

(1989) 09 RAJ CK 0004

In the Rajasthan High Court

Case No : Cr. Miscellaneous Petition No. 128 of 1989

Kulwant Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-09-1989

Acts Referred:

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

Citation : (1989) 2 RLW 171 : (1989) WLN 365

Hon'ble Judges : G.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Sharma, J.—This petition u/s 482, Cr.P.C. has been preferred against the order dated 15th November, 1988, by which, the Judicial Magistrate, (Railways), Jaipur, has taken cognizance against the petitioner.

2. The learned Counsel for the petitioner, argued that this is one of the rare cases where this Court can interfere against the order of taking cognizance.

3. Heard both the learned Counsel at length. Sufficient time was granted to the Investigating Officer to remain present before this court & give replies to certain queries to be made by this Court, with regard to this offence, but unfortunately, in spite of grant of so many opportunities to the Investigating Officer, he did not appear in the Court. On 10-3-1988, a case was registered against the petitioner at PS-RPF, Alwar, on an information that there was suspicion that two bullock-carts, full of cement bags had been sent outside the premises of the Inspector of works (IOW), Railway, unauthorisedly. On this information, the SHO, along with other police personnel went for a search, to the site and caught two bullock-carts. On inquiry, the two drivers of the carts Ramesh Babulal and two other persons stated that these cement-bags were loaded according to the directions of Jamadar Hari Singh from the godown of IOW. On further inquiry, no satisfactory reply was given regarding the cement-bags. So, the SHO seized

those 105 bags and investigated the case. Thereafter, the case was transferred to the SHO, RPF, Bandikui, who registered it as Case No. 4/88 u/s 3 of the Railway Property (Unlawful Possession) Act, 1966 ("the Act"). After completing usual investigation, a challan was filed against the petitioner and Hari Singh u/s 3 of the Act. Hari Singh claimed the cement-bags and produced the receipts regarding their purchase from a retailer. However, the Magistrate took cognizance against the petitioner and Hari Singh. This order has been challenged.

4. The learned Counsel for the petitioner argued that according to Section 3 of the Act, penalty for unlawful possession of railway property, has been provided. According to this section, who ever 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 punished. So, first of all, it is to be established that the property which was seized, i.e., the cement-bags belonged to the railway, authority. Then, it is to be proved that the petitioner and Harisingh were in possession of the cement-bags unlawfully. It is pertinent to note that the railway-godown of which the petitioner was incharge, was checked and the bags lying in the godown were counted, & it was found that the stock in the godown was as per the stock register. Thus, the learned Counsel argued that this shows that the cement of the railway was not as all taken out from the godown. There were no marks on these bags, of the railway. If they were railway-property, the bags must have borne the identification mark of the railway. Then, if they were taken out of the godown, which was in charge and under control of the petitioner, then, the stock in the godown must have been less 105 bags were seized, and if these bags were taken out from the godown, which was under the control of the petitioner, the stock in the register should have been less, whereas, to the contrary, it was found that the stock in the godown was correct according to the stock-register. This shows that these 105 bags which were seized, were not taken out from the godown of the railway. There were no identification marks on those bags so as to presume that they belonged to the railway administration.

5. A query was made by this Court from the learned Public Prosecutor for which, the Investigating Officer was called so many times to explain how those 105 bags of cement belonged to the railway, A question was posed presuming that those bags belonged to the railway administration. But, how they came out of the railway godown, whether those bags belonged to the present stock or they were from the earlier stock under the control of the petitioner, is not known. The petitioner was Inspector of works. He might be carrying out so many works of the railway department, where cement used to be consumed So, there might have been position that from the previous stock, the Inspector had saved some cement-bags and later on sold them in the market. Therefore, the query was whether those 105 bags were from the earlier stock. But, in spite of direction of this Court, the investigating officer did not obey the order of this Court, nor did he try to explain the position. This shows that those 105 bags were not even from the prior stock. So, it was a mere presumption that the Court wanted to

draw, but Investigating Officer did not co-operate the Court. The presumption was nothing but simply a thought which had come in the mind to arrive at the correct conclusion, but, now, in the absence of any clarification by the Investigating Officer, & more particularly, his non appearance in the Court shows that the seized 105 bags did not belong even to the prior stock of the railway godown. Then the stock was checked and it was found alright, I find absolutely no case established against the petitioner prima facie. In-my view, the learned Magistrate failed to appreciate the fact that in spite of the checking of the stock in the godown which was under the control of the petitioner, it was found to be intact and there was no shortage, so how the seized 105 bags could be treated to be of that godown which was under control of the Inspector of Works. Thus, absolutely there is no prima facie case against the petitioner. No case is made out that those seized 105 begs of cement belonged to the railway department. Therefore, the order of taking cognizance against the petitioner, is not a correct order. There is thus no case prima facie to proceed against him.

6. The miscellaneous petition is, therefore, accepted. The order dated 15th Nov. 1988 taking cognizance against the petitioner, is set aside, and the proceedings are here by quashed.