

State of U.P. Vs. Ram Dass

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SooperKanoon Citation : sooperkanoon.com/468777

Court : Allahabad

Decided On : Feb-18-1976

Reported in : 1976CriLJ1401

Judge : H.N. Seth and ;V.N. Verma, JJ.

Appellant : State of U.P.

Respondent : Ram Dass

Judgement :

H.N. Seth, J.

1. State of U. P. has come up in appeal against the judgment of Additional District and Sessions Judge, Bareilly, dated 19-1-1971 allowing the appeal of Ram Das and setting aside the judgment of the Special Railway Magistrate 1st Class dated 10th August, 1970 convicting him for an offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966.

2. Briefly stated the case for the prosecution was that on 12-3-1969, at about 1-45 A.M. accused Ram Das was searched at workshop gate by Rakshak Varma Singh and Head Rakshak Kripal Singh and 5 Kg. of copper dust mixed with white metal dust belonging to the railway, was recovered from inside a bag which he was carrying. The recovery was made in the presence of witnesses and after preparing the recovery memo the recovered material was sealed at the spot. Thereafter, the

accused, along with recovered material was taken to the police station where a report was lodged, and in due course a complaint under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 was filed and Ram Das was prosecuted accordingly.

3. In support of its case the prosecution examined ten witnesses in all. But of them P.W. 1 T. P. Srivastava, P.W. 2 Varma Singh, P.W. 3 Prakash Chand and P.W. 4 Kripal Singh are witnesses of fact, P.W. 5 S. R. Gangoli Incharge Loco Workshop Railway deposed that he examined metal dust recovered from the possession of Ram Das and found it to be railway property. The remaining witnesses produced in the case were more or less of a formal nature.

4. Ram Das pleaded not guilty and stated that he had been falsely implicated in this case due to enmity. He examined five witnesses in his defence. The learned Magistrate relying on the prosecution evidence and disbelieving the defence case, came to the conclusion that the prosecution had succeeded in establishing its case against Ram Das. In the result he convicted him for an offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 and sentenced him to one year's rigorous imprisonment and a fine of Rs 1,000.

5. In appeal, the learned Sessions Judge held that so far as recovery of the metal dust belonging to the railway from the possession of Ram Das was concerned, there was no reason to disbelieve the prosecution witnesses. According to him the learned Magistrate had given cogent reasons for believing them and he did not see any reason to differ from the conclusion arrived at by him. However, relying upon a decision of the Supreme Court in the case of Kashmiri Lal v. State of U.P. 1970 All WR (SC) 500 : 1970 Cri LJ 1647 (SC), he held that as there was no evidence to show that the recovered article, i.e. copper dust mixed with white metal dust, was used or intended to be used in construction, operation or maintenance of railway it could not be said that an offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 had been made out. In the result he allowed the appeal and made an order setting aside the conviction and sentence passed against Ram Das.

6. In our opinion reliance by the learned Sessions Judge on the case of *Kashmiri Lal v. State of U.P.* 1970 All WR (SC) 500 : 1970 Cri LJ 1647 (SC) was misplaced. That was a case under Section 3 of the Railway Stores (Unlawful Possession) Act, 1955 and not under the Railway Property (Unlawful Possession) Act, 1966. Section 3 of that Act provided that if any person was found to be in possession of any article of railway stores, reasonably suspected of being stolen or unlawfully obtained and for the possession of which he could not offer a satisfactory explanation, he was to be punished with imprisonment for a term which may extend to five years or with fine or with both. Section 2 defined the railway store as meaning any article which is the property of any railway administration and which is used or intended to be used in the construction, operation or maintenance of railway. It was because of the definition of the words 'railway stores' as contained in Section 2, that the Supreme Court in *Kashmiri Lal's* case observed that any article which is the property of the railway administration but which has been discarded or rejected for further use, would be outside the definition of the railway stores. If the railway administration has no further use of the stores whether they be new or old, as in the case where they become unserviceable or outmoded, no person can be charged under Section 3 in respect thereof.

7. However, the Railway Stores (Unlawful Possession) Act, 1955 was repealed by the Railway Property (Unlawful Possession) Act, 1966 and Section 3 of the new Act provided that whoever is found 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 as provided therein. The expression 'railway property' has been defined in Section 2(d) as including any goods, money or valuable security or animal belonging to or in the charge or possession of a railway administration. It will thus be seen that the definition of the expression 'railway property' as used in the 1966 Act is considerably wider than the definition of 'railway stores' as contained in the 1955 Act. Under the 1966 Act it is not necessary that before an article can be considered to be railway property, it must be such which is used or intended to be used for the construction, operation or maintenance of the railway (which was the requirement for its being covered by the definition of railway stores under the 1955 Act). It, therefore, follows that the

judgment of the learned Sessions Judge in acquitting Ram Das on the ground that the article recovered from the possession of Ram Das was not shown to be used or intended to be used in the construction, operation or maintenance of railway cannot be sustained.

8. Learned Counsel for Ram Das urged that the prosecution evidence regarding the recovery of railway property from his possession was not reliable and that the finding recorded by the two courts below in that regard was vitiated. We are unable to accept this submission.

9. P.W. 1 Sri T. P. Srivastava, Sub-Inspector, Railway Protection Force, Workshop Izatnagar stated that on 12-3-1969 he was posted at the main gate and was getting the persons coming out of the gate checked by Rakshak Varma Singh and Rakshak Kripal Singh. As Ram Das accused came out of the gate, he was checked and from a Jhola in his possession 5 Kg. copper dust, mixed with white metal dust was recovered. Accused Ram Das then took him to the Loco Wheel Shop and pointed out the place from where he had collected the metal dust. Similar metal dust was lying in the Wheel Shop and he collected sample from that metal dust as well and sealed it at the spot. P.W. 2 Rakshak Varma Singh also was on duty on the gate of Izatnagar Workshop. He claims to have checked Ram Das accused and found him taking away the bag containing metal dust and fully corroborated the evidence given by P.W. 1 Sri D. P. Srivastava. P.W. 3 Prakash Chand Chargeman deposed that he witnessed the recovery of the dust from the possession of the accused who had been caught at the gate. He also deposed that the accused took the Rakshak to the workshop and pointed out the place from where he had picked up the dust, P.W. 4 Kripal Singh, Head Rakshak also corroborated the evidence of the first three witnesses.

10. P.W. 5 Sri S. R. Ganguli, In-charge Loco Wheel Shop, Northern Railway gave evidence to show that the metal dust said to have been recovered from the possession of Ram Das was railway property.

11. Evidence of these witnesses leaves no manner of doubt that the metal dust which had been recovered from the possession of the accused was the property belonging to the railway. All these witnesses have given evidence in a very

consistent and straightforward manner and there is nothing inherent in their evidence which makes their testimony suspicious. It is true that all the prosecution witnesses belonged either to the Railway Protection Force or were railway employees. But, that by itself is no reason to suspect their testimony. After all if a person is checked while coming out of the railway gate it will only be the members of the Railway Protection Force or the railway employees who would be present there. Nothing whatsoever has been brought out in the cross-examination of these witnesses to create a suspicion that these witnesses had any animus to give false evidence against the accused.

12. Ram Das examined, including himself, five witnesses in his defence. The learned Magistrate found that the evidence of these witnesses was not worth relying upon. Learned Counsel appearing for the accused did not, while arguing this appeal, rely upon the evidence of the defence witnesses. The learned Magistrate has given good reasons for not accepting the defence evidence. It is, therefore, not necessary to burden our judgment with all those reasons.

13. In the result we find that the prosecution has succeeded in establishing its case against the accused and the learned Sessions Judge was not justified in interfering with the conviction recorded by the trial court.

14. So far as the question of sentence to be awarded to Ram Das is concerned, we find that the offence took place as far back as 12th March, 1969. In our opinion, the ends of justice would be adequately met if, instead of requiring Ram Das to go back to jail after a lapse of over five years, he is sentenced to pay a fine of Rs. 1,000.

15. In the result, the appeal succeeds and is allowed. The judgment of the Additional District and Sessions Judge, Bareilly dated 19-1-1971 allowing the appeal of Ram Das is set aside. He is found guilty and convicted for an offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 and is sentenced to pay a fine of Rs. 1,000. In default of payment of fine he shall undergo rigorous imprisonment for one year.

