

**State of U.P. Vs. Ram Charan**

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**Court :** Allahabad

**Decided On :** Jan-15-1974

**Reported in :** 1974CriLJ1247

**Judge :** P.N. Bakshi and Chandra Prakash, JJ.

**Appellant :** State of U.P.

**Respondent :** Ram Charan

**Judgement :**

**P.N. Bakshi, J.**

1. This is a Government appeal against the acquittal of Ram Charan respondent for an offence under Section 3 of the Railway Property (Unlawful Possession) Act 1966.

2. The prosecution case is that at about 12.15 in the night of 28th and 29th March, 1969 Ratan Lal a senior Rakshak of the Railway Protection Force and some other members who were on patrol duty apprehended the respondent near coach N. R. 2418 on the railway line No. 1 holding a dynamo belt Ex. I in his hand. The respondent is also said to have made a confessional statement which was recorded by Sri Rahim Uddin, A.S.I. of R.P.F. It appears that the matter was enquired into by the officers concerned of the R.P.F. and a complaint was made by Sri Rahim Uddin Special Railway Magistrate, Jhansi who took cognizance of

the case. The trial Magistrate after a consideration of the evidence on the record arrived at a conclusion that the offence against the respondent had been established. He, therefore, convicted the respondent under Section 3 of the said Act and sentenced him to R. I. for one year. The respondent filed an appeal in the Court of the Sessions Judge, Jhansi vide his judgment and order dated 13-12-1969 whereby he has dismissed the complaint and set aside the order of conviction recorded by the Magistrate. Hence the present Government Appeal.

3. Before dealing with the merits of the case, the point of law that has been raised by the State counsel is that the Sessions Judge has erred in law in holding that the Magistrate could not take cognizance on the basis of the complaint which had been filed by Sri Rahim Uddin A.S.I., R.P.F. We shall now consider this submission.

4. The court below in arriving at its conclusion on the question of cognizance has taken into consideration Sections 5, 6, 7 and 8 of the Railway Property (Unlawful Possession) Act, 1966. Before however, dealing with these sections it may be pointed out that under Section 190 of the Criminal P. C., a Magistrate is empowered, to take cognizance of an offence.

(a) Upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police officer;

(c) upon information received from any person other than a police officer or Upon his own knowledge of suspicion that such offence has been committed.

5. There is nothing in the Railway Property (Unlawful Possession) Act, 1966 which fetters the discretion of the Magistrate to take cognizance of an offence in the circumstances narrated above i. e. either on a complaint or a report or an information received by him from any other person. There are several enactments which contain provisions that serve as a bar to a court taking cognizance of an offence. As a matter of fact, the Code of Criminal Procedure itself contains provisions whereby a court is barred from taking cognizance of an offence in certain circumstances unless a complaint in writing has been filed by a person or

authority specified therein. In offences under the Arms Act also cognizance of an offence cannot be taken unless sanction for prosecution has been obtained. There are several other enactments which lay down that a complaint should be filed, by a particular or specified officer before cognizance could be taken of an offence by the court. We do not find any such restrictions in the Railway Property (Unlawful Possession) Act, 1966. As such, there is nothing in this Act which is inconsistent with the provisions of the Code of Criminal Procedure as contained in Section 190, Criminal P.C. referred to above.

6. Section 14 of the Railway Property (Unlawful Possession) Act lays down that 'the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force'. There being nothing inconsistent in Section 190, Criminal P.C. we are of the opinion that the three modes which have been prescribed therein for a court to take cognizance of an offence are equally applicable to prosecutions which are launched under the provisions of the Railway Property (Unlawful Possession) Act.

7. Coming now to the provisions of the aforesaid Act itself, it may be mentioned that Section 5 of this Act states 'Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this Act shall not be cognizable.

Section 6 deals with the power to arrest an offender under this Act without warrant. It also authorises any superior officer or member of the force to arrest any person without a warrant against whom reasonable suspicion exists of his having committed an offence.

Section 7 lays down that every person arrested for an offence punishable under this Act shall, if the arrest was made by a person other than an officer of the force, be forwarded without delay to the nearest officer of the Force.

Section 8 is to the effect that when any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7, he shall proceed to inquire into the charge against such person.

8. The distinction between Sections 7 and 8 of the Act is to the effect that whereas in Section 7 if the arrest is made by a person other than an officer of the Force, he has to forward the accused without delay to the nearest officer for the purpose of making an enquiry; under Section 8, if the arrest is effected by an officer of the Force, the enquiry can be proceeded with by the officer himself. Sub-Section (2) of Section 8 empowers the officer conducting an enquiry to exercise the same powers which may be exercised under the Code of Criminal Procedure by an officer investigating the cognizable case. The proviso to Section 8 Sub-Section (2) states that 'when there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate. If on the other hand the officer finds that there is not sufficient or reasonable ground for suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties. It is significant that even though the proviso to Section 8, Sub-Section (2) speaks of forwarding the accused against whom an enquiry has been conducted by an officer to a Magistrate but the section is completely silent on the point as to who should be the scribe or maker of the report or the complaint along with which the accused is to be forwarded to the Magistrate. After an enquiry has been conducted by the officer concerned, the result of the enquiry or in other words the report or complaint is merely a ministerial act and can be submitted by any subordinate officer. In the present case, the report has been made by Sri Rahim Uddin A.S.I., R.P.F. Even though he may not be deemed to be an officer of the Force to come within the definition of Section 2(c) of the Railway Property (Unlawful Possession) Act, 1966 yet to our minds it is not a condition precedent that a complaint or the report must necessarily be made by an officer of the Force at the time the accused is forwarded to the custody of a Magistrate. Having considered all these relevant provisions, we are of the opinion that the complaint which was filed by A.S.I., R.P.F. Rahim Uddin was not in any way legally defective and the Railway Magistrate was not debarred from taking cognizance of the offences on the basis thereof.

9. Even if we assume that there has been some irregularity in filing of this complaint, this irregularity in our view would not vitiate the trial but would be clearly

covered by the provisions of Section 537 (a) Code of Criminal Procedure. No finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered either in appeal or in revision on account of an error, omission or irregularity in the complaint. In this view of the matter, we are of the opinion that the Sessions Judge was not justified in dismissing the complaint after the conviction has been recorded by the Railway Magistrate, The error in the filing of the complaint, if at all, was a mere irregularity and did not vitiate the trial.

10. Coming now to the merits of the case, the evidence which has been led by the prosecution to prove the charge against the accused consists of two witnesses namely Ratan Lal (P. W. 1) and Satendrapal (P. W. 2). We have carefully scrutinized the statements of both these witnesses. Several contradictions have been pointed out in the statements of these witnesses by learned Counsel for the respondent. Ratan Lal has deposed that the respondent was seen near coach No. 2418 which was standing on railway line No. 1. Satendra Pal has stated that the coach was standing on line No. 3. Ratan Lal has stated that there was a whole train standing on the line whereas Satendrapal stated that there was one wagon No. 2418 standing there. These contradictions cannot be taken to be minor contradictions in the background of limited facts which comprise the entire prosecution. Further, it may be noted that Ratan Lal has stated that the dynamo belt was seen in the hand of the respondent. He was caught and the belt was snatched away from his hand. The statement of Satendrapal is that he was at the relevant time taking tea in the canteen when he heard a noise. Thereafter, he came out and in his presence, the belt was recovered from the possession of the respondent. If the members of the Railway Protection Force saw the respondent holding the belt and they caught him and snatched the belt from him, then in these circumstances Satendrapal who was at that time taking tea inside the canteen which is removed at a short distance from the place of the incident could not have reached the site within time to see the belt being snatched from the hand of the respondent. We are not satisfied that Satendrapal was present at the time of the incident to witness the same, It is significant that Ratan Lal in his deposition has stated that Mathura, Munna Lal and Nirpat Singh, were all present at the time of the incident. None of these has been produced to corroborate the case for the prosecution. Admittedly Ratan Lal is a member of the Railway Protection Force.

His testimony is therefore, clearly interested. The respondent has given adequate explanation for his presence at the site of the incident. He has stated that he was going to his cabin near the railway line. In passing that way he saw the belt lying near the railway line. He was looking at this belt when he was caught. It is not improbable that this defence may be correct. Ratan Lal in his zeal implicated the respondent by stating that he was not only seeing the belt but was holding it in his hand. This may be an act of extra loyalty on the part of Ratan Lal towards the department concerned. In any case we are not prepared to convict the respondent on the basis of this solitary testimony.

11. Having considered the entire evidence on the record and all the facts and circumstances of the case, we are of the opinion that the prosecution has failed to prove the guilt of the respondent beyond reasonable doubt.

12. In the result, therefore, this appeal is dismissed in the light of the observations made by us above.

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