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Crl.R.C.No.940 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.No.940 of 2021

1. Easuraja

2. Dineshkumar

3. Iyappan

...Accused/Appellants/Petitioners

-Vs-

The State rep by its

The Inspector of Police,

Railway Protection Force Police Station,

Mayiladuthurai

(Crime No.4 of 2011)

...Complainant/Respondent /Respondent

Prayer:- Criminal Revision Case filed under Section 397 r/w.401 of the Criminal Procedure Code, 1973 to call for the records of the learned Additional District and Sessions Judge, Mayiladuthurai, in C.A.No.40 of 2018 by judgment dated 11.03.2021 confirming the conviction and sentence passed by the learned Judicial Magistrate No.I, Mayiladuthurai in C.C.No.244 of 2011 by judgment dated 16.05.2018.

For Appellants : Mr.R.Shivakumar

For Respondent : Mr.S.Vinoth Kumar

Government Advocate (Crl.side)



J U D G M E N T

WEB COPY The Criminal Revision case has been filed to set aside the order passed by the learned Additional District and Sessions Judge, Mayiladuthurai, in C.A.No.40 of 2018 dated 11.03.2021 confirming the conviction and sentence passed by the learned Judicial Magistrate No.I, Mayiladuthurai in C.C.No.244 of 2011 dated 16.05.2018.

2. The learned Counsel for the Revision Petitioners submitted that the Revision Petitioners were residents of the Sitharkadu Village near Mayiladuthurai Railway Station. They were employees of the Railway canteen on daily wage basis. The Railway properties were alleged to have been seized from their custody for which they have been convicted by the learned Judicial Magistrate No.I, Mayiladuthurai in C.C.No.244 of 2011 for offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966. The learned Judicial Magistrate No.I, Mayiladuthurai had imposed 6 months Rigorous imprisonment and fine of Rs.500/- for each of the Accused.

3. It is the submission of the learned Counsel for the Revision Petitioners that neither the Railway Contractor who was in custody of the



Railway materials for the contract work of the conversion of Meter gauge to broad gauge between Chennai and Main line for the Southern Districts nor the Railway Engineer had given the complaint regarding the missing of the Railway properties.

4. It is the further submission of the learned Counsel for the Revision Petitioners that the witnesses in this case are all Railway Protective Force Officials. The Inspector/P.W-1 was the Investigation Officer, Railway Protective Force and other witnesses were constables working under him. They had deposed the same fact favouring the prosecution.

5. The learned Counsel for the Revision Petitioners invited the attention of this Court to the cross examination of P.W-1 to P.W-5. P.W-5 was the Railway Engineer who had clearly admitted that he had not given any complaint regarding the missing of fish plates or any other Railway properties. He also admitted that the conversion work was in progress and the Contractor had engaged his workers for the relevant work. It is submitted that P.W-5/ the Railway Engineer had deposed that the Railways maintain proper Registers for Railway properties and there was no complaint from the Railway Officials regarding any missing Railway



properties. When there is no prior complaint or when the registers were properly maintained and when the Contractor or Engineer of the Railways had not preferred any complaint, the Railway Protection Force registering a case against the Revision Petitioners as though, the Revision Petitioners-1 to Revision Petitioner-3 had indulged in offences attracting section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 is unacceptable. The judgment of conviction recorded by the learned Judicial Magistrate No.I, Mayiladuthurai and confirming in Appeal by the learned Additional District and Sessions Judge, Mayiladuthurai in C.A.No.40 of 2018 dated 11.03.2021 are to be have set aside as perverse.

6. The learned Government Advocate (Crl.side) Mr.S.Vinoth Kumar, vehemently objected to the line of arguments of the learned Counsel for the Revision Petitioners stating that the judgment of the learned trial Judge, the learned Judicial Magistrate No.I, Mayiladuthurai was confirmed in Appeal by the learned Additional District and Sessions Judge, Fast Track Court, Mayiladuthurai. When the trial Court and the Appellate Court had considered the materials and confirmed concurrent finding, the Revision Court cannot re-appreciate the evidence. The submission of the learned Counsel for the Revision Petitioners that the Revision Petitioners were



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residents of Sitharkadu village near to Mayiladuthrai Railway Station and were employees of Railway canteen at Mayiladuthurai on daily wage basis and they had been framed, cannot be accepted as the Inspector/P.W-1 and the constables attached to P.W-1 had made night rounds in the place where the Railway properties were found missing. The Accused were arrested on the Railway property, where the conversion work was going on. What was the reason for the Accused to be present in the Railway property at odd hours of early morning 3 a.m. The properties were seized from the Accused near the Mayiladuthurai Railway Station . Therefore, explanation has to be offered by the Accused and not by the Railway Protection Force. The learned Judicial Magistrate No.I, Mayiladuthurai had on proper appreciation of evidence had recorded the conviction against the Revision Petitioners which was confirmed in Appeal by the learned Additional District and Sessions Judge, Fast Track Court, Mayiladuthurai. Therefore this Revision is having no merits and has to be dismissed.

Point for consideration

Whether the conviction recorded by the learned Additional District and Sessions Judge, Mayiladuthurai, in C.A.No.40 of 2018 dated 11.03.2021 confirming the



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conviction and sentence passed by the learned Judicial Magistrate No.I, Mayiladuthurai in C.C.No.244 of 2011 dated 16.05.2018 is to be set aside as perverse.

7. Heard the learned Counsel for the Revision Petitioners. Heard the Government Advocate (Crl.side). Perused the evidence of P.W-1 to P.W-5, deposition of Ex.P-1 to Ex.P-10 and the judgment of the learned Judicial Magistrate No.I, Mayiladuthurai and the judgment of the learned Additional District and Sessions Judge Fast Track Court, Mayiladuthurai.

9. The submission of the learned Counsel for the Revision Petitioners seeking re-appraisal of evidence cannot be accepted by this Court as this is the Revision case. The Revision Court does not have all the powers of an Appellate Court which has all the powers of the trial Court to re-appreciate the evidence. The Revision Court cannot re-appreciate the evidence. As rightly pointed out by the learned Government Advocate (Crl.side), the judgment of the trial Judge re-assessing regarding evidence before the trial Court by the learned Appellate Judge and had confirmed finding of the learned Judicial Magistrate No.I, Mayiladuthurai.

10. The learned Counsel for the Revision Petitioners invited the



attention of this Court to Section 3 of the Railway Property (Unlawful Possession) Act, 1966 wherein under section 3(a), it is clearly stated that for the first time offence, the imprisonment may extend up to 5 years or fine or with both. In the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than 1 year and such fine shall not be less than Rs.1000/-.

11. It is the submission of the learned Counsel for the Revision Petitioners that the Revision Petitioners were daily wage earners working in the Railway Canteen and their presence in the Railway property cannot be objected on mere suspicion, the case had been foisted. There is specific evidence through P.W-5/Engineer of the Railways that no stock or Railway property were found missing as per the Registers.

12. It is his submission that the Contractor has the right to take back the damaged and used Railway properties and to sell it in auction. Therefore those things had not been verified by the Investigation Officer in this case. The objection of the learned Counsel for the Revision Petitioners that P.W-2 to P.W-4 are all constables of the team under P.W-1/Investigation Officer. Therefore their evidence incriminating the Accused



cannot be accepted is also found unacceptable as per the Railway Property

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(Unlawful Possession) Act, 1966. The investigation conducted by the Investigation Officer and the examination of the Railway Protection Force personnel as witnesses cannot be faulted either by the Court or by the Counsels appearing for the Accused. As they are empowered to do so and the Railway Property (Unlawful Possession) Act, 1966 is a separate code regarding the conduct of investigation by the Railway Protection Force officials as per the Railway Property (Unlawful Possession) Act, 1966. The Accused in cases under Railway Property (Unlawful Possession) Act, 1966 has to give explanation for having possession of the Railway property in their custody. Therefore the presumption is against them. Under those circumstances, the excuse that they were framed cannot be accepted by this Court. As rightly raised by the learned Government Advocate (Crl.side) what was the reason for the Accused-1 to Accused-3 to come to the Railway property on the early hours or the intervening night or at odd hours raises presumption against them under the circumstances in the light of Railway Property (Unlawful Possession) Act, 1966.

13. The learned Judicial Magistrate No.I, Mayiladuthurai, on proper appreciation of evidence had sentenced the Accused to minimum 6 months



imprisonment and also imposed fine of Rs.500/- each which is found to be reasonable. As per Section 3(a) of Railway Property (Unlawful Possession) Act, 1966, for the first time offence, without reason if the learned Judge convicts, then in that circumstances, minimum one year imprisonment and fine of not less than Rs.1000/- shall be imposed. In the light of those circumstances, even though, the learned Judge had discussed the evidence and convicted the Accused by way of leniency shown to the Accused, the sentence alone is modified instead of 6 months imprisonment, the fine imposed is Rs.1000/-.

14. The Accused-1 to Accused-3 were arrested on 09.08.2011 and released on bail on 23.08.2011. Considering the period of detention as period of imprisonment, the sentence of 6 months imprisonment is converted as fine, instead of Rs.500/- modified as Rs.1000/-.

15. **The Appeal is partly allowed.** The judgment of the learned Judicial Magistrate-I is not treated as perverse. Also the confirmation of the judgment of the learned Additional District and Sessions Judge also is not treated as perverse. **Considering the Accused as first time offenders, leniency is shown instead of sentencing them to imprisonment, fine of**



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Rs.1000/- is imposed as per Section 3(a) of Railway Property

(Unlawful Possession) Act, 1966.

In the result, the Criminal Revision Case is partly allowed.

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Index : Yes/No

Speaking/Non-speaking order

To

1. The Additional District and Sessions Judge,
Mayiladuthurai
2. The Judicial Magistrate-I,
Mayiladuthurai
3. State rep by its,
The Inspector of Police,
Railway Protection Force Police Station,
Mayiladuthurai
4. The Public Prosecutor,
High Court of Madras, Chennai - 600 104.
5. The Section Officer, VR Records,
High Court of Madras, Chennai.

SATHI KUMAR SUKUMARA KURUP, J.,



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