

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Revision Application No. 74 of 2019

Applicant : **Amjad Khan,**
Through Ms. Abida Parveen
Channer, Advocate

Respondents : **The State**
through Mr. Altaf Ahmed
Sahar, Assistant Attorney
General for the Federation of
Pakistan

Pakistan Railway
Through Mr. Samiullah Shah
Special Prosecutor Railways

Date of hearing : 8th December 2023

ORDER

Omar Sial, J.- The appellant, Amjad Khan's father, runs a junkyard. On 01.05.2017, when Amjad Khan was at the shop, some members of the Railway police came and allegedly recovered stolen Railways material from the shop. The recovered material was for an aggregate of Rs. 207,594, and therefore, F.I.R. No. 07 of 2014 was registered against him under section 411 P.P.C. at the Railways police station.

2. Amjad Khan pleaded not guilty and claimed trial. The prosecution examined PW-1 Inspector Anwar Hussain, who was the complainant. PW-2 Aftab Khan witnessed the recovery. PW-3 Javed Iqbal also witnessed the recovery. PW-4 Nasir Anwar was an employee of the Railways. PW-5 A.S.I. Shafique Rehman was a

witness to the recovery and arrest. PW-6 S.I. Ashique Hussain was the investigating officer of the case.

3. In his section 342 Cr.P.C. statement, the appellant denied all wrongdoing and further stated that he had been facing police persecution for a long time. The learned 12th Judicial Magistrate, Karachi South, on 29.05.2018 convicted the appellant under section 411 P.P.C. and sentenced him one year imprisonment and a fine of Rs. 5,000. Amjad Khan has challenged the conviction and resultant sentence through this appeal.

4. I have heard the learned counsel for the appellant and the learned Special Prosecutor, Railways. My observations and findings are as follows.

5. After reading the entire case, police malafide is seen floating on the surface of the case. Most surprisingly, the entire action was undertaken in a surreptitious manner and without any complaint having been made by any officer or authorized person of the Railways. PW-1 Inspector Anwar Hussain took it upon himself to arrive at the junk shop at midnight without a search warrant. He had walked a minimum of one kilometer to reach the shop, then claimed that Railways material was missing and showed that recovery had been effected. I find it surprising and unbelievable that five policemen from the same police station would walk at midnight for more than a kilometer over a vague report received from an unidentified person.

6. None of the prosecution witnesses explained how they transferred the allegedly recovered material from the shop to the police station, keeping in mind their own admission at trial that the material was so heavy that four to five people could not even lift it.

7. PW-1 Inspector Anwar Hussain testified that all the “expired” material (out of which the alleged material at the shop was part) was stored under lock and key in a warehouse and had security deployed over it. He also said that anybody could access the railway tracks. He did not, however, conduct any investigation from the warehouse in charge or the guards deployed there to determine how goods inside the warehouse had been taken out. No inventory was produced at trial.

8. The gravity of the offence was deliberately magnified in the case by the Complainant. What started as millions of rupees worth of stolen equipment had reduced to Rs. 207,594 when the charge was framed, and according to PW-4 Nasir Anwar, the Railway material shown to him as stolen was valued at Rs. 10,490. No evidence was recorded to show or reconcile that the material picked up by the police from the junkyard was even the same as shown to Nasir Anwar. Of the 228 odd items allegedly stolen from the Railways and recovered by the police, PW-Nasir Anwar only confirmed four as Railways material. The evidence produced at trial was not of such quality that merited a conviction.

9. It is incredibly disappointing to see that in this case, the value of junk, which was Rs. 10,490, has remained on the court dockets for nine years since the case was registered.

10. Above are the reasons for the short order dated 08.12.2023, in terms of which the appeal was allowed and the appellant was acquitted of the charge.

JUDGE