



WEB COPY



CrI.O.P.No.10949 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **M.DHANDAPANI**

CrI.O.P.No.10949 of 2024
in CrI.A.SR.No.28645 of 2024

Union of India
Rep. By Inspector/RPF
AC-LOCO, Arakkonam.

... Petitioner

Vs.

D.Simon

... Respondent

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to set aside the acquittal order dated 09.12.2021 in C.A.No.66 of 2018 on the file of the II Additional District and Sessions Judge, Ranipet, Vellore District in CC.No.06 of 2009 on the file of the learned Judicial Magistrate, Arakkonam, Vellore District dated 05.04.2018.

For Petitioner : Mr.J.Madanagopal Rao

ORDER

This petitioner has filed this Original Petition seeking leave to file an appeal as against the acquittal order dated 09.12.2021 in C.A.No.66 of 2018 on the file of the II Additional District and Sessions Judge, Ranipet, Vellore District in CC.No.06 of 2009 on the file of the learned Judicial Magistrate, Arakkonam, Vellore District dated 05.04.2018.



2. The facts of the case are as follows:

The petitioner is the complainant and the respondent is the accused. On 19.08.2008, when PW1,2 and 4 were watching over the employees who were coming out of AC Loco shed through C-Gate, the respondent/accused who was the one of the employee, on suspicion, the respondent was checked by the Railway officials and found that he was hiding one folded copper plate with white painted railway mark DH 22 inside his underwear. Therefore, the petitioner made a complaint against the respondent before the Railway Police Station and the same was registered in Cr.No.1/2008 under Section 3(a) of RP (UP) Act and charge sheet has been filed in CC.No.06 of 2009 before the Judicial Magistrate, Arakkonam. In order to prove the prosecution, the petitioner has examined six witnesses PW1 to PW6 and marked 11 documents and produced one material objection. On the side of the respondent/accused, no witness was examined and no document was marked. After adjudication, the learned Judge ordered conviction to the respondent. Challenging the said order, the respondent has filed appeal in C.A.66 of 2018 before the II Additional District and Sessions Judge, Vellore and the same was allowed in favour of the respondent/accused. Aggrieved over the same, the complainant has filed this petition to grant leave to file an appeal.



CrI.O.P.No.10949 of 2024

WEB COPY

3. The learned Standing Counsel for the petitioner submitted that the Railway Police have seized the stolen article from the respondent. It is clearly seen from the deposition of PW's 1,2 and 4 that when the accused was searched he was in possession of copper plate bus bar in his under wear. The said copper plate is weighing about 1.50 Kgs., 62 cm length. Hence, the accused committed the offence. The learned counsel further submitted that the respondent has no authority to take away the Railway property. After considering all the materials, the learned Judicial Magistrate, has rightly convicted the accused. However, the lower appellate Court has reversed the judgement, which is not sustainable. Therefore, the learned counsel prays to allow the petition.

4. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and perused the materials available on record.

5. It is the consistent ratio of the Courts that grant of leave is not a matter of right; rather it is the edifice on which the liberty of the person, who has been accused of a crime rests and where a person, who had been accused of a crime



had been acquitted by the court below, a presumption follows the golden rule that a person is presumed innocent until proven guilty and on that basis the second presumption on the basis of the acquittal necessitates the appellate court to scrutinize the materials more carefully. Further, grant of leave to prosecute should not be as a matter of routine, but should be on just and equitable basis, when materials reveal that the court below has not appreciated the materials in proper perspective.

6. Grant leave provided for u/s 378 (4) is not an empty formality, but has been brought into the statute only to safeguard the interests of the persons accused of a crime, who have since been acquitted, as otherwise, they would be put through the rigours of continuous litigation even after their innocence has been accepted by the appellate court.

7. On a perusal of records, it is seen that based on the deposition of PW1, 2 and 4, the trial Court has allowed the case and convicted the accused for the offence under Section 3(a) of RP(UP) Act and sentenced to under three months SI and imposed a fine of Rs.1000/- in default, to undergo further one month SI. However, the lower appellate Court has relied upon the deposition of PW6 who



is the senior most engineer of the Railway Department, that the Railway property did not contain railway emblem. Further, the prosecution claimed that the stolen property is weighing about 1.50 kgs. And length is about 62 cm. Breath 40 m.m. And it was found it from the underwear of the accused. It is unbelievable that the stolen item has folded and kept it in underwear. The lower appellate court has doubted the version projected by the petitioner and rightly allowed the appeal in favour of the respondent.

8. As stated above, to grant leave, a case should be made out which bristles with infirmities which strikes at the root of the findings recorded. However, in the case on hand, the petitioner has not made out a case, where the findings are so very perverse that there has been miscarriage of justice warranting this Court to grant leave to set right the wrong that has been committed by the courts below and this court is not inclined to interfere with the same.

9. No infirmities or other materials are placed which necessitates relook into the findings recorded by the lower appellate Court and granting leave to appeal would be nothing but a travesty of justice insofar as the respondent are



CrI.O.P.No.10949 of 2024

concerned, who have been acquitted through a well considered judgment passed by the lower appellate Court.

10. In the aforesaid circumstances, no case is made out by the petitioner for grant of leave and, accordingly, this criminal original petition is dismissed. Consequently, the criminal appeal is rejected at the SR stage itself.

06.06.2024

Index:Yes/No
Speaking/Non speaking order
rli

To

1. Union of India
Rep. By Inspector/RPF
AC-LOCO, Arakkonam.

2. The II Additional District and Sessions Judge, Ranipet,
Vellore District

3. The Judicial Magistrate, Arakkonam, Vellore District.



WEB COPY



Crl.O.P.No.10949 of 2024

M.DHANDAPANI . J,

rli

Crl.O.P.No.10949 of 2024
in Crl.A.SR.No.28645 of 2024

06.06.2024