

Ch. Ramu and anr. Vs. Inspector/Rpf Post, South Central Railway

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Court : Andhra Pradesh

Decided On : Feb-12-2002

Reported in : 2002CriLJ3222

Judge : C.Y. Somayajulu, J.

Acts : Railway Property (Unlawful Possession) Act, 1966 - Sections 3 and 3(1)

Appeal No. : Crl. Petition No. 472 of 2002

Appellant : Ch. Ramu and anr.

Respondent : inspector/Rpf Post, South Central Railway

Advocate for Def. : P.P

Advocate for Pet/Ap. : Ch. Durga Prasad, Adv.

Disposition : Petition allowed

Judgement :

ORDER

C.Y. Somayajulu, J.

1. Inspector, Railway Protection Force, Renigunta, filed a charge sheet against the petitioners and another alleging that on 20-11-1996 he had information that 32nd accused [A2] (who is the Inspector of Works, South Central Railway) had on 14-

11-1996 issued 50 bags of cement belonging to the Railways to the 2nd petitioner for being used in the construction of Railway Quarters undertaken through the Railways, though the 2nd petitioner as per the contract, is required to purchase, cement from open market to meet the requirements, and that he went to the construction site and found the 1st petitioner supervising the contract work, with six bags of cement, half bag cement and 19 empty cement bags belonging to the Railways, and seized the empty cement bags and the cement stock found there, and that on enquiry 1st petitioner informed him that A2 issued 50 bags of cement from the Railway godown and therefore petitioners and A2 are liable for punishment under Section 3(1) of the Railway Property (Unlawful Possession) Act, 1966 [the Act]

2. The charge sheet was taken on file as C.C. No. 2/1997 by the Special Judicial Magistrate of First Class for Railways, Nellore.

3. This petition is filed to quash the proceedings in the said C.C. No. 2/97 inasmuch as a learned single of this Court in Crl. P. No. 6226/1999 by the order dated 20-11-2001 had quashed the proceedings in the said C.C. against A2 on the ground that he has discretion to release cement bags to the Contractor for early completion of work.

4. The contention of the learned counsel for the petitioner is that since the petitioners have come into the possession of the cement stock only through A2, and have in fact, utilised the said cement for construction of the Railway Quarters, undertaken by them, their possession of the cement bags cannot be said to be unlawful. The contention of the learned Public Prosecutor is that the fact that the proceedings against A2 were quashed is not a ground for quashing the proceedings against the petitioners.

5. As per Section 3 of the Act whoever is found to be or 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 with imprisonment for a term which may extend to five years or with fine, or with both for the first offence, and for second or 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.

6. Since the case of the prosecution is that the petitioners came into possession of the cement bags through A2 and since it is not case of the prosecution that the 50 cement bags delivered to the petitioners by A2 were misutilised, or were not utilised for the construction of Railway Quarters, undertaken by the petitioners, it cannot but be presumed that they came into possession of the stock lawfully because it was held in Crl. P. No. 6226 of 1999 that A2 has discretion to give cement to the petitioners for early completion of work, though as per the terms of contract petitioners are bound to purchase cement from outside.

7. Since the stock of cement found in possession of the petitioners was delivered by A2 to complete the work of Railways, it cannot be said that the petitioners, who admittedly are the Contractors for Railways, are in unlawful possession of the stock of cement bags. Therefore, it cannot, even prima facie, be said the petitioners' possession of the stock was not lawful. Since unlawful possession of Railway property only is an offence under Section 3 of the Act, there is not even a prima facie case of an offence under Section 3 of Act against the petitioners.

8. Hence, the petition is allowed and the proceedings against the petitioners. A-1 and A-3 in C.C. No. 2/1997 on the file of the Court of the Special Judicial Magistrate of First Class for Railways, Nellore, are quashed.