

Kashmiri Lal

Vs

The State of Uttar Pradesh

Criminal Appeal No. 65 (N) of 1968

(S. M. Sikri, G.K. Mitter, P. Jagmohan Reddy JJ)

02.09.1969

JUDGMENT

MITTER, J. -

1. In this appeal by special leave the appellant challenges his conviction under Section 3 of the Railway Stores (Unlawful Possession) Act, 1955.

2. The Act is a measure providing for punishment of persons in unlawful possession of railway stores who cannot satisfactorily account how they came by the same. By Section 2 "railway stores" are defined to mean any article (a) which is the property of any railway administration; and (b) which is used, or intended to be used in the construction, operation or maintenance of a railway. Section 3 defines the offence as also the measure of punishment therefor. It reads :

"If any person is found, or is proved to have been in possession of any article of railway stores reasonably suspected of being stolen or unlawfully obtained, and cannot account satisfactorily how he came by the same, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both."

3. Before any one can be charged with the offence under Section 3 it must be shown that he was in possession of railway stores which by the definition of section does not include all articles which are the property of a railway administration but only those which are used or intended to be used in the construction, operation or maintenance of a railway. Mere unlawful possession of the property of any railway administration is not an offence. The prosecution must also prove that the articles were being actually used or were intended to be used for by the railway. Thus any article which is the property of a railway administration but which has been discarded or rejected for further use would be outside the definition of railway stores. Railway stores may be new or old and an offence may be committed in respect of stores of either kind. If the railway administration has no further use of them be they new or old as in the case where they have become unserviceable or out-moded no person can be charged with an offence under Section 3 in respect thereof. It is only when the articles satisfy the definition of railway stores that the prosecution can be successfully launched against a person in unlawful possession thereof. Even in such a case, the prosecution must first adduce evidence to show that there was cause for reasonable suspicion of the stores being stolen or obtained unlawfully. It is only when the burden in respect of this is discharged by the prosecution that the onus shifts to the accused to account satisfactorily of his possession of the same. He may, for instance, show that he had purchased the property in open market where goods of this kind are usually sold or that he had bought them from someone bona fide in the belief that the vendor had lawfully obtained the same.

4. The facts in this case are as follows. On the strength of some information received on 28th July, 1964 that some stolen railway property was being sent out of Lucknow through a motor transport agency, a Sub-Inspector attached to the Railway Protection Force along with another Sub-Inspector of Police searched the premises of the motor transport company at Lucknow the same night. The search which took place in the presence of the appellant and the manager of the transport company revealed that a large number of parts of railway machinery (railway engines) bearing railway marks were contained in 23 bags of metal scrap booked the same day by the appellant for consignment to Jullunder. The usual formality of preparing a recovery memo and the sealing of goods in bags in the presence of witnesses was gone through. One Jaswant Singh, described as an expert of railway machinery parts and Foreman and Chief Inspector of N. E. Kotwali Chowk, Lucknow, examined the goods said to be railway stores and kept in 11 bags and made a report to the effect that they were all railway stores being parts of a railway engine. It was the case for the prosecution that the appellant failed to offer any satisfactory explanation of his possession of the goods. On the strength of the evidence adduced and principally on the report of Jaswant Singh along with his oral testimony the Magistrate found him guilty and sentenced him to imprisonment for two years. The conviction was maintained by the Sessions Judge and the High Court.

5. The report made by Jaswant Singh shows that he had examined the material which he classified under 38 heads and described the same as unauctionable property. Against each item he put a remark either "O" or "N", 'O' signifying old goods and 'N' meaning new ones. The report seems to suggest that the goods being unauctionable a third party could not lawfully obtain possession of the same. Curiously in his testimony before the Court although he said that he had prepared the report and signed the same he made no statement to the effect that the contents of the report were correct. His definite averment was :

"Railway engine is auctioned in the market. I cannot say if these articles were auctioned in the market. I cannot say if these articles were auctioned or not."

In his cross-examination he repeated the same averment in different words but only added that he had examined the articles and they were parts of an engine and that railway articles were mixed with other goods in the bags. From his deposition it is not possible to spell out any averment to the effect that the items mentioned in his report were used or intended to be used in the construction, operation or maintenance of a railway.

6. In our view there was no evidence before the courts to prove that the articles seized were railway stores within the meaning of Section 2 of the Act. Our attention was drawn to the case of *Moyalal Rostagir v. The State*, (66 CWN 269) wherein it was held that in order to prove that the articles were railway stores it was necessary to establish that the articles in question were not only the property belonging to a railway administration but they were used or intended to be used for the construction or operation of a railway. Counsel for the respondent however cited a decision of the Orissa High Court in *Udaya Dalai v. The State*. (30 Cuttack Law Times 275). The materials seized in that case were tie-bars and iron sleepers which were brand new. According to the learned Judge of the Orissa High Court :

"..... Section 2 of the Act does not require the prosecution to prove that the incriminating articles belonged to a particular railway. From the evidence of P.W. 5 it can be reasonably inferred that as the seized articles were found to conform to the specifications of the Indian Railway Standards they held that they belonged to any of the railways in India. His further evidence that they were "brand new" is also

sufficient to show that they were intended to be used in the construction, operation or maintenance of the railway."

In our view although the prosecution is not called upon to prove that the goods belonged to any particular railway administration it has to establish that the articles were the property of a railway administration. Evidence to the effect that the goods conformed to the Railway Standards falls short of such proof. In most cases the burden of proof in this respect may be discharged by leading evidence about the identifying marks on the goods or some peculiarity of the goods not to be found in cases of non-railway goods. Again the mere description of the goods as new would not fulfil the requirements of Section 2(b). Some evidence will have to be led to the effect that the goods of the kind were being actually used by a railway administration and that the goods were in a serviceable condition. In the case of goods which had not been put to use evidence would have to be led to establish that they had been manufactured for such use.

7. The evidence in the case before us did not establish that the goods were railway stores within the meaning of Section 2 of the Act and as such the question of punishment under Section 3 did not arise. The appeal will therefore be allowed and the bail bond of the appellant directed to be cancelled.

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