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Court : Karnataka

Decided On : Oct-29-2010

Judge : L.Narayana Swamy J.

Appeal No. : CRIMINAL APPEAL NO. 12/2005

Appellant : State of Karnataka

Respondent : Dandeppa S/O. Nagappa and ors

Advocate for Def. : SRI. S.R. DESAI. ADV.

Advocate for Pet/Ap. : SRI. K.B. ADYAPAK, A.G.A

Judgement :

1. This appeal is by State being aggrieved of the judgment and order of acquittal dated 01/07/2004 passed by the learned J.M.F.C. Kudljgi I.n C.C. No. 492/1999, acquitting the respondent-accused for the offence punishable under Section 3(a) of Railway Property (Unlawful Possession) Act. 1966.

2. When this matter was posted for final hearing, the learned counsel for respondents raised preliminary objections with regard to the competency in preferring this appeal before this Court.

3. The preliminary objections raised by the respondent is to he considered before going into the merits of the case.

4. The Inspector of Railway, Outpost, Hospet lias filed a complaint. The brief facts leading to the case are that accused I persons have committed theft of cut rails of different size and M.S. Scrap weighing about i9.523 mtr worth of Rs. 1,56.782/- from Kottur Railway Station Yard. As such complaint was registered under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966 hereinafter called 'the Act'. The said Section deals in respect of - la) for the first of offence, with imprisonment for a term which may extend to five years, or with fine, or with bom and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees. Under the said Act, section 2(a) defines the word ''Force' means the Railway Protection Force constituted under section 3 of the Railway Protection Force Act, 1957, which contemplates that, 'there shall be constituted and maintained by the Central Government, (an armed force of the Union) to be called the Railway Protection Force for the better protection and security of railway property.'

5. The learned counsel submitted that the Ac' is a Central Act and the Force constituted under the Act is maintained by the Central Government and Force under the Act belong to the Union of India and for the purpose of prosecution a Central Government has appointed the prosecution branch under The Railway Protection Force Rides 1987. Rule 18(1) prescribes that 'The Prosecution branch on each zonal railway shall have a separate cadre of Inspectors and Sub-Inspectors, who are appointed as Public Prosecutors and Assistant Public irosecuiors respectively.'

6. It is submitted that entire force came into existence by an Act and it is constituted under the provisions of the Act and also under Railway Protection Force Act. 1957 and further the Act bars the State Government or its Prosecutors to deal with such cases which falls under I he Central Government. To prosecute a case under the Apj and also to prefer an appeal the case shall be entrusted to the prosecution branch for scrutiny and conducting the same in a Court of law. In the instant case no such orders have been parsed cither under The [Railway Protection Force Rules. 1987 under rule 18 or Rule 231 and further no such orders have been passed either under the Act or Railway Protection Force Act, 1957.

Under these circumstances, the learned counsel submitted that the prosecution appointed by the Stat" Government is incompetent to prefer an appeal since no such special authorization has been made by the Central Government under the said Act. In support of his submission he fills relied on a judgment reported in 2010 AIR (Criminal) 480 between Lalu Prasad Yadav v. State of Bihar and Another and submitted that under Section 378 Central Government may direct the public prosecutor to file an appeal from an order of acquittal. Further by referring to para 40 of the judgment, it is submitted that under the powers vested to the Central Government by the legislation, which has exclusively vested the power in case of prosecution and also to prefer an appeal in case of an acquittal to the competent authority i.e. the prosecution under the Act. it is the Central Government who has got the authority.

7. The learned counsel for respondents submitted that on the authorization made 'by the Slate Government, this appeal has been preferred and there is no infirmity in the order and the prosecution has no competence in preferring the appeal. Accordingly, this appeal is to be dismissed.

8. If is further submitted that the judgment, referred is not applicable in this case in the facts and circumstances and in the judgment the subject matter was in respect of preferring an appeal against the acquittal] order wherein investigation has been lodged by Central Bureau of Investigation. Here is a case where an offence committed by the accused is also punishable under the Special Act and also the General Act and in respect of the General Act State Government has got power to prefer an appeal.

9. I have heard both sides. 10. The offence committed by the accused has to be prosecuted by the prosecutor being established under the Railway Protection Force Act. 1957 and the offences said to have been committed are tribal under the Railway Protection Act. Which is a Central Act. For the purpose of prosecuting the offenders, the Act itself contemplates a wing under Rule 18 of The Railway Protection Rultjs. On each zone, railways shall have a separate cadre of Inspectors and Sub-Inspectors, who are appointed as Public Prosecuicrs and Additional Public Prosecutors respectively. When an inbuilt machinery is existing

within the Act it exclusively and distinctly bars the jurisdiction of the State Government in preferring an appeal in case of acquittal. Under the Railway Protection Force Rules. 1987. under Rule 231 in case the prosecution prefers an appeal, it has to be forwarded to the prosecution branch for scrutiny after the branch recommends to prefer an appeal. Then only prosecution branch under the Railway Protection Act and Rules will have to prefer an appeal. When legislation demarks iron; State and Central for the purpose of exercising power. When there is no role for the State Government to initiate prosecution in case of an offence it is also understandable that the State Government cannot prefer an appeal in case of acquittal, j In the judgment referred to supra, where the investigation has been conducted by the C.B.I, and held that State Government is not competent to present an appeal against an order of acquittal passed in cases investigated by C.B.I, or the Agency under 1948 Act by Special Judge C.B.I. Public Prosecutor, who is appointed under The Railway Protection Act, is only competent to prefer an appeal in case of acquittal. Under these circumstances, for want of competence it is held that prosecution cannot prefer an appeal.

11. In view of the facts and circumstances of the case, it is directed that the prosecution under Railway Protection Act and Rules to take decision by. Forwarding the same to the Prosecution Branch to prefer an appeal.

With these observations, appeal stands dismissed.

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