

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 5th November, 2009*
Judgment Delivered on: 10th November, 2009

+ **CRL.REV.P.137/2003**

STATE (THROUGH INSPECTOR RPF) Petitioner
Through: Mr.Manoj Ohri, APP for State
SI R.K.Yadav, RPF O/Post
Tughlakabad

versus

RAVI KANT Respondent
Through: Mr.Rajesh Mahajan, Adv.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. On 12.11.2002, the Additional Sessions Judge had discharged the petitioner Ravi Kant in a complaint which had been filed against 13 persons including the present petitioner under Section 3 of the Railway Property (Unlawful Possession) Act 1966 (hereinafter referred to as 'the said Act'). The court had held that there is no prima facie evidence against the petitioner in the absence of which the issuance of the process for summoning the petitioner by the Trial Court was a bad order and was accordingly

set aside. The Trial Court had summoned the petitioner on this complaint vide its order dated 24.12.2001.

2. Briefly stated the facts are that on 2.7.2001, the Vigilance department of the Railway Board received an information that railway servants of electric loco shed Tuglakabad of Western Railway will make excess delivery of M/s Turning/boring in connivance with the party purchaser. Acting upon this information Mahesh Kumar Inspector investigation, Vigilance Railway Board, Sh.Vishok Gupta, Chief Vigilance Inspector Northern Railway, Sh.Mahesh Chandra Gupta, Senior Vigilance Inspector Northern Railway came to the RPF Post of Tuglakabad. They were accompanied with HC RPF Dharam Vir Meena; they reached Jeewan Dharam Kanta, Madan Pur Kuadar. At about 6 PM, three trucks loaded when turning and boring arrived at the said dharam kanta for weightment; these trucks left at about 6.35 PM; Dharamvir Singh and Vishok Gupta followed them and stopped at a distance of half a kilometer. In the meanwhile Mahesh Kumar and Mahesh Chander Gutpa arrived at the Jeewan dharam kanta and demanded the documents regarding the turning and boring loaded in the trucks. The present petitioner i.e. Ravi Kant who was the Assistant Controller of Stores (W.R.) Tuglakabad (ACOS) was standing at the spot along with Raghubar Dayal, Divisional Store Keeper, G.N.Gupta, Stock Verifier, R.L.Gupta, SI/RFP and Kadir of M/s Saboo Ruby Traders. Sale delivery issue note and the

weightment slips of the dharam kanta were produced. These documents were seized by the vigilance team; they reflected that 6070 kgs. of turning and boring had been loaded in the three trucks; on the weightment of the material these trucks were found to be loaded with 5465 kgs. of excess turning and boring. The aforestated material was seized.

3. These allegations had become the subject matter of the complaint dated 24.12.2001 on which the summons had been issued on the same day. Petitioner had been arrayed as accused No.12 in the complaint.

4. The court of the Additional Sessions Judge had held that there is no dispute to the fact that the petitioner was present at the spot i.e. at the dharam kanta when the weightment of the disputed material had been effected. However, mere presence of the petitioner would not have been sufficient to make out the ingredients of an offence under Section 3 of the said Act. The explanation given by the petitioner that his presence was required at the spot only to countersign the sale issue note which he had not signed and which was an admitted position, was for the reason that the petitioner had come to know that the trucks had been apprehended and this had reflected the bonafides on the part of the petitioner as it was on this ground that he had refused to countersign this sale issue note; had he been in connivance with the other co-accused he would have signed the sale issue note.

Ingredients of Section 3 of the said Act not having been made out the petitioner had been discharged.

5. The State has impugned this order. It is pointed out that the averments in the charge-sheet make out an offence under Section 3 of the said Act; the petitioner was in possession of that property which was suspected to be stolen/unlawfully obtained; it was also a railway property; ingredients of Section 3 of the said Act were prima facie made out for this proposition that the word "is" as is contained in Section 3 of the said Act may also be read as "was" i.e. in the past tense; reliance has been placed upon Om Prakash vs. State of U.P. AIR 2008 SC 1112. It is submitted that the impugned order of the Additional Sessions Judge had unjustifiably set aside the summoning which was passed by the Magistrate; the court was yet to go into the question as to whether the provision of Section 114 of the IPC are attracted or not; ingredients of abetment of the offence as contained in Section 114 of the IPC qua the petitioner were made out; it was for this reason that he had been roped in.

6. Arguments have been heard and the record has been perused.

7. Railway property has been defined in Section 2 (d) of the Act and which reads as follows:

Section 2(d) "railway property" includes any goods, money or valuable security or animal, belonging to, or in the charge or possession of, a railway administration.

8. Section 3 deals with the penalty for unlawful possession of railway property. The same reads as follows:

Section 3. 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-

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.

9. In State of Maharashtra v. Viswanath Tukaram : 1979CriLJ1193 , it was held that the following ingredients are necessary to bring in the application of Section 3:

“(i) The property in question should be railway property;

(ii) It should be reasonably suspected of having been stolen or unlawfully obtained; and

(iii) it should be found or proved that the accused was or had been in possession of that property.”

10. The question which arises for decision is as to whether on a prima facie reading of the complaint, the ingredients of the section 3 are made out; it was under this provision of law that the complaint has been filed.

11. Averments made in the complaint have been perused. The name of the present petitioner who has been arrayed at No.12 finds mention at three places i.e. in the complaint at running page

no. 4, 7 and 9. These averments are only to the effect that the petitioner Ravi Kant was present at Dharamkanta; there is no averment that he abetted the offence i.e. he had allowed the excess of 5465 kgs. of railway property to be taken out illegally.

12. Presence of the petitioner at the Dharmakanta would not by itself be sufficient to hold that he was guilty prima facie unless it is substantiated by the material on record. The material on record besides the complaint are the documents which have been filed along with the complaint which includes the Stores Depots-Receipts and Custody of Stores Rules contained in Chapter XII and appended to this Act. Under Rule 1201 the Depot Officer is responsible to the Controller of Stores. The present petitioner has been described as ACOS i.e. Assistant Controller of Stores. Under Rule 2417 the depot officer was to supervise the auction and would be responsible for the conduct of the auction. Under Rule 2426 the material sold shall be weighed and counted before the delivery and be supervised by four persons which does not include the Assistant Controller of Stores i.e. the present petitioner. The loading of the sold materials under Rule 2433 has to be done under the supervision of the Depot Officer or his assistant.

13. A perusal of these Rules shows that the presence of the petitioner at the time of the weightment of the disputed material was not a part of his duty; he being the Assistant Controller of Stores was not even required to be present at the time of the

weightment. The Circular dated 17.2.1975 of the Western Railway i.e. Stores Instruction No.23 RB 01 WR 03 relied upon by the Trial Court also states that the sale issue note is to be signed by the Controlling Officer ensure a post scrutiny of the document at the gazetted levels. Admittedly this sale issue note had not been countersigned by the petitioner. The explanation of the petitioner accepted by the trial court was to the effect that he was present at the spot to countersign the sale issue note but when he learnt about the apprehension of the goods when he was at the Dharamkanta itself he refused to sign the sale issue note. This explanation appeared to be satisfactory. It appears that there was a negligence on the part of the subordinate officers of the petitioner for which the petitioner cannot be held liable.

14. The ingredients of Section 3 of the said Act are not attracted; the question of the applicability of Section 114 of the IPC i.e. the abetment of the offence would also not arise in the absence of their being no such averment from which such an inference could have been drawn. Even otherwise, criminal law is not based on inferences and surmises; ingredients of the offence even at the first stage have to be prima facie established.

15. The judgment reported in Purna Chandra Sen Gupta and Ors. Vs. Superintendent & Remembrancer of Legal Affairs, W.B. 1993 (3) Crimes 598 (SC) relied upon the counsel for the petitioner, was an appeal against final conviction; the appellants

were Rakshaks in charge of the protection of railway property; charge-sheet against them had been filed under Section 3 (a) of the Act and Section 114 of the IPC; they had been held guilty as there was clear evidence after trial to establish that there has been a dereliction of duty which amounted to an abetment under Section 114 of the IPC.

16. Complaint in this case is only under Section 3 of the said Act. Facts of this case are distinct; the duties of the Assistant Controller of Stores as enumerated in the Rules discussed supra do not prima facie qualify for a dereliction of duty on the part of the petitioner; there is also not a whisper of this in the complaint. The second judgment relied upon by the counsel for the State of Om Prakash (supra) was an appeal against conviction where the appellant was admittedly the contractor and it was at his behest that the articles had been unloaded; said facts are also distinguishable.

17. Order of the trial court calls for no interference. It had correctly been appreciated that there is not an iota of evidence to summon the petitioner. Revision petition is without any merit; it is dismissed.

(INDERMEET KAUR)
JUDGE

10th November, 2009
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