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Crl.A(MD)No.144 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05/09/2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.114 of 2018

The State rep. by
The Public Prosecutor,
High Court, Madras.
(RPF, Karaikudi)
Crime No.3/2003)

: Appellant/Complainant

Vs.

1.A.Pandikumar
2.A.Ramesh
3.G.Rajappa
4.S.Muthu Servai

: Respondents/
A3,A4, A6 and A7

Prayer: This Criminal Appeal is filed under Section 378 of the Criminal Procedure Code, to set aside the judgment of acquittal passed by the Sessions Judge, Sivagangai, in C.A No.26 of 2011, dated 30/10/2014.

For Appellant : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

First Respondent : Died

For R2 and R4 : Mr.P.Vasanthakumar

For 3rd Respondent : Mr.M.Thirunavukkarasu

J U D G M E N T

This criminal appeal is filed seeking to set aside the judgment of acquittal, dated 30/10/2014 passed in Crl.A No.26 of 2011 by the Sessions Judge, Sivagangai.



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2.The case of the prosecution is that on 20/10/2003 on the information and with the strength of a search warrant issued by the Judicial Magistrate, Karaikudi, the Inspector of Police, Railway Protection Force, Virudhu Nagar along with a police team, conducted a search between 02.30 pm and 03.30 pm, on 20/10/2003 at a Saw Mill situated at No.22, Railway Main Road, Karaikkudi owned by D.Sethu/A1 in the presence of the Village Administrative Officer and Village Assistant, recovered Railway wooden sleepers number about 19 valued at Rs.3,000/-. On the basis of the confession statement of A1, it came to know that on 18/10/2003 at about 04.00 pm, 4 people in a mini lorry brought the said railway properties and kept the same in his saw mill. At about 07.00 am, the Inspector of Police, RPF, Virudhungar, seized the mini lorry which was used for transportation of the railway wooden sleepers and arrested the owner of mini lorry. Upon the occurrence, a case in Crime No.3 of 2003 was registered by the police for the offence punishable under section 3(a) of Railway Property (Unlawful Possession) Act against the accused persons. After completing the investigation filed a final report and it was taken cognizance in CC No.271 of 2004 by the Judicial Magistrate, Karaikudi. After completing 207 Cr.P.C proceedings framed the charge for the offence punishable under section 3(a) of the Railway Property (Unlawful Possession) Act.



3.The following charge was framed against the accused persons:-

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On 20/10/2003 when the Inspector of Police, RPF, Virudhunagar & party conducted a search in the Saw Mill belonged to A1, it was found 19 Nos of Railway wooden sleeper valued at Rs.3,000/- which were stolen by using the Mini Lorry bearing Registration No.TN-72-B-1456 with the help of the accused Nos.3 to 7 and thereby all the accused committed the offence punishable under section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

4.To that, all the accused pleaded not guilty and claimed to be tried.

5.On the side of the prosecution, 7 witnesses were examined and 12 documents marked. Apart from that, 20 material objects were marked. On the side of the accused, no oral and documentary evidence was adduced.

6.During the relevant point of time, PW1-Philips Jayakumar was working as a Railway Protection Inspector, Virudhunagar @ Karaikudi. During enquiry, the first accused made a statement on 18/10/2003 around 4.00 pm by using the Mini Lorry bearing Registration No.TN-72-B-1456, the accused Nos.3 to 7 had handed over the said wooden pieces and requested him to cut.



7.In respect to the possession, the first accused did not having any valid authorisation. Hence, PW1 prepared a search list and in the presence of PW2-Samayadurai and one Kalyanasundaram, he recovered the wooden pieces M.O.1 to M.O.19. Further, he has recorded the confession statement from the first accused under Ex.P2 and after recording the confession statement, he arrested the first accused, brought him to the Karaikudi Railway Protection Force outpost and registered the case against the accused in Crime No.3 of 2003 under Section 3(a) of Railway Properties (Unlawful Possession) Act (hereinafter referred as "**the Act**"). The copy of the occurrence report was marked as Ex.P3. On 21/10/2003, he produced the accused along with recovered wooden sleepers before the Court, which is having the jurisdiction.

8.In continuation of investigation, on 22/10/2003 around 7.00 am in Karaikudi main road, he recovered the Mini Lorry bearing registration No. TN-72-B-1456 under a mahazar Ex.P4. He arrested the driver of the lorry, who is arrayed as second accused in this case. Before the trial Court, the said lorry was marked as M.O.20. In the meantime, on 19.10.2003, PW5-Ramanath, who is the Senior Engineer submitted the report stating that the wooden sleeper fitted in the railway track in Km 506/11-12 was



stolen. In this regard, he issued the certificate under Ex.P11. After obtaining the said certificate, PW1 examined the witnesses, recorded their statements and received the certificate that the first accused herein is running the sawmill.

9.In the meantime, the other accused (A3 to A7) obtained the Anticipatory bail and while at the time they were complying with the condition imposed by the Court, they had given confession statement before PW1 and the same has been recorded in the presence of PW4- Karunanithi. The value of the property recovered during investigation is Rs. 3,000/-. Ultimately, after concluding the investigation, he filed the final report under Ex.P5.

10.After taking cognizance, in order to find out the *prima facie* case, the learned trial Judge, recorded the chief examination from PW1 to PW4. In turn, after satisfying with the *prima facie* case, the learned trial Judge framed the charges under Section 3(a) of the Act. All the accused denied the charges and opted for trial. Hence, in order to give opportunity to the accused, all the witnesses who gave evidence previous before framing the charge, appeared before the trial Court for the purpose of cross-examination. Additionally, three more witnesses have been examined as PW5 to PW7 and 12 documents were exhibited



as Ex.P1 to Ex.P12, besides, 20 material objects (M.O.1 to M.O.20) .

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11.After recording the evidence, as above from the prosecution witnesses in respect to the incriminating materials available from the evidences given by the prosecution witnesses, all the accused were examined under Section 313 Cr.P.C, wherein they denied the evidences given by the prosecution witnesses as false. However, they did not choose to examine any witness nor mark any documents on their side.

12.Having considered all the materials placed before him and on considering the arguments advanced by the learned counsel appearing on either side, the learned trial Judge came to the conclusion that the accused 1 to 4, 6 and 7 are guilty under Section 3(a) of the Act and accordingly, they were convicted and sentenced to undergo Rigorous Imprisonment for one year each and to pay a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for three months each.

13.Challenging the said conviction and sentence, accused Nos.1 and 2 preferred an appeal in C.A.No.23 of 2011 on the file of learned Sessions Judge, Sivagangai. By



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judgment dated 30/10/2014, the learned Sessions Judge, Sivagangai, allowed the appeal and setting aside the conviction and sentence passed by the trial Court.

14. Similarly, A3 to A7 preferred an appeal in C.A No.26 of 2011 on the file of the learned Sessions Judge, Sivagangai. By judgment, dated 30/10/2014, the appeal was allowed by setting aside the conviction and sentenced passed by the trial court.

15. Challenging the said judgment, the appellant/complaint, against the acquittal of A1 and A2 namely D.Sethu and G.Babu, preferred appeal in Crl.A(MD)No. 56 of 2016 before this court and it was heard at length and appeal was dismissed, by judgment, dated 03/09/2016. Against which, it appears that no SLP was preferred by the State.

16. Now this criminal appeal is filed by the appellant, challenging the acquittal judgment passed by the appellate court.

17. Heard both sides.

18. The relevant portion made by the Coordinate Bench of this court in Crl.A(MD)No.56 of 2016, dated



03/09/2021, may be extracted hereunder for better appreciation.

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"10.Admittedly, before the trial Court, the copy of the application filed for issuing the search warrant and the copy of the search warrant issued by the Jurisdictional Magistrate were not marked as exhibit. In this occasion, it is necessary to see Section 10 of the Act, which reads as follows:-

10.Issue of search warrant.-

(1)If an officer of the Force has reason to believe that any place is used for the deposit or sale of railway property which has been stolen or unlawfully obtained, he shall make an application to the Magistrate, having jurisdiction over the area in which that place is situate, for issue of a search warrant.

(2)The Magistrate to whom an application is made under sub-section (1), may, after such inquiry as he thinks necessary, by his warrant



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authorise any officer of the Force –

*(a)to enter with such assistance
as may be required, such place;*

*(b)to search the same in the
manner specified in the warrant;*

*(c)to take possession of any
railway property therein found which he
reasonably suspects to be stolen or
unlawfully obtained; and*

*(d)to convey such railway
property before a Magistrate, or to
guard the same on the spot until the
offender is taken before a Magistrate,
or otherwise to dispose thereof in some
place of safety.*

*11.The said Section is clear and
narrow that after getting information or
otherwise, the officer has reason to
believe that any place is used for the
deposit or sale of railway property, he
shall make an application to the
Magistrate for issuing the search
warrant. In this regard, during the time
of cross examination, before PW1 who is*



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the Officer alleged to obtain the search warrant and conduct the search, it was suggested by the accused that there is no application has been filed to obtain the search warrant. Therefore, after suggesting as above, it is for the prosecution to call the records pertain to the search warrant and mark the same as exhibit. But, here it is the case, even after suggesting as above on the side of the accused, no steps have been taken by the prosecution to show only after complying Section 10 of the Act, PW1 obtained the search warrant and upon the search warrant, search was proceeded in Al's Shop.

12. Therefore, the said act committed by the prosecution agency is nothing, but the prosecution agency, before the trial Court, had proceeded the trial in lethargic manner. Only on seeing the copy of the application filed before the Magistrate and on seeing the order passed on that application, we can



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conclude that PW1 filed the application for issuing search warrant in respect to the shop which belongs to A-1. Here it is the case, without any reason, the said application filed by PW1 has not found place in the case records. Further, the same has not been exhibited. Therefore, the non-production of the copy of the application, which was filed for issuance of search warrant and also the non-production of the search warrant issued to the appellant, creates a doubt whether the alleged application has been filed in respect to the petition mentioned premise or not. In the said circumstances, I am of the considered opinion that the appellant herein has not approached the trial Court with clean hands and also the same amounts to non-proving of his case."

19. Reading of the above said observation of the Coordinate Bench of this court shows that section 10 of the Railways Act was not properly followed. So, what applies to A1 and A2 squarely applies to the case of the responders 2



to 4 in this matter also. So, no more discussion is required in this matter loading the judgment with unnecessary particulars and for brief, we can summarize the arguments advanced on both sides.

20.The learned Additional Public Prosecutor would submit that the property was properly identified that it belongs to the Railways Department; The Identity of the property was not disputed by the respondents. So, the order of acquittal passed by the appellate court is *per se* illegal.

21.Per contra, the learned counsel appearing for the respondents would submit that in view of the observation of the Coordinate Bench of this court in ***The State Rep. by the Public Prosecutor, High Court of Madras, (RPF, Karaikudi) vs. D.Sethu and one another Cr1.A(MD)No.56 of 2016, dated 03/09/2021***), unless there is further SLP by the State Government, that finding cannot be interfered without any further evidence or circumstance can be brought on record. He would further submit that the witnesses turned hostile. PW1 on the side of the prosecution has not witnessed to the seizure. According to him, the benefit extended to A1 and A2 by this court in Cr1.A(MD)No.56 of 2016 may also be extended to the respondents 1 to 5.



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22.I find much force in the argument of the respondents in view of the above discussion. So, no circumstance or additional evidence was brought on record by the appellant to differ from the view taken by the appellate court.

23.In the result, this criminal appeal fails and the same is **dismissed**.

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Index : Yes/No
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To,

- 1.The Sessions Judge,
Sivagangai.
- 2.The Principal District Munsif-cum-
Judicial Magistrate, Karaikudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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