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Md. Faiz and Another Vs State and Another

Criminal Rev. No. 1720 of 1984

Court: Calcutta High Court

Date of Decision: Feb. 27, 1985

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 401, 482#Penal Code, 1860 (IPC) â€" Section 114#Railway Property (Unlawful Possession) Act, 1966 â€" Section 3, 3(a), 4

Citation: 89 CWN 692

Hon'ble Judges: N.G. Chaudhuri, J; G.C. Chatterjee, J

Bench: Division Bench

Advocate: Pradip Kumar Ghosh, Shekhar Kumar Basu and Hiranya Choudhuri, for the Appellant;Dipti Mitra, for the Respondent

Judgement

N.G. Chaudhuri, J.
This revision case has arisen out of an application u/s 401 read with section 482 of the Cr. P. C. 1973 challenging the

legality of the proceedings in case No. C 83 of 1982 (T-366 of 1982) u/s 3(a) of the Railway Property (unlawful possession) Act 1966 pending in

the court of Judicial Magistrate, First Class, Barrackpore, 24 Parganas As a matter of fact, a prayer has been made for quashing the aforesaid

proceedings in view of their total illegality. On 4.2.82 P. R. Biswas, A. S. I. of Police attached to Baranagore police station in course of his patrol

duty in, a mobile Van arrived at Asokegarh colony where some local people produced before him the present petitioners and three other accused

along with a gunny bag containing ten pieces of aluminium window frames, of various sizes. It was alleged that the accused persons were

apprehended when they were trying to sell the aforesaid articles. The accused persons are said to have confessed their unlawful possession of

railway property. Against the above background a petition of complaint was filed by Dilip Kumar Sarkar, Inspector-in-charge of Railway

Protection Forced Dum Dum, Eastern Railway, and a case u/s 3(a) of the Railway Property (unlawful possession) Act was initiated against the

present petitioners and the other three, namely, Paku Das, Saidul Gazi and Biswanath Saha. The last named three persons being children their case

has been sent to the Juvenile Court, Salt Lake City and it is reported that they having confessed their guilt they have been released for due

admonition. The present two petitioners are members if Railway Protection Force.

2. Examination of seven witnesses being over a charge has been framed against them. The charge reads as follows :

First - That you, on or about the 4th day of February 1982 at Asokegar P. S. Baranagore were present at the time of seizure when Purba Das,

Saidul Gazi, Biswanath Saha were found in possession of aluminium window and door plates used in B. M. C. Railway coaches, which were

Railway property suspect to have been stolen or lawfully obtained by you all and failed to account for your unlawful possession and you abetted in

commission of such offence which was committed in consequence of your abetment.

And thereby committed an offence punishable u/s 3(a) R. P. (U.P.) Act. 1966/114 I. P. C. and within my cognizable.

Secondly - that you on or about the And I hereby direct that you be tried by the said court on the said charge : The charge is framed, read over

and explained to the accused persons 2. to which they pleads not guilty and claims to be tried.

3. Mr. Pradip Ghosh the learned Advocate for the petitioners assisted by Mr. Shekhar Basu challenges the propriety and continuance of the

proceedings for prosecution of the two petitioners in the court below on two grounds principally. Reading out the evidence of prosecution

witnesses so far recorded Mr. Ghosh contends that there is not a whisper therein that the present petitioners had in their possession any property

of the Railway. Reading the charge framed against the petitioners he contends that it is abundantly clear that the other three accused had railway

properties in their possession unlawfully and it was believed that the present two petitioners connived with them in obtaining possession of the said

railway property. Reading out the provisions of sections 3 and 4 of the Railway Property (Unlawful Possession) Act, 1966, Mr. Ghosh contends

that the provisions aforesaid have very limited and restricted application and they relate narrowly to possession of railway property and not

anything else. Mr. Ghosh reads out section 3 of the Act to justify his contention. The said section reads as follows :

whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully

obtained shall, unless he proves that the railway property came into his possession lawfully be punishable.

Mr. Ghosh submits that for bringing an offence under the above section the alleged offender is required to be found to be in possession of railway

property. In the charge under consideration and in the evidence adduced there is no indication whatsoever that the present petitioners had any

railway property in their possession. Mr. Ghosh, therefore, submits that there was no justification for framing of the charge against the petitioners in

the above state of evidence.

4. The next branch of Mr. Ghosh''s argument is that persons who allow people in unlawful possession of railway property to store such property in

their land or in their godown are liable to be prosecuted u/s 4 of the Act but no other person connected with such activity can be prosecuted under

the aforesaid Act, by invoking the provisions of section 114 of the Indian Penal Code, Mr. Ghosh contends that the essence of charge and

prosecution under the Act is possession of railway property and by invoking section 114 of the Indian Penal Code prosecuting anybody not

actually in possession of such property, is not possible; In short, Mr. Ghosh''s contention is that section 114 or any section whatever under

Chapter V of the Indian Penal Code cannot be added to any of the provisions of the Railway Property (Unlawful Possession) Act to prosecute a

person not found in actual possession of any railway property. Apart from the above Mr. Ghose makes a grievance that the manner of abetment

allenged has not been spelt out in the charge and that handicapped the petitioners, from taking up their defence. In view of the above Mr. Ghosh

submits that the proceedings in so far as the present petitioners are concerned are liable to be quashed as it is nobody''s case that they were ever in

any unlawful possession of railway property. Mrs Dipti Mitra the learned Advocate appearing for the State could not refute the arguments of Mr.

Ghosh. She simply prayed that after quashing the charge the proceedings may be sent down to the court below for framing of a fresh charge if the

materials permit.

5. We have gone through the evidence. We see no reason to remit the case to the court below. Essentially the prosecution was under the

provisions of the Railway Property (Unlawful Possession) Act and we have indicated that there is no material on record permitting an inference that

the petitioners had any railway property unlawfully in their possession. In the above view we cannot grant the prayer of Mrs. Mitra. Mr. Ghosh''s

arguments, we have noticed, are irrefutable and are well founded on the evidence on record. In the result the revisional application succeeds and

the Rule issued is made absolute. The proceedings of the case noted above along with charge framed therein are quashed. The accused petitioners

may be released from their bail bonds. This order will not, however, preclude the authorities from, prosecuting the petitioners in any other case for

committing any offence under any other law.

Gobinda Chandra Chatterjee, J.

I agree.