



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 15 OF 2023

The Sub-Inspector,
Railway Protection Force,
Bhusawal Loco, Taluka Bhusawal,
District Jalgaon.

... Applicant

Versus

Shaikh Shabir Shaikh Lal,
Age : 59 years, Occupation: Service,
R.P.O.H. Colony, Bhusawal,
Taluka Bhusawal, District Jalgaon.

... Respondent
[Orig. Accused]

.....

Mr. A. G. Talhar, DSGI for the Applicant.
Mr. Shaikh Nasimoddin Rafiyoddin, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 16.01.2024

Pronounced on : 23.01.2024

ORDER :

1. Railway police is hereby seeking leave to file appeal against the judgment and order passed by JMFC (Railways), Bhusawal dated 25.04.2022 by which present respondent-original accused has been acquitted from charge under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

2. Learned DSGI appearing for the applicant would point out that there is no dispute that present respondent was also an employee of railway department. That on 20.04.2021, he was found to be leaving the railway P.O.H. premises carrying copper strip which was property owned and belonged by railway. He was spotted by complainant taking away railway property and therefore he was questioned. He could not offer explanation for its possession and therefore complaint was filed. Learned DSGI pointed out that in support of its case, prosecution had adduced evidence of complainant which was cogent and reliable. Spot panchanama was drawn. Moreover, accused respondent had admitted and confessed about committing the offence. The property was owned by railway and therefore with such evidence, conviction ought to have been recorded. However, according to him, learned trial Judge has, by its order dated 25.04.2022, acquitted the respondent. He pointed out that there is total non-application of mind and improper appreciation of evidence. The findings and conclusion reached are patently erroneous and therefore applicant has a strong case on merits and hence he seeks leave to prefer appeal.

3. In answer to above, learned counsel for respondent pointed out that prosecution has miserably failed to establish the charges. He pointed out that there is no cogent and reliable evidence. At the outset, he invited attention of this court to the complaint wherein mere suspicion was raised. He further submitted that there is no expert's evidence to show that the so called property in possession of respondent-accused was railway property. He invited attention of this court to the evidence of prosecution witnesses and submitted that when prosecution had failed to show that property belonged to only and only railway, learned trial Judge committed no error in refusing the case of prosecution. According to him, more particularly there is no independent evidence except so called confessional statement which has no evidentiary value. Hence, he prays to dismiss the application seeking leave.

4. After hearing submissions advanced by both sides and on going through the impugned judgment, it transpires that present respondent was made to face trial before learned JMFC, Railway Court, Bhusawal for offence punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

5. In above background, if the evidence adduced by prosecution in the trial court is seen, there is evidence of complainant who deposed that on 20.04.2021, he found respondent in suspicion condition and was found possessing copper strip. He had no permit for the same and therefore it was said to be a stolen property and on suspicion this witness passed information to superior officer and thereafter lodged complaint.

6. Perused the evidence as well as impugned judgment. At the outset it needs to be observed that from the very complaint it is evident that accused himself is a staff and employee of railway department. There is no evidence as to what was he working as and what were his duties and responsibilities. Secondly, complaint is apparently on suspicion. There is no record of inventory to show that property alleged to be in possession of accused in fact was belonging to railway department. There is no independent oral or documentary evidence in that regard. Unless it is established that said property was owned and possessed by railway department, it cannot be said that the property allegedly found in possession of accused was of railway and was stolen.

7. It also further appears that though there is certification dated 13.05.2021, PW3 himself seems to have admitted that the property found with accused was thrown away as scrap. Therefore, all such circumstances create doubt. Case does not seem to have been proved beyond reasonable doubt. Mere confessional statement, as put forth by learned counsel for applicant cannot be considered in isolation and moreover in absence of other incriminating material.

8. Resultantly, in the light of above discussion, no fruitful purpose would be served by permitting applicant to file appeal. No case being made out for grant of leave, the application is rejected.

[ABHAY S. WAGHWASE, J.]