CASE NO. 538542/2016
CC No. 19/16
PS- RPF/NDLS

27.02.2017

Present: Ld APP for the State.
Accused produced from J/C.
Sh. Puneet Singhal, LAC for accused.

I have heard the arguments on charge, as advanced by the Ld. PP for the RPF as well as LAC for the accused and have perused the material available on record.

This is a complaint case registered by the officers of the Railway Protection Force (RPF) under section 3 of the Railway Property (Unlawful Possession) Act, 1966, wherein it was alleged that the accused was found in possession of railway property which was reasonably suspected to be stolen or unlawfully obtained.

Since the complaint was filed in writing by a public servant, recording of pre-summoning evidence was dispensed with. Pre-charge evidence was led by the complainant/prosecution/RPF. In such a complaint case, to charge an accused, the material should be sufficient to warrant his conviction, if the same remains unrebutted (sec. 245 CrPC).

The complainant/RPF has examined 05 witnesses in pre-charge stage.

ASI Rajroop Singh PW2 and PW5 ASI Arvind Kumar who are the witnesses of recovery, have deposed that the accused was apprehended by the RPF officials near AEN Office, OHE Pole No. 2/3, within the jurisdiction of RPF NDLS upon suspicion while he was carrying one a plastic bag containing 11 pendrol clips (railway property).

Bijon Kumar Mandol PW1 is an expert in the field who verified the recovered property at the instance of the Inquiry Officer. He gave his detailed report / memo Ex. PW1/B after he examined the property and vide his report, testified that the property recovered was a railway

property. He had issued theft memo Ex. PW1/A.

ASI Soudan Singh PW3 carried out further inquiry. After completion of inquiry, he filed the present complaint Ex. PW4/F.

ASI Mahavir Singh PW3 made the crime register entry Ex. PW3/A for the offence U/s 3 RP (UP) Act.

The property in question is pendrol clips which has no use other than for the purpose of the railways and the same is not available in open market. Property is stated to be worth Rs. 880/-.

The Hon'ble Supreme Court has held in precedents titled as ***State of Maharashtra v. Vishwanath Tukaram Umale [AIR 1979 SC 1825]*** and recently in ***Om Prakash v. State of UP [AIR 2008 SC 1112],*** that the following ingredients need to be established by the prosecution in such cases to establish the guilt of the accused:

> *(i) the property in question should be railway property,*
>
> *(ii) it should reasonably be suspected of having been stolen or unlawfully obtained, and*
>
> *(iii) it should be found or proved that the accused was or had been in possession of that property.*

In the present case, to frame charge against the the accused, the evidence has to be considered unrebutted. The testimonies of the above witnesses establishes that the accused was found in possession of the property which was verified to be belonging to the railways. Now as per section 3 of the Act, the burden is upon the accused to establish that his possession was lawful.

Further, in ***Balkishan A. Devidayal v. State of Maharashtra [AIR 1981 SC 379],*** the Hon'ble Supreme Court has held that a RPF official is not a 'police officer' and a confessional statement made to him cannot be excluded from evidence. Confessional statement of the accused on record have to be considered unrebutted till this stage. Even the same can be used as corroboration to convict the accused.

In view of the above discussion, I find that the material at this stage, if remains unrebutted, would be sufficient to convict the accused. As such, it is directed that the charge be framed against him under section 3 of the Act.

Charge has accordingly been framed against the accused. The same has been read over and explained to him, to which he pleads not guilty and claims trial.

Put up for post charge evidence on **24.03.2017.**

(BABRU BHAN)
MM-07/ CENTRAL
27.02.2017