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CrI.R.C.No.968 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.968 of 2022

Rajendran

... Petitioner

Vs.

Union of India,
Represented by
The Inspector of Police,
Railway Protection Force,
Katpadi, Vellore District.
[In Crime No.08 of 2005]

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Code of Criminal Procedure to call for the records pertaining to C.A.No.40 of 2016 on the file of the learned Principal District and Sessions Judge, Vellore, by judgment dated 14.12.2017 against the judgment dated 08.12.2015 in C.C.No.621 of 2005 on the file of the learned Judicial Magistrate No.I, Vellore and set aside the same.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.B.Sudhir Kumar
Special Public Prosecutor



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ORDER

The petitioner/A2 in C.C.No.621 of 2005 was convicted by the Trial Court by judgment dated 08.12.2015 for the offence under Section 3(a) of Railway Property (Unauthorized Possession) Act, 1966 and sentenced to undergo one week rigorous imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo six months simple imprisonment. Aggrieved against the same, the petitioner preferred an appeal in C.A.No.40 of 2016. The learned Sessions Judge by judgment dated 14.12.2017 dismissed the appeal by confirming the conviction and sentence imposed by the Trial Court. Against which, the present revision petition is filed.

2.The gist of the case is that on 12.08.2005 P.W.1 along with a team of officials of Railway Protection Force [RPF] were keeping a watch between Sevrur Railway Station and Katpadi Railway Station, at that time, they found three persons moving from west to east direction in a suspicious manner carrying white polythene bags in their left shoulder. The RPF intercepted them and enquired regarding the contents of the Polythene bags. Since they were unable to give satisfactory answers and also found to be



nervous, the contents of the polythene bags were examined in the presence of witnesses P.W.8 and one P.K.Balachandra Reddy, who were part of the RPF team since no independent witnesses available in the spot. All the white polythene bags contain railway properties and the persons were not having any voucher or bill or authority for lawful possession of the railway property and hence, the same were seized under the cover of mahazar and the persons identity was disclosed as Kumar, Rajendran and Kathavarayan. All the three were railway employees and thereafter, they were taken to Sevrur Station. A1 and A3 gave confession and statement in the presence of P.W.6/ Maheswaran, Station Manager, Sevrur and A2 gave confession and statement in the presence of P.W.7/A.Dhakshinamoorthy, Junior Engineer, Telecom Exchange, Katpadi Railway Station. From their confession, it revealed that between 25.07.2005 and 26.07.2005 all the three accused committed theft of one motor trolley engine and the same was sold in the Sunday Market on 07.08.2005 to unknown person and they received cash of Rs.8,500/- which was kept with A2 in his residence. Thereafter, search conducted in the house of A2 and the amount seized in the presence of P.W.6. After arrest, the accused produced before the Magistrate and they were remanded. The seized properties were confirmed as Railway



properties as per the evidence and certificate given by P.W.2/Senior Section Engineer, Katpadi. P.W.9/Senior Section Engineer given a report about missing of the motor trolley engine. On conclusion of investigation, complaint filed before the learned Judicial Magistrate No.I, Vellore listing 12 witnesses along with documents and material objects. During trial, on the side of the prosecution P.W.1 to P.W.9 examined, Ex.P1 to Ex.P23 and M.O.1 to M.O.11 marked. In the meanwhile, A3 passed away and the case proceeded against A1 and A2. On conclusion of trial, the Trial Court convicted both the accused as stated above. A1 and A2 filed appeals in C.A.Nos.40 of 2016 and 36 of 2017, both the appeals were dismissed by the Sessions Court by common judgment. Thereafter, A1 preferred a revision before this Court in Crl.R.C.No.158 of 2018 and this Court by order dated 25.10.2018 finding that the procedural law not followed, allowed the revision by setting aside the conviction and sentence imposed on A1.

3.The contention of the learned counsel for the petitioner is that the petitioner is also standing on the similar footing as of A1 and the same benefit to be extended to the petitioner. He would submit that in this case P.W.1/Inspector of Police, RPF along with a team is said to have kept watch



between Sevrur and Katpadi, at that time, found the petitioner along with two others in a suspicious manner carrying a polythene bag. The entire search and seizure of the material objects which is claimed to be the railway property were made in presence of P.W.8 and one P.K.Balachandra Reddy. It is stated that there is no public witnesses available. The other witnesses projected to be present in the scene of occurrence is P.W.1, P.W.3 and others, all from RPF. The search and seizure is highly doubtful. The evidence of P.W.1 is that the seizure made on 12.08.2005 at about 4.50 a.m., M.O.1 to M.O.10 seized in the scene of occurrence, all railway properties and the properties produced along with the accused during remand. But the evidence of P.W.2 is that the properties inspected by him on 22.08.2005 and gave certificate/E.P11 and statement/Ex.P12 confirming M.O.1 to M.O.10 are railway properties which causes serious doubt. Likewise, the evidence of P.W.9 is that he gave a complaint for missing of motor trolley engine by a report/Ex.P23 on 26.07.2005 but no complaint registered. It is shown that on the confession of the petitioner and other accused, it is seen that motor trolley engine was stolen by them and thereafter sold in the Sunday market for a sum of Rs.8,500/- and the cash recovered from the house of A2 in presence of P.W.6. In this case, P.W.5 an



independent witness from the Village not supported the case of the prosecution. P.W.6/Station Manager, Sevur Railway Station is a Southern Railway employee. Hence, it cannot be said that the petitioner committed the theft of motor trolley engine is proved.

4.The learned counsel further submitted that in this case it is projected that in the presence of P.W.6, A1 and A3 gave confession statement. P.W.6/Station Manager confirms that the entire incident taken place in Katpadi Station but confession statement of the accused is recorded at Sevur Railway Station. Hence, the confession and statement becomes highly doubtful. He would submit that as regards the confession statement of A2, it is projected that it was given in the presence of P.W.7, whose evidence is that the same is recorded at Sevur Railway Station. Hence, there is clear contradiction in the manner in which the confession and statements recorded. Hence, the foundational fact of the case becomes shaky. The case of the petitioner is that the petitioner was in his office at Katpadi, P.W.6 his senior on the instructions of RPF produced him for enquiry and the enquiry took place in Katpadi and a case has been fabricated and petitioner falsely arrayed as accused in this case. He further submitted that the Trial Court



and the Lower Appellate Court failed to consider these aspects and it is projected that the said team which was keeping watch over the area consists of more than 10 persons but except P.W.1, P.W.3 and P.W.8, no other persons examined. Hence, when the foundational fact has become shaky, the conviction of the petitioner is not sustainable. Alternatively, he also submitted that the petitioner having no previous case and he is an aged person, now retired and residing with his family and hence, he may be given the benefit under the Probation of Offenders Act.

5.In support of his contentions, the learned counsel for the petitioner relied upon the following decisions:

- 1) *Nirmal Lal Gupta vs. State of Orissa* reported in 1995
*Supp(2) SCC 713***
- 2) *State by Public Prosecutor vs. Paramasivam*
*[Crl.A.No.819 of 1984 dated 30.10.1989]***
- 3) *State by Public Prosecutor vs. Rathinavelu*
*[Crl.R.C.No.981 of 1970 dated 13.03.1970]***

6.The learned Special Public Prosecutor appearing for the respondent submitted that in this case P.W.1 along with a team of RPF Officials were



patrolling near the railway track between Sevur and Katpadi Junction and keeping a watch over the railway properties, at that time, on 12.08.2005 in the early hours at 4.50 a.m., they found three persons, namely, A1 to A3 carrying white polythene bags on their shoulders. When they were stopped and enquired, they gave contradictory statements and found nervous. The RPF team on getting suspicion opened the polythene bags and material objects M.O.1 to M.O.10 found with railway markings, the accused persons unable to give any valid reason for the possession. Hence, the unlawful possession of railway properties by the accused proved. In the presence of P.W.3, the seizure of articles recorded in the mahazar. Further, another witness P.W.8 also confirms the questioning of the accused and seizure of railway properties. Hence, the evidence of P.W.1, P.W.3 and P.W.8 corroborate with each other with regard to the accused found in possession of railway properties and seizure of material objects. Thereafter, they were taken to Sevur Railway Station and to Katpadi Station. In the presence of P.W.6, A1 and A3 gave confession and statement since they worked under P.W.6. Likewise, A2 who was employed as Assistant in the Telecom Exchange under P.W.7/Junior Engineer gave confession and statement under P.W.7. Based on the confession of A2, his house was searched in the



presence of P.W.5 and P.W.6 and a sum of Rs.8,500/- seized, which was derived by selling the stolen motor trolley engine. P.W.5/neighbour not supported the case of the prosecution. P.W.4/Village Administrative Officer of the Village confirmed the address and residence of A2. A complaint was given by P.W.9 for missing of motor trolley engine. The properties belong to Railway certified by P.W.2. During trial, A3 passed away and hence, the case proceeded against A1 and A2. From the evidence of witnesses, documents and material objects, the Trial Court rightly convicted A1 and A2. Further, considering the plea of the petitioner, the Trial Court imposed a sentence of one week and fine. It is also recorded that as regards this petitioner, he was arrested and detained in Prison from 12.08.2005 to 22.08.2005 and the period of detention undergone is ordered to be set off. He further submitted that the petitioner already undergone the sentence, the petitioner committed the theft of railway properties which is a serious offence, the Probation of Offenders Act would not be applicable.

7.In support of his contentions, the learned Special Public Prosecutor relied upon the decision of the Hon'ble Supreme Court in the case of ***Om Prakash vs. State of Uttar Pradesh*** reported in ***(2008) 1 SCC (Cri) 335*** for



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the point that the prosecution has to prove that the property in question should be a railway property, the property should be stolen or unlawfully obtained and it should be proved that the accused was in possession of the property. He would submit that in the present case, all the ingredients established. He further submitted that as regards A1, whose revision in Crl.R.C.No.158 of 2018 was allowed is on technicality and the same is not available to the petitioner. In this case, the petitioner's confession and statement proved from the evidence of P.W.7, seizure of Rs.8,500/- from the house of the petitioner/A2 proved from the evidence of P.W.6, search and seizure proved from the evidence of P.W.1, P.W.3 and P.W.8. Hence, prayed for dismissal.

8.Considering the submissions made and on perusal of the materials, it is seen that it is not in dispute that the petitioner is a railway employee, employed in Telecom Division at Katpadi Junction. P.W.7 is the Junior Engineer under whom the petitioner was employed. On the date of occurrence, the petitioner/A2 not attended the office proved. Further, the petitioner given confession statement in the presence of P.W.7. Since the Railway Protection Force are not Police, the statement given is not hit by



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Section 25 of the Indian Evidence Act. M.O.8 to M.O.10 seized from the petitioner in the scene of occurrence which is proved to be railway property as per the evidence of P.W.2 and Ex.P11. The missing of motor trolley engine is proved by the report of P.W.9, Ex.P23. The sale proceeds recovered from the house of the petitioner/A2 which proved by the evidence of P.W.6. Thus the Trial Court as well as the Lower Appellate Court by a reasoned judgment had rightly convicted the petitioner. Further, it is seen that the petitioner was convicted and sentenced to undergo imprisonment for a period of one week, the petitioner during trial was in detention from 12.08.2005 to 22.08.2005 for a period of 11 days, already the same has been set off. Thus the ingredients of offence proved. Finding no merits in the contention of the petitioner, this Court is not inclined to give the benefit under the Probation of Offenders Act.

9. Accordingly, the criminal revision petition stands dismissed. The conviction by the Trial Court affirmed by the Lower Appellate Court is confirmed.

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Index: Yes/No



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Speaking Order/Non-Speaking Order

Neutral Citation: Yes/No

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To

- 1.The Inspector of Police,
Railway Protection Force,
Katpadi, Vellore District.
- 2.The Principal District and Sessions Judge,
Vellore.
- 3.The Judicial Magistrate No.I,
Vellore.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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