

**Mahaboob Batcha Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/784568](http://sooperkanoon.com/784568)

**Court :** Chennai

**Decided On :** Aug-29-1991

**Reported in :** 1992CriLJ3050

**Judge :** Padmini Jesuddurai, J.

**Appeal No. :** Criminal Revision case Nos. 145 and 141 of 1987

**Appellant :** Mahaboob Batcha

**Respondent :** State

**Advocate for Def. :** P. Govindrajan, Adv.

**Advocate for Pet/Ap. :** N. Ganapathy of M/s. Pathy, Adv., ;Sundaram and ;R. Jayaseelan, Advs.

**Judgement :**

ORDER

1. This Criminal Revision is by the accused in C.C. 85/84 on the file of the Judicial First Class Magistrate, Tiruchirapalli, challenging his conviction for an offence under section 3 of the Railway Property (Unlawful Possession) Act, 1966 (hereinafter referred to as the act) and the sentence of imprisonment for a period of 1 year, confirmed by the learned Sessions Judge, Tiruchirapalli in C.A. 210/85.

2. The gravamen of the charge against the petitioner was that on 13-10-1983 at 4.30 p.m. he was in possession of 5 AC chairs marked as M.O. 2 series kept in M.O. 3 gunny bag and tied to the carrier of M.O. 1 cycle.

3. The prosecution is briefly as follows :-

P.W. 1, the Inspector along with P.W. 4 the Goods Yard Sub-Inspector and one Natarajan P.W. 2 were coming along the Mudukkupatti overbridge, when they saw the petitioner coming pushing M.O. 1 bicycle, in the carrier of which, a gunny bag with its contents was tied P.W. 1 stopped the petitioner and opened the gunny bag and found it to contain 5 A.C. chairs M.O. 2 series belonging to the railway. On a reasonable suspicion, he arrested the petitioner and seized the articles under Ex. P.1 mahazar. He questioned the petitioner and recorded his statement as per Ex. P.2. A case in crime No. 29/83 of Tiruchirapalli Goods Yard was registered. M.O. 2 series were sent to P.W. 3 the Permanent Way Inspector, who examined them certified them to be railway properties. Ex. P.3 is his certificate. After completing investigation, charge sheet was laid.

4. During trial, on behalf of the prosecution, P.Ws. 1 to 4 were examined and Exs. P.1 to P.5 marked. M.Os. 1 to 3 were produced. The petitioner when questioned, denied having committed any crime and examined D.W. 1. The learned Magistrate found that the prosecution had proved the case and accordingly convicted and sentenced him as stated above and the same having been confirmed in appeal, the present revision is filed.

5. Thiru N. Ganapathy, learned counsel for the petitioner would initially contend that the prosecution has not proved that M.O. 2 series is railway property. According to the learned counsel, though P.W. 3 has spoken about the markings found on M.O. 2 series, they have not been co-related to show that they belonged to railway and the admission of P.W. 3 that A.C. chairs of the type of M.O. 2 series, would be used in private railways also, would show that the prosecution had failed to prove that M.O. 2 series is railway property. The learned counsel relied upon a judgment of this Court in State by Sub-Inspector R.P.F. v. Ramaswamy, wherein it was held that mere presence of railway emblem on a property, will not prove that the property is railway property. The learned counsel

then contended that the third ingredient of S. 3 of the Act, namely that the property must have been reasonably suspected of having been stolen or unlawfully obtained, had not been established in this case. No witness had spoken to it and neither court had rendered any finding. Section 3 therefore is not attracted. Finally the learned counsel submitted that in the event of this court not accepting any of the above contentions, and if this court finds that the remission G.Os. passed by the Government of Tamil Nadu would not apply, a lenient view on the sentence could be taken and for sufficient and good reasons the sentence could be reduced to the period of imprisonment already undergone by the petitioner, which is 45 days.

6. Per contra, the learned Public prosecutor by referring to the salient features of the prosecution case sought to sustain the conviction and sentence.

7. The question that arises for consideration is whether the judgment of the court below suffers from any illegality or impropriety or error calling for interference by this court, under its revisional jurisdiction.

8. The first contention of the learned counsel is that the prosecution has failed to prove that M.O. 2 series is railway property. No doubt, this is one of the necessary ingredients for the offence under S. 3 of the Act., P.W. 3 has been examined to prove this aspect, P.W. 3 has stated that in each of the A.C. chairs, he found the following letters. 75 REWS D 101/45 1983 K. He has also stated that M.O. 2 series was in a serviceable condition and they will not be available in open market and A.C. Chairs of M.O. 2 series type will not be auctioned to the public and that M.O. 2 series will be used to link the railway line and the sleepers. In the cross-examination P.W. 3 has stated that D 101/45 indicates the design number, that in 75 R design there are three holes and in the other designs the number of the holes will depend upon the particular design that is in 90 R four holes, 65 R three holes and so on. It is further stated that M.O. 2 series are new ones, which had not been used and these will be in the stores and accounts will be maintained in the stores. He has admitted that for the stores there is no R.P.F. Protection and A.C. chairs were not missing from the stores. E.W.S. are available in other workshops also. 1983 indicates the year of manufacture and K indicates the group code. The year

of manufacture the group code, the design the number and other markings on A.C. chairs will be imprinted even in the A.C. chairs. When questioned as to whether these chairs would be used in private tracks. P.W. 3 had stated that in small lines intended to carry stones from the site of quarry, these A.C. chairs cannot be used, but in big lines used by private persons A.C. chairs of the same design as M.O. 2 series, can be used. From this, the learned counsel for the petitioner contends that M.O. 2 series could have been used by private persons in big tracks. I am unable to accept this contention. P.W. 3 has given the meaning of each marking found on M.O. 2 Series. D 101-45 is the design number 75 R has three holes. 1983 is the year of manufacture. EWS is the engineering workshop symbol. K is the group code. P.W. 3, though he has stated that he did not look into the design book has specifically stated that railway A.C. chairs contain the year of manufacture, the group code, and the design number. It is on the basis of these that P.W. 3 asserts that M.O. 2 series are railway properties. The contention of the learned counsel for petitioner that the markings have not been co-related to railway, has no force. P.W. 3 has also stated that he has passed the test for the Permanent Way Inspector and has put in 30 years service. The prosecution, therefore has proved that M.O. 2 series is railway property.

9. Regarding the next contention, namely that the prosecution had not established that M.O. 2 series was reasonably suspected of having been stolen or unlawfully obtained, we find that under this ingredient, all that is required is that there should be a reasonable suspicion. There need not be any proof that the property was stolen or unlawfully obtained. A reasonable suspicion is sufficient. In the instant case, the petitioner was coming along the track at 4.30 a.m. with M.O. 2 series. He has given a statement Ex. P.2 which is admissible in its entirety, wherein he has stated that he took M.O. 2 series which were found near the railway line and was carrying them. He has also stated that M.O. 2 series belong to the railway and he took M.O. 2 series with the intention of selling them to scrap merchants. It is not necessary that the prosecution must prove that M.O. 2 series was actually stolen. I therefore, find that all the three ingredients of S. 3 of the Act have been established and both the Courts below have rightly found the petitioner guilty and convicted him. The conviction is confirmed.

10. As far as the two G.Os. passed by the Government of Tamil Nadu under S. 432, Cr.P.C. are concerned, sentences for convictions under the Railway Property (Unlawful Possession) Act, cannot be remitted by the above Government Orders. This is in view of the fact that S. 432, Cr.P.C. gives the States, power to remit sentences under statutes on matters which relate to the executive powers of the State and which in turn relate to the legislative power of the States 'Railway' is found in Entry 22 of List one of the Seventh Schedule of the Indian Constitution. The State Government, therefore has no power to remit sentences under the above Act. The two G.Os. namely G.O. Ms. No. 180, Home (Prison VI) dated 28-1-1989 and G.O. Ms. No. 781 Home (PRC Dept) dated 11-4-1990 will not apply to the sentence given under the above Act.

11. Regarding the final submission that S. 3 of the Act enables the Court for special and adequate reasons not to give the minimum sentence, it is stated that the occurrence had taken place in the year 1983 and a lenient view could be taken. Long lapse of time would be a circumstance justifying a lenient view. However, the sentence cannot be so lenient, as to defeat the very purpose for which the penal enactments have been made, prescribing a minimum sentence. This Act imposes a minimum sentence in view of the fact, that it is impossible for the railway to keep all their property in tight security and in normal course railway property, has only to be left in the open near the tracks. Under these circumstances, I feel that though a reduction can be made, the sentence cannot be reduced to the period already undergone by the petitioner. On the contrary, imprisonment for a period of three months would be a reasonable sentence which would meet the ends of justice.

12. In the result the conviction is confirmed but the sentence of imprisonment for a period of 1 year is modified to imprisonment for a period of 3 months. With this modification in the sentence, this revision is dismissed.

13. Petition dismissed.