



2025:DHC:628



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.02.2025

+ **CRL.L.P. 493/2024, CRL.M.A. 30759/2024, CRL.M.A. 30760/2024 & CRL.M.A. 30761/2024**

STATE THROUGH RPF

..... Petitioner

versus

FAROOQ AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Amit Tiwari, CGSC alongwith Mr. Hussain Taqvi (GP), Mr. Chetanya Puri, Mr. Ayush Tanwar & Mr. Rahul Bhaskar, Advocates.

For the Respondents :

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed seeking grant of special leave to appeal against the judgment dated 04.01.2024 (hereafter '**impugned judgment**'), passed by the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi, in CC No. 4/2017.



2. By the impugned judgment, the learned Trial Court acquitted the respondents of the offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 ('**RP Act**').

3. The present case came to be registered against the accused persons pursuant to secret information received on 28.06.2017 that the stolen RO Machines were in the possession of a scrap dealer, namely, Farooq/accused and he was going to sell them on the same day. During the search and seizure proceedings, three RO machines were recovered from Farooq. It was alleged that Farooq in his confessional statement stated that the RO machines were stolen by Maksood Ali @ Sher Khan, Firoz and Mohd. Miyan @ Kawa (co-accused persons) and were subsequently sold to him in return of ₹5,000/-.

4. On the basis of the disclosure statement of Farooq, accused Mohd. Miyan was apprehended and he disclosed that he along with co-accused Maksood Ali and Firoz, had stolen five RO machines.

5. Thereafter, accused – Firoz was apprehended and two stolen RO machines were recovered from his house.

6. After the completion of the investigation, the inquiry officer filed a complaint and subsequently, charge under Section 3 of the RP Act was framed against the respondents.

7. As noted above, the learned Trial Court, by the impugned judgment, acquitted the respondents and held as under :

*“25. In **State/Railway Protection Force v. Raju** (Supra) it was mandated that in the absence of public persons the Court needs to be circumspect relying upon the confessional statements recorded by the RPF officials. In present case firstly, recovery*



has been effected from accused Farooq near Buland Masjid at Community Center, Shastri Park, Delhi which is a densely populated area however, despite that fact RPF has not joined any public witness to the enquiry and they have mentioned one public witness in the list of witness namely Jimal and Vikas, however, they were not examined by RPF in support of their case for the reasons best known to them. In **State/Railway Protection Force v. Raju, 2014 SCC OnLine Del 575**, the Hon'ble High Court has held that RPF Rules, 1987 are mandatory. The Court further held that requirement of associating public witnesses must not be treated as a mere formality. It must not be presumed by the RPF in every case that the requirement can be dispensed with. Where there are no public witnesses involved, a trial Court is bound to view with suspicion the confessional statement made by an accused in the presence of the RPF officers.

26. In instant case accused Farooq got recovered two Aquagaurds from his house and at the time of search and seizure no independent witness was joined to the enquiry by RPF witness SI Jargish Mohd. And Ct. Vikas Kumar which is violation of Section 100 Criminal Procedure Code, 1973. Further he disclosed that he received the stolen case property from co-accused persons namely Mohd. Miyan, Sher Khan (since already convicted) and Feroz. Similarly, accused Mohd. Miyan@ Karwa was also arrested on the basis of secret information from a public place i.e Murga Mandi near Buland Masjid, Shastri Park at that time also no public witness was joined to enquiry, RPF has even failed to shown to have made any effort to any public person to enquiry. Accused Firoz was formally arrested from Tis Hazari Court when he came on hearing in some other case on 29.08.2017. Thereafter, accused Firoz was also arrested on the basis of his disclosure statement and he confessed that wherein he stated that he along with co-accused Sher Khan (already convicted) Mohd Miyan@ Karwa stolen the R.O Aquagaurds from the Yoga Express Train no. 19032 and further sold the same to accused Farooq, scrap dealer.

27. In the considered opinion of this Court when accused persons are arrested only on the basis of their disclosure and confessional statement the Court need to be circumspect and in the absence of any independent witness or material it would not be safe to convict the accused persons. In the present case the mandatory rules of RPF are violated by witnesses as no public



witness was joined during enquiry or RPF has failed to examine them, if joined, hence, abovesaid non-compliance has created doubt about the voluntariness of accused person in making confessional statement to the RPF witnesses/officials.

28. From the aforesaid evidence on record it is clear that case of Complainant/RPF suffers from inconsistencies and in violation of mandatory RPF Rules hence, it has failed to prove its case against the accused Md. Miyan@ Karwa, Feroz and Farooq beyond reasonable doubt. Accordingly accused Md. Miyan@ Karwa, Feroz and Farooq Md. Afzal@ Rahul and Ramzani@ Ramzan are given benefit of doubt and acquitted in the present case for the offence under Section 3 RP(UP) Act.”

8. The learned CGSC for the State submits that the impugned judgment is erroneous as the learned Trial Court, while acquitting the respondents failed to appreciate the evidentiary value of the disclosure statements of the respondents and that the property recovered from the respondents was also subsequently verified as railway property.

9. He submits that the learned Trial Court erred in not appreciating the confessional statements made to the RPF officials as the same are admissible in the eyes of the law as the RPF official is not a police officer.

10. He submits that the evidence and witness statements of RPF officials cannot be excluded merely due to the non-availability of independent witnesses.

11. I have heard the learned counsel and perused the record.

12. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made



out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of ***State of Maharashtra v. Sujay Mangesh Poyarekar : (2008) 9 SCC 475*** held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

13. Suffice it to say that leave to appeal can be granted only if there is any perversity in the order of the learned Trial Court or a substantial error in the view taken by the learned Trial Court. Hence, an order of acquittal can only be set aside if the approach of the lower court is vitiated with the manifest illegality or the decision is perverse and the trial court has committed a manifest error of law and ignored material



evidence on record.

14. The learned Trial Court has passed a well-reasoned order after appreciating the evidence on record. It was observed that the respondents were arrested only on the basis of their disclosure and confessional statements and there are no independent witnesses corroborating the prosecution case as to the manner in which the case properties were seized and the learned Trial Court, after a thorough consideration, has rightly extended the benefit of doubt and has acquitted the respondents.

15. A coordinate Bench of this Court in ***State/Railway Protection Force v. Raju : 2014 SCC OnLine Del 575***, while considering a similar issue regarding the evidentiary value of disclosure and confessional statements in the absence of independent corroboration, held as under :

“27. Where there are no public witnesses involved, a trial Court is bound to view with suspicion the confessional statement made by an accused in the presence of the RPF officers. It has been held in Balkishan Devidayal v. State of Maharashtra 1981 SCC (Cri) 62 that the statement made to an RPF officer will not be hit by Section 25 of the Evidence Act, 1872. In Babu Lal v. State 1977 CrL LJ. 2008 (All), it was held that the statements recorded by the officers of the RPF during the investigation do not attract the provisions of Section 162 Cr PC. In Chinna v. State, (1977) 2 Karn LJ 480, it was held that the statements recorded by an officer of the RPF in the course of inquiry can be read in evidence. This makes it all the more necessary for the Court to cautiously evaluate the confessional statement purportedly made by an accused to an officer of the RPF soon after his arrest. The Court will have to be satisfied that the statement was voluntary. Otherwise, it will be a denial of a just, fair and reasonable procedure and constitute a violation of Article 21 of the Constitution as well. The voluntariness of the statement will have to be tested on a case by case basis and evaluated in light of the attendant circumstances of each



case. Where there are no public witnesses associated, or where, as in the present case, all the RPF officers stated to have been present at the time of the arrest do not sign the confessional statement, or where, as in the present case, the entries mandatorily required to be made in the registers maintained under the RPF Rules as regards the arrest of the accused and the seizure of the railway property are not proved by producing the original registers, it would be unsafe for the Court to proceed to convict the Respondent only on the basis of his confessional statement.”

16. The confessions allegedly made by the respondents falls within the category of ‘extra-judicial confession’ and the law on the subject has been clarified by the Hon’ble Apex Court in a catena of decisions and the principle that emerges out as essence from the various decisions is that the extra-judicial confession can be accepted and can be made the basis of conviction if it passes the test of credibility and such confession should inspire confidence and the Court must find out whether there are other cogent circumstances on record to corroborate it.

17. In ***Subramanya vs. State of Karnataka : (2023) 11 Supreme Court Cases 255***, the Hon’ble Apex Court explaining the law on the subject held as under:

“54. Extra judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. It is considered to be a weak piece of evidence as it can be easily procured whenever direct evidence is not available. In order to accept extra judicial confession, it must be voluntary and must inspire confidence. If the court is satisfied that the extra judicial confession is voluntary, it can be acted upon to base the conviction.”

“55. Considering the admissibility and evidentiary value of extra judicial confession, after referring to various judgments,



in Sahadevan and Another v. State of Tamil Nadu, (2012) 6 SCC 403, this Court held as under:—

“15.1. In Balwinder Singh v. State of Punjab [1995 Supp (4) SCC 259 : 1996 SCC (Cri) 59] this Court stated the principle that: (SCC p. 265, para 10)

“10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

18. The learned Trial Court noted that the recovery, in the present case, was effected from Farooq from his house who further disclosed that he received the stolen property from one, Mohd. Miyan, who was then arrested near Buland Masjid at Community Centre, Shastri Park, Delhi which is a densely populated area however, despite the same, RPF did not examine any public witnesses. It further observed that where there are no public witnesses, a trial Court is bound to view with suspicion the confessional statement made by an accused in the presence of the RPF officers.

19. Hence, the alleged extra-judicial confession, which is not supported by any cogent independent evidence, loses its importance and its credibility becomes doubtful in a case like this.

20. The learned Trial Court had rightly appreciated the judgment passed by this Court in the case of ***State/Railway Protection Force v. Raju*** (*supra*) and noted that in the absence of public witnesses, the Trial Court is bound to view with suspicion any confessional statement made by an accused in the presence of RPF officials.



Furthermore, the failure to examine public witnesses mentioned in the case records creates doubt regarding the voluntariness of the accused persons' statements. It was also noted that no notice under Section 100 of the CrPC was served upon independent witnesses before conducting the search and seizure, thereby violating the procedural safeguards meant to ensure transparency and fairness in the investigation. Thus, in light of the observations in *State/Railway Protection Force v. Raju (supra)*, the learned Trial Court found that the non-compliance with mandatory procedures by the RPF led to a situation where the prosecution case could not be sustained beyond reasonable doubt.

21. In the present case, it is not disputed that the RPF officer was entitled to make an inquiry under the RPUP Act and the officer under the said Act is not a Police officer for the purposes of Section 25 of the Indian Evidence Act and the confessional statement recorded by him is admissible in evidence. [Ref : *State of U.P. v. Durga Prasad : (1975) 3 SCC 210*]

22. However, the evidence of RPF officials as prosecution witnesses to prove the extra-judicial confession allegedly made by the respondents cannot be taken as a reliable piece of evidence as none of the witnesses has seen the respondents committing the crime. When the accused himself denies any of such offence committed and states that the investigation was conducted in a biased manner, the accused could not be convicted on the basis of the testimony of highly interested witnesses and in this way, the prosecution lacks an



independent reliable corroboration of the confession made by the accused.

23. While irregularity and violation of the provisions of Section 100 of the CrPC does not vitiate the seizure, the same would make it indispensable for the Court to consider the question as to whether the weight of evidence has been effected in any manner by the non-compliance or if the same has prejudiced the accused person in any manner. The Hon'ble Apex Court in the case of ***State of Punjab v. Balbir Singh : (1994) 3 SCC 299*** had observed as under:

“6. At this juncture we may also dispose of one of the contentions that failure to comply with the provisions of CrPC in respect of search and seizure even up to that stage would also vitiate the trial. This aspect has been considered in a number of cases and it has been held that the violation of the provisions particularly that of Sections 100, 102, 103 or 165 CrPC strictly per se does not vitiate the prosecution case. If there is such violation, what the courts have to see is whether any prejudice was caused to the accused and in appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and from that point of view evaluate the evidence on record. Under Section 100 CrPC the officer conducting search under a warrant should call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search.....Section 165(4) lays down that the provisions of this Code as to search warrants and the general provisions as to searches contained in Section 100 shall, so far as may be, apply to a search made under Section 165 also.....

7. It therefore emerges that non-compliance of these provisions i.e. Sections 100 and 165 CrPC would amount to an irregularity and the effect of the same on the main case depends upon the facts and circumstances of each case. Of course, in such a situation, the court has to consider whether any prejudice has



been caused to the accused and also examine the evidence in respect of search in the light of the fact that these provisions have not been complied with and further consider whether the weight of evidence is in any manner affected because of the non-compliance. It is well settled that the testimony of a witness is not to be doubted or discarded merely on the ground that he happens to be an official but as a rule of caution and depending upon the circumstances of the case, the courts look for independent corroboration. This again depends on question whether the official has deliberately failed to comply with these provisions or failure was due to lack of time and opportunity to associate some independent witnesses with the search and strictly comply with these provisions..... It thus emerges that when the police, while acting under the provisions of CrPC as empowered therein and while exercising surveillance or investigating into other offences, had to carry out the arrests or searches they would be acting under the provisions of CrPC. At this stage if there is any non-compliance of the provisions of Section 100 or Section 165 CrPC that by itself cannot be a ground to reject the prosecution case outright. The effect of such non-compliance will have a bearing on the appreciation of evidence of the official witness and other material depending upon the facts and circumstances of each case.....

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22. We have also already noted that the searches under the NDPS Act by virtue of Section 51 have to be carried under the provisions of CrPC particularly Sections 100 and 165. The irregularities, if any, committed like independent witnesses not being associated or the witnesses not from the locality, while carrying out the searches etc. under Sections 100 and 165 CrPC would not, as discussed above, vitiate the trial....

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25. The questions considered above arise frequently before the trial courts. Therefore we find it necessary to set out our conclusions which are as follows:

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(4-A) If a police officer, even if he happens to be an “empowered” officer while effecting an arrest or search during normal investigation into offences purely under the provisions of CrPC fails to strictly comply with the



provisions of Sections 100 and 165 CrPC including the requirement to record reasons, such failure would only amount to an irregularity.

(4-B) If an empowered officer or an authorised officer under Section 41(2) of the Act carries out a search, he would be doing so under the provisions of CrPC namely Sections 100 and 165 CrPC and if there is no strict compliance with the provisions of CrPC then such search would not per se be illegal and would not vitiate the trial.

The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case.

(Emphasis supplied)

24. Sections 100 of the CrPC delineate the procedure for involving independent witnesses during a search. 100(4) of the CrPC mandates that the officer or individual authorized to conduct the search must summon two or more independent and respectable inhabitants from the locality where the search is to be executed. These witnesses are required to be present during the search to observe the proceedings, ensuring transparency and fairness throughout the process.

25. It is peculiar that the RPF Officers were unable to examine even a single public witness and no efforts to serve any notice under Section 100 of the CrPC have been pointed out to have been made either. In such circumstances, *prima facie*, the non-joinder of independent witnesses by the prosecution is a frailty in the prosecution's case.

26. Further, this Court also observes that with so many technological advancements, the RPF officials can no longer be



excused for not improving its methods of gathering and presenting evidence and violating the RPF Rules. Almost all individuals carry a mobile phone compatible with videography/photography these days. While a little play in the joint has to be afforded to investigating agencies to enable them to discharge their duties, the authorities also have to be held accountable to prevent abuse of law.

27. The learned Trial Court was justified in concluding that the case of the prosecution suffered from significant inconsistencies. The respondents were arrested solely on the basis of disclosure statements and in the absence of any independent witnesses. The learned trial court cannot be faulted for concluding that the prosecution failed to prove the allegations against the respondents beyond reasonable doubt.

28. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned judgment and grant leave to appeal in the present case.

29. The leave petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

FEBRUARY 03, 2025