 4 of the said Act shall not suffer disqualification, if any, attaching to an conviction of an offence under such law. It is settled law that Section 12 of the



Probation of Offenders Act does not prohibits or preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law and that the said Section was not intended to exonerate the person from departmental/disciplinary punishment.

22. The Honourable Supreme Court in **Additional D.I.G., of Police, Hyderabad Vs. P.R.K.Mohan**, reported in (1997)11 SCC 579 and in **Harichand vs The Director Of School Education** reported in (1998)2 SCC 383, has reiterated the above legal position and has held that Section 12 of the said Act would apply only in respect of disqualification that goes with a conviction under the law which provides for the offence and its punishment. Hence, it is clarified that the petitioner is not entitled to invoke Section 12 of the Probation of Offenders Act with respect to the departmental action initiated and the punishment awarded. Hence, the conviction passed against the revision petitioner stands confirmed, but instead of sentencing him at once, in exercise of Section 4 of the Probation of Offenders Act, the accused is ordered to be released on entering into a bond for a sum of Rs.25,000/- (Rupees Twenty five thousand only) with two solvent sureties for a like sum, to appear and receive the sentence and as and when called upon during the period of six months and in the meantime, he is directed to keep the peace and be of good behaviour during that period.

23. This Criminal Revision Petition is disposed of accordingly.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1. The District and Sessions Judge
Trichirappalli
2. The Judicial Magistrate No.II, Trichirappalli
3. Do Through The Chief Judicial Magistrate, Trichirappalli
4. The Principal District & Sessions Judge, Trichy.
5. The District Probation Officer, Trichirappalli.
6. The Superintendent, Central Prison, Trichy.



7. The Inspector of Police,
R.P.F. Trichirappalli Goods yard,
Trichirappalli.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
9. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.S.MANO HAR, Advocate Sr.No.3479

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28.01.2022

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