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(1995) 1 CALLT 251

Calcutta High Court

Case No: Criminal Rev. No. 467 of 1994

Gour Mohan Chowdhury and Others	APPELLANT
Vs	
The State of West Bengal	RESPONDENT

Date of Decision: Jan. 1, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Railway Property (Unlawful Possession) Act, 1966 - Section 3

Citation: (1995) 1 CALLT 251

Hon'ble Judges: Nripendra Kumar Bhattacharyya, J

Bench: Single Bench

Advocate: Milon Mukherjee and Rebati Raman Biswas, for the Appellant;Ranjan Roy, for the Respondent

Final Decision: Allowed

Judgement

Nripendra Kumar Bhattacharyya, J.
By this revision the accused petitioners have challenged the proceeding in connection with Howrah R.P.F. (O.E.) Post Case No. 1 (6) 93 dated 15.6.93 u/s 3(a) of the Railway Properties (Unlawful Possession) Act, 1966, being Case No. S.L. 84/93 pending in the court of the Judicial Magistrate, 3rd Court, Howrah.

2. The brief background of the case is that the petitioners are the railway employees and at all material times posted at Carshed (Stores Section) Eastern Railway. The petitioner No. 1 is a senior electrical foreman, petitioner No. 2 a store-keeper in the carshed and petitioners Nos. 3 to 8 are railway employees and they are attached to the Carshed (Stores Section) and authorised to use stores and/or railway materials. On 15th June, 1993 at about 7-30 hours one railway lorry bearing No. WBI 7990(loaded with railway materials) arrived at the main gate of the carshed and in that lorry three persons and the

driver were found. When challenged by the R.P.F. staff on duty, P.K. Mitra, petitioner No. 2 produced a gate pass in respect of the materials loaded in the said lorry. On verification it was found that some excess railway materials were there in the said lorry, which did not tally with the gate pass produced by the said P.K. Mitra and after a joint inspection with the C.I.T. (M) Sri B.B. Kolay it was found that broken suspension bearing-14 pes., without coller and 12 pes coller were in excess. So also two rolls of bare aluminium wire, 1 pc., insulated aluminium coil were found in excess. Thereafter, Sri C.R. Kaviraj, Inspector, R.P.F., Howrah, O.E. Post, lodged a complaint and on the basis of the said complaint the case being No. 1 (6) 93 dated 15th June, 1993 u/s 3(a) of the Railway Property (Unlawful Possession) Act was started by the R.P.F., (OE) Post, Howrah, against petitioner No. 3, A.K. Chakraborty, the driver of the said lorry, P.K. Mitra, petitioner No. 2, Store Keeper, Samir Dey, petitioner No. 4, Fitter, and Jainal Abedin, petitioner No. 8, another store-keeper, who were already arrested by the R.P.F. personnel. On the prayer of Sri Kaviraj, Inspector, R.P.F. (O.E.), Howrah, made before the court of the learned Sub-divisional Judicial Magistrate, Howrah, the warrant of arrest was issued against the petitioners Nos. 1, 5, 6 and 7. The learned Sub-divisional Judicial Magistrate, Howrah, took cognizance of the offence against all the accused persons and a case was registered being Case No. S.L. No. 84/93 which is still pending. The complaint has been made for an offence u/s 3(a) of the Railway Properties (Unlawful Possession) Act, 1966, (hereinafter referred to as the said Act). Clause (a) of Section 3 of the said Act envisages punishment for the first offence.

3. Appearing for the accused petitioners, learned Advocate. Mr. Milon Mukherjee contended that the seizure list does not show from whose possession the materials were seized. He further contended that no doubt the four accused persons, viz. A.K. Chakraborty, P.K. Mitra, Samir Dey and Jainal Abedin were in the truck but there is nothing on record to show that the materials were seized from their possession ; rather it was on record that the materials were loaded in the lorry, which was also railway properties. Mr. Mukherjee contended further that Section 3 of the said Act, inter alia, envisages that whoever is found or is proved to have 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. Mukherjee further contended that in the instant case the materials were found from the lorry and during the time of seizure nobody was found to be in possession of the materials. Seizure from the lorry of the excess materials cannot be construed notionally to be in possession of the accused persons. Unless it is recovered and seized from the person concerned the offence cannot be constituted so far as that person is concerned. Mr. Mukherjee contended that as the ingredient of the offence is absent in the instant case the proceeding against the accused petitioners u/s 3 of the said Act is not maintainable and is liable to be quashed.

4. Mr. Ranjan Roy, learned Advocate for the State, contended that in the instant case there are some defects and unless the excess materials which belonged to the railways

are proved to be found from possession of the individual person the persons cannot be made liable for the offence u/s 3 of the said Act.

5. Heard the submissions of the learned Advocates for the parties. Considered the materials on record.

6. From a plain reading of Section 3 of the said Act it is apparent that the materials seized must be a railway property and must be in possession of the person and that the property must reasonably be suspected of having been stolen or unlawfully obtained. In the instant case, from the seizure list it is not clear from whose possession each of the materials was seized and there is also no indication as to whether the materials were seized from any person ; rather there are indications in the seizure list that the materials were recovered from the truck and not from any person. Secondly, there is no allegation that the materials were stolen by ones because the gate pass was produced at the gate on demand by the R.P.F. Personnel. There is also no allegation that the accused persons unlawfully obtained the materials. In the absence of the said allegation the proceeding u/s 3 of the said Act against the accused petitioners is not maintainable.

7. In that view of the matter, I quash the entire proceeding in connection with the Howrah R. P.F. (O.E) Post Case No. 1(6)93 dated 15.6.93 u/s 3(a) of the said Act, being Case No. S.L. 84/93 pending in the court of the Judicial Magistrate, 3rd Court, Howrah.

The revisional application is accordingly allowed.