



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO. 1165 OF 2022
IN
CRIMINAL APPEAL (STAMP) NO. 10245 OF 2022

(Union of India through RPF Inspector, Nagpur vs. Mukund Janardan Joshi)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. C.J.Dhumne, Advocate for applicant.
Mr. U.R.Phasate, Advocate for respondent.

CORAM : M.M.NERLIKAR, J.
DECEMBER 02, 2025

- 1) Heard learned counsel for the applicant/appellant and the respondent.
- 2) The challenge is to the judgment and order dated 04/08/2020 passed by Judicial Magistrate First Class(Railway), Nagpur, wherein the present respondent accused is acquitted of the offence punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966. Being dissatisfied by the said order, Police Station R.P.F. Nagpur has filed the present application seeking leave to file an appeal.

Brief Facts of the case are as under :-

- 3) A private complaint was lodged by the Head Constable Mr.R.G.Nipayssiya at Crime Investigation Branch, Nagpur stating that on 04/02/2012 he had received secret information that some persons are taking away scrap material belonging to Railways in a truck. On the basis of said information, the truck bearing No.MH-31-AP-5987 carrying scrap material was

apprehended and on an inquiry with the driver it was revealed that they were carrying the railway property of D.R.M. building of Central Railway. On further inquiry it was revealed that on the say of present respondent Mukund Joshi, the persons was carrying the said scrap material. On these allegations the complaint came to be lodged against the accused persons bearing Crime No.03/2012. After completion of investigation final report at Exh.1 was filed along with the entire papers of investigation. Charge was framed at Exh.51 wherein the accused pleaded not guilty (Exh.52).

- 4) In the statement recorded under Section 313 of the Cr.P.C. the defence of the accused is of false implication and total denial. In all, total 13 witnesses were examined. After leading the oral as well as documentary evidence, the learned trial Court found that there is no evidence against the accused and accordingly acquitted the respondent accused.
- 5) Learned counsel appearing for the applicant/appellant submits that the prosecution has examined total 13 witnesses, however, out of these only 03 witnesses have supported the case of the prosecution i.e. CW-1 Inquiry Officer (Investigating Officer), CW-2 Complainant and CW-3 Inspecting Officer, who has done inspection of scrap material.
- 6) He further submits that the other accused persons have pleaded guilty and accordingly, they were convicted under Section 248(2) of Cr.P.C. for the offence punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966, however, instead of sentencing them, fine of Rs.1000/- each was imposed on them. The said order was passed on the basis of the application filed by the accused Nos.2 to 6 vide Exh.2 thereby pleading guilty. However, in the present case the

accused pleaded not guilty and claimed to be tried. He further submits that it was specifically confessed by the other accused persons that on the say of present respondent Mukund Joshi they have lifted the scrap material.

7) He further submits that so far as CW-1 is concerned, who is the Inquiry Officer deposed at Exh.5, wherein he has specifically stated that on 04/02/2012, he was posted as Sub-Inspector in R.P.F. Police Station, Nagpur. CW-2 R.G.Nipayssiya had received a secret information and he had apprehended the truck carrying railway scrap material. Thereafter, the truck and Muddemal along with the accused persons were brought to R.P.F. Police Station and thereafter, seizure Panchnama of the said Muddemal was drawn. He further lodged the complaint. The inquiry was handed over to Mr.PK.Haldar. He recorded the statement and during further inquiry the accused were taken to the spot shown by the accused. He further deposed that when inquiry was made with the accused Mujammil Hussain and Rajik Hussain they told that they are taking away the said scrap material of the Railways on the say of Mukund Joshi.

8) Learned counsel further submits that confession statement can be relied upon, as a personnel of R.P.F. is not a Police Officer and therefore, the said confession is not hit by Section 25 and 26 of the Indian Evidence Act, 1872.

9) On the other hand, learned counsel appearing for the respondent accused submits that even if evidence of 03 witnesses are taken on its face value, it cannot be said that the scrap material belongs to the Railways. The truck was apprehended outside the railway premises and there is no mark of Railways to demonstrate that the property belongs to Railways. He further submits that the evidence of CW-1 and CW-2 does not inspire

confidence as several omissions and contradictions in respect of the Railways' properties are brought on record. He has invited my attention to the omission in the evidence of CW-2 Ramgopal in respect of truck going outside the D.R.M. and CW-2 chasing the said truck on a motorcycle and stopping it at Central Avenue Road. The witness CW-2 specifically admits that he has not mentioned all these facts in the report. He further admits that he has not made entry of this in station diary also. Even he has not mentioned about receiving of secret information in any other document.

10) Learned counsel further invited my attention to the evidence of CW-3, who is the Inspecting Officer of the scrap material, wherein he has specifically admitted that it is very difficult to identify the aluminium frame whether the same was seized during the investigation. He further deposed that based on his experience he is saying that the property belongs to Railways.

11) He further invited my attention to the evidence of CW-1 wherein he has specifically admitted that the order dated 14/01/2012 issued by ADEN (HQ), Nagpur was shown to him, however, nobody showed the said order to him during the investigation. He further admits that by the said letter/order permission was granted in favour of Razique Hussain for lifting the scrap material which was auctioned on 12/01/2012, who is the accused No.3 in the present crime. He further admits that the seized property was not recovered from the custody of the respondent Mukund Joshi. On Memorandum Panchnama at Exh.8 the signatures of ASE and ADEN are there. He further admits that names of Panchas on Exh.8 are Shankar Mankar and Satish Dongre, who were not from ASE and ADEN.

- 12) Lastly, he submits that prosecution has utterly failed to demonstrate that the scrap material belonged to Railways. Further the prosecution also failed in establishing the guilt of the respondent accused beyond reasonable doubt and therefore, submits that the Trial Court has properly appreciated the evidence and rightly acquitted the respondent accused.
- 13) Upon hearing, learned counsel for the applicant/appellant, as well as the respondent, it appears to me that admittedly though total 13 witnesses were examined and out of these witnesses only 03 witnesses i.e. CW-1, CW-2 and CW-3 have supported the prosecution, others have turned hostile. After perusal of the evidence of all these 03 witnesses, important question for my consideration would be whether the property which was said to be apprehended and seized belonged to Railways ?
- 14) Upon perusal of the entire evidence, admittedly there is no mark of identification on the said property. Even CW-2 who is the complainant has specifically deposed that it was apprehended outside the railway premises. It can be further gathered from the evidence that for identification of the said property, prosecution has utterly failed to produce on record the list of scrap material maintained by the Railways in respect of the said property. Had it been a case that it was the railway property, then definitely there would have been list of the scrap material maintained by the Railways. Neither of these three witnesses deposed about the list being maintained by the Railways, then under such circumstances it is very difficult to say that the property which was seized belonged to Railways and therefore, prosecution has utterly failed to prove that property is railway property.

15) Further it can be gathered from the evidence that omission was brought on record as to receiving secret information, so also apprehending truck on motorcycle. So far as the evidence of CW-1 is concerned it has come on the record and it was admitted by the CW-1 that the material seized is not having railway mark on it. However, in the deposition of CW-3 it has come on record that the scrap material is of aluminium window frame, aluminium shutters, broken PVC Tank, Iron Angles, GI Taps, GI Pipes etc. So far as this material is concerned, it is unused material which can be gathered from the evidence of CW-3. However, though said witness was examined for the purpose of identification of the material, he stated that based on his experience the scrap material belonged to Railways. However, in the second breath he admits that it is very difficult to identify whether the aluminium window frame which was seized during the investigation is same or not. Therefore, under such circumstances the evidence of CW-3 cannot be relied who says on his experience he identified the material is of railways and again says when aluminium window frame is shown then says it is very difficult to identify as it is from seized scrap or not. Therefore, he falsifies his own evidence and therefore, it is unsafe to rely on his evidence.

16) The important fact which was brought on record in the cross-examination of CW-1 is that said material was auctioned by the Railways and one Razique Hussain has purchased the same in the auction, which was held on 12/01/2012. This fact was specifically admitted by CW-1 in his cross-examination. Therefore, if this is the fact that Razique Hussain was the successful bidder and he had purchased the said material in auction, then the question remains as to how it could be said that it is the case of theft. On this aspect there is no explanation

from the Railways. Had it been a case that during the investigation, the order dated 14/01/2012 issued by ADEN (HQ), Nagpur was showed to him then there was every possibility that he would not have proceeded further with the investigation.

- 17) Considering the above facts and circumstances, the prosecution has utterly failed to demonstrate that the property belonged to the Railways and therefore, case is not made out to admit the appeal. Hence, the application for grant of leave to file an appeal is hereby rejected.

(M.M.NERLIKAR, J.)