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Registered on : 17.03.2021
Decided on : 25.01.2022
Duration : 00 Y. 10 M. 08 D
CNR No. : MHPU190002842021

IN THE COURT OF JUDICIAL MAGISTRATE F.C., RAILWAY COURT,
(Presided over by : Govind S. Varpe) **AT DAUND**

S.C.C. NO. 229/2021

EXH. NO. 39

Government of India

(Through : Railway Protection Force,
Solapur)

.... Complainant

VERSUS

Vinaykumar Sidramappa Katare

Age : 31, Occ. : Advocate.

R/o, Mahalaxminagar, Majarewadi,
Solapur

.... Accused

**OFFENCE PUNISHABLE UNDER SECTION 174(c) AND 159 OF THE
RAILWAYS ACT, 1989.**

Shri. Shaikh Rabbani, Ld. P.P. for Railway.

Shri. S. S. Mahindrakar, Ld. Advocate for Accused.

J U D G M E N T

(Delivered on : 25.01.2022)

Accused, Vinaykumar Sidramappa Katare, is complained by
Railway Protection Force, Solapur for the offence punishable under
section 174(c) and 159 of the Railways Act, 1989.

In brief, the case of the complainant is as under :

02. On 22.02.2021 at about 11.10 a.m. the complainant, Smt.

Pushpa Ankush Kambale, was on duty as a gateman at gate No.61 of Tilathi Railway Station. At that time, accused came on his motorcycle. He entered from one side of the gate and the front gate of the railway crossing was closed. Thereafter, immediately the first gate from which the accused entered, was also closed. Therefore, the motorcycle of the accused was stuck on railway track. The accused has not followed the directions of the railway servant i.e. the complainant and argued with her. Consequently, C.R. No. 84/2021 for the offence punishable under section 174 (c) and 159 of the Railways Act, 1989 has been registered against accused.

03. The inquiry officer, Shri. Anuj Patel, conducted the inquiry. He received complaint of the complainant. During inquiry he prepared spot panchnama. He received train detention certificate from Station Master, Tilathi. He received information from the R.T.O. office, Solapur regarding the particulars of disputed two wheeler. He recorded statements of Station Master, Tilathi and Shri.Choturam, constable, Hotgi Outpost, RPF, Solapur. He recorded confessional statement of accused. He prepared seizure panchanama of disputed two wheeler. He further recorded statement of panch witnesses. After completion of inquiry, as accused was found at flaw, inquiry report came to be filed against accused.

04. On 17.03.2021 the I. O. produced the accused along with inquiry report. On the basis of inquiry report process for an offence punishable under section 174(c) and 159 of the Railways Act was issued against the accused. The accused wish to plead guilty on the day of filing of inquiry report itself. The accused also told me that he is an Advocate. Therefore, I explained him the consequences of plead guilty. I further explained him that if he pleaded guilty it might create hurdle in future in the Public

Service etc. to him. Hence, accused decided to contest the case.

05. As, initially, there was as sufficient material to proceed against the accused, on 17.03.2021 itself the plea was recorded against him at Exh.06 for the offence punishable under section 174(c) and 159 of the Railways Act and read over and explained to him in Marathi. Accused pleaded not guilty and claimed to be tried.

06. The complainant unfolded its case by examining following witnesses :

CW No.	Name of witness	Relevance	Exh. No.
01.	Pushpa Ankush Kamble	Complainant	14
02.	Narendra Babu	Witness	25
03.	Navnath Aarun Gaikwad	Panch witness	27
04.	Anuj Patel	Inuiry officer	32

07. The complainant relied upon following documentary evidence :

- i. (Exh. 15) : Complaint.
- ii. (Exh. 26) : Statement of CW.02
- iii. (Exh. 28) : Spot panchanama
- iv. (Exh. 29) : Confessional statement of accused
- v. (Exh. 30) : Seizure panchanama of two wheeler
- vi. (Exh. 31) : Statement of Navnath Gaikwad
- vii. (Exh. 33) : Train detention Certificate
- viii. (Exh. 34) : Letter received from RTO Solapur
- ix. (Exh. 35) : Statement of Shri.Choturam
- x. (Exh. 36) : Statement of panch witness Khajappa Igole

08. On 13.01.2022 the Ld. P.P. filed evidence close pursis at Exh. 37.

09. The statement of accused under section 313(1)(b) of the Code of Criminal Procedure, 1973 (for short "The Cr.P.C.") has been recorded at Exh. 38. The defence of accused is of total denial and false implications. Accused has not examined himself on oath or any other defence witness in his defence.

10. On the submissions made by Shri. Shaikh Rabbani, Ld. P. P. for the Railway and Shri. S. S. Mahindrakar, Ld. Advocate for accused as well as considering the evidence on record following points arise for my determination and my findings are against each point for the reasons given below :

Sr. No.	POINTS	FINDINGS
01.	Does the complainant prove that on 22.02.2021 at about 11.10 a.m. when the complainant was on duty as a gateman at gate No.61 of Tilathi Railway Station, at that time, accused came on his motorcycle and entered from one side of the gate and the another gate of the railway crossing was closed, thereafter, immediately the first gate from which the accused entered was also closed and stuck of railway track along with motorcycle therefore accused obstructed running of train and there by committed an offence punishable under section 174(c) of the Railways Act, 1989 ?	No.
02.	Does the complainant prove that on aforesaid date, time and place, the accused disobeyed the reasonable directions of the complainant and there by committed an offence punishable under section 159 of the Railways Act, 1989 ?	No.
03.	What order ?	Accused is acquitted.

REASONS

AS TO POINT NO. 01 :

11. Here the offence punishable under section 174 (c) of Railways Act, 1989 is registered against accused person. Hence, before appreciating evidence on record, I would like to reproduce section 174(c) of the Indian Railways Act, 1989.

Section 174 : Obstructing running of train etc-

If any railway servant (whether on duty or otherwise) or any other person obstructs or causes to be obstructed or attempts to obstruct any train or other rolling stock upon a railway -

(a)

(b)....

(c) by tampering with, disconnecting or interfering in any other manner with its hose pipe or tampering with signal gear or otherwise,

he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees, or with both.

Procedure

12. Prior to discussion of evidence, here it needs to clear that the offences under the Railways Act, 1989 tried as complaint case and not State case.

Hooter and Red Signal

13. The first and foremost submission of Ld. P.P. for Railways is that

at the time of incident the hooter (one kind of siren) and red signal was on. Therefore, according to him, the accused must have to stop at above disputed gate No.61. Accused has not followed the siren of hooter as well as red signal. Therefore, the accused has violated the directions of the railway servant i.e. CW 01, Pushpa Kamble.

14. On the contrary, Ld. Advocate for accused argued that the Ld. P. P. has raised this point at the time of final argument only. There is nothing on record to show that at the time of incident hooter and red signal were on. Therefore, according to Ld. Advocate for accused, it is the duty of the complainant to prove that at the time of incident hooter and red signal were on.

15. On perusal of record, it appears that to prove its case, the complainant relied on the evidence of CW.1, Pushpa Kamble. According to the complainant CW.1, Pushpa Kamble, is the eye witness to the incident. Therefore, the evidence of CW.1, Pushpa Kamble, shall be appreciated. On perusal of complaint (Exh.15) and the testimony of the CW.1, Pushpa Kamble, (Exh.14) it appears that the CW 01, nowhere mentioned in the complaint as well as in her testimony that at the time of incident the hooter and red signal were on.

16. It is the prime duty of every gate man before closing the gate booms at railway crossing, he shall give hooter prior to two to five minutes of closing of gate booms. He also required to give red signal to stop the traffic. Therefore, it is the first and foremost duty of the complainant to prove that at the time of incident the hooter and red signal were on.

17. As per Section 157 of the Indian Evidence Act former statements

of witness may be proved to corroborate later testimony as to same facts. On perusal of former statement i.e. complaint (Exh.15) and the testimony (Exh.16) of the CW.1, Pushpa Kamble, it appears that she has not mentioned that at the time of incident hooter and red signal were on which is a condition precedent before closing gate booms.

Evidence of CW.1, Pushpa Kamble

18. It is not the case of the complainant that the accused came on railway track when the gate booms were closed for traffic. The complainant herself came with the case that when accused entered from one side gate boom, the next gate boom was closed. As soon as the accused came on railway track the first gate from which he entered was also closed. Therefore, for the sake of argument if it be considered that accused entered on railway track, it can safely be said that when the accused entered from first gate boom, the gate boom was open for crossing of railway line.

19. Surprising thing is that the CW.1, Pushpa Kamble, herself admitted during her cross-examination that she can close both sides gate booms at the same time. She further admitted that any two wheeler required four to five seconds to cross the railway line. Moreover, she admitted that the gate boom required ten seconds to close. Therefore, for the sake of argument, if it be considered accused entered from one side gate boom, he can easily cross the railway line.

20. The CW 01, Pushpa Kamble, further admitted during her cross-examination that the goods train was departed from Solapur Railway Station before 20 to 25 minutes of the time of incident. She further admitted that the train started from Solapur Railway Station, crossed the

Tilathi Railways Station within ten minutes. Moreover, she stated that she has given complaint to Hotgi outpost of R.P.F., Solapur. She again stated that one constable of Hotgi outpost came at spot and she has given complaint to him. Moreover, she admitted that during her working hour she required to open and close gate booms for 25 to 30 times. Hence, on this ground also she might be reluctant to on hooter and red signal to stop the traffic. If hooter and red signal were on, it would definitely reflect in the complaint. Therefore, on perusal of evidence of CW 01, Pushpa Kamble, a doubt create in the mind that the train was crossed gate No.61 of Tilathi Railway Station before the time of incident as narrated by her.

21. Apart from this it needs to be consider that in Railways keeping of minute to minute time record is must. The CW.1, deposed before the Court that at the date of incident at 11.10 a.m., CW.2, Narendra Babu, Station Master Tilathi, called her and asked to close the gate booms as the goods train required to pass. Therefore, it can safely be said that minute to minute time record is maintained by Railway. On perusal of the complaint (Exh.15) it appears that the CW 01 stated in her complaint that the goods train was detained near about twenty minutes but on perusal of her testimony (Exh.16) it appears that she deposed before the Court that the goods train was detained for six to seven minutes. Therefore, for the complainant it is very huge time difference.

22. It is natural tendency of every person to cross railway line as early as possible. In the case in hand, as discussed above, it is not the case of the complainant that both the booms were closed for traffic and the accused came on railway track. It is but natural that when any person saw the gate boom is open, he will try to cross the railway line. Therefore, it can safely be said that the gate booms were opened for traffic.

23. During her cross-examination she further admitted that if train detained by any reason the railway servants required to give explanation. The defence came with the case that to avoid to give explanation for delayed running of train, the false case has been registered against the accused. The defence also came with the case that the accused is the practicing Advocate at District Court, Solapur. Prior to the incident the accused asked the CW.1, Pushpa Kamble, that he will make her complaint to her superior as she made delay to open the gate booms when the trains were passed from gate No.61. Therefore, according to the defence, accused is falsely implicated in the crime.

Non Examination of Shri. Choturam

24. The complainant came with the case that regarding incident CW.2, Narendra Babu, informed the Section and Security Control. Thereafter, CW.4, Anuj Patel, informed Shri. Choturam, constable, Hotgi outpost, R.P.F., Solapur, to attend the spot of incident. Accordingly, he attended the spot of incident. It suggests that Shri.Choturam, is the first RPF personnel who attend the spot. It is surprising that the complainant has not examined Shri.Choturam, to prove its case. He was a material witness in the present case.

25. Apart from this CW.2, Narendra Babu, deposed before the Court that, that unknown person argued with the staff of Signal and Telecommunication Department of Railway (for short "S. and T. Department"). On perusal of statement (Exh.26) of CW.2, it appears that the name of the staff of the S. and T. Department was mentioned in his statement. The name of the staff of S. and T. Department is Shri. Jahir Shaikh. It means that he was eye witness to the incident. He was a prime witness to prove the case of the complainant. Needles to say that the

CW.4, Anuj Patel, who is the inquiry officer reluctant to record the statement of Shri. Jahir Shaikh. During cross-examination CW.01, Pushpa Kamble, given many admissions. Therefore, the defence succeed to shake her credit. Apart from this non examination of Shri. Choturam by the complainant and non examination of Shri. Jahir Shaikh by the inquiry officer fatal the case of the complainant.

Confessional Statement

26. The Ld. A.P.P. argued that the confessional statement recorded by R.P.F. officer is admissible. On the contrary the Ld. Advocate for the accused argued that unless and till the complainant proves its case, the confessional statement recorded by Railway Protection Force has no value.

27. The Hon'ble Apex Court in the case of **Balkishan Devidayal Vs. State of Maharashtra (1980)4 SCC 600** observed that, *“In the light of the above discussion, it is clear that an officer of the R.P.F. conducting an enquiry under Section 8(1) of the 1966 Act has not been invested with all the powers of an officer in charge of a police station making an investigation under Chapter XIV of the Code. Particularly, he has no power to initiate prosecution by filing a charge sheet before the Magistrate concerned under Section 173 of the Code, 'police officer'. Thus, judged by the test laid down in Badku Jyoti savant case which has been consistently adopted in the subsequent decisions, Inspector Kakada of the R.P.F. could not be deemed to be a and therefore, any confessional or incriminating statement recorded by him in the course of an inquiry under Section 8(1) of the 1966 Act, cannot be excluded from evidence under the said section.”*

28. In **R. Muthu Vs. Assistant Sub-Inspector, R.P.F. Eroda, 1983 Cri. LJ 1309 (Mad)**. Hon'ble Madras High Court held that, a confession made by an accused before the R.P.F. officer is admissible in evidence. But where the accused was forcibly taken to the out post where he made the confession which was subsequently denied, no reliance could be placed on such confession. On perusal of record it appears that accused has not admitted confessional statement before the Court. Hence as per the ratio laid down in **R. Muthu (Cited Supra)** the confessional statement recorded by R.P.F. is not admissible in the present case.

29. One interesting point raised by Ld. P.P. that accused is an Advocate. Therefore, before signing of confessional statement he definitely protested, if he has not committed any offence. On the contrary, Ld. Advocate for accused submitted that once the accused denied the confessional statement itself then there is no issue of protest of confessional statement.

30. On perusal of record it appears that the plea of the accused was recorded at Exh.06. The accused specifically denied the allegations against him. Hence, at the time of recording of the plea it was presumed that the accused has committed the offence. As per Section 102 of Indian Evidence Act, 1872 the burden of proof to prove the case is on the complainant. Therefore, mere signing of confessional statement is not sufficient to prove the accusation.

31. Hence, it is not the burden of the complainant to prove the train was detained for five to seven minutes but it is the burden of the complainant to prove the train was detained due to the accused. By filing train detention certificate (Exh.33) the complainant, though, succeeded to prove the train was detained but it is not sufficient to prove the guilt of

the accused. To prove the guilt of the accused the complainant has to prove the train was detained due to negligence of accused.

Application u/s. 216 of Cr.P.C.

32. On 11.11.2021 Ld. P.P. filed an application (Exh.16) u/s.216 of Cr.P.C. to add Section 154 of the Railways Act along with Section 174(c) and Section 159 of the Railways Act.

33. The application strongly resisted by the Ld. Advocate for the accused. The application was rejected on merit. This fact is required to mention here because there was ample opportunity to the complainant to record the statement of Shri. Jahir Shaikh who was the eye witness to the incident. Apart from this there was ample opportunity to the complainant to examine Shri. Choturam, Constable, RPF Solapur but the complainant failed to bring on record material evidence against the accused. Therefore, instead of filing application (Exh.16) the complainant has to make attempt to bring material evidence on record. In spite of due opportunity the complainant failed to bring on record material evidence. As discussed above the CW.1, Pushpa Kamble, stated in her complaint (Exh.15) that the train was detained for 20 minutes and in her testimony stated before the Court that the train was detained for six to seven minutes. Considering the major admissions of CW.1, her sole evidence to prove the case of complainant is not sufficient. The evidence of CW.3, Navnath Gaikwad, who is a panch witness, is only procedural part. He is not eye witness to the incident. Hence, I answer point no.1 in the negative.

AS TO POINT NO. 02 :

34. Here the offence punishable under section 159 of Railways Act, 1989 is also registered against the accused person. Hence, before

appreciating evidence on record, I would like to reproduce section 159 of the Indian Railways Act, 1989.

***Section 159 : Disobedience of drivers or conductors
of vehicles to directions of railway servant, etc.***

If any driver or conductor of any vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police officer, he shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both

35. Ld. P.P. argued that the accused had disobeyed the reasonable directions given by the CW.1, Pushpa Kamble, who was gate man at the relevant time of incident. Therefore, he has committed an offence punishable u/s.159 of the Railways Act.

36. On the contrary, Ld. Advocate for the accused argued that there is nothing on record to show that the CW.1, Pushpa Kamble, has given directions to stop the accused. Therefore, the complainant failed to prove the charge of the above offence.

37. In the present case, the CW.1, Pushpa Kamble, was the only eye witness as well as prime witness to the incident. CW.2 to CW.4 are not the eye witness to the incident. Therefore, to prove the charge punishable u/s.159 of the Railways Act, the complainant has to prove the accused had disobeyed reasonable directions given by the CW.1, Pushpa Kamble.

38. On perusal of evidence of CW 01, Pushpa Kamble, it appears that during her testimony she never deposed before the Court that she had

given reasonable directions to the accused to stop his two wheeler. Apart from this it is came on record that to start hooter and to give red signal for the traffic is a condition precedent to stop the traffic before closing down any gate boom. Therefore, a question raise in my mind that whether the CW.1, Pushpa Kamble, herself obeys the directions required to follow by her ?

39. Mere allegations are not sufficient to prove the guilt of the accused person. To prove the guilt of accused person the complainant must have to prove the reasonable directions given by the Railway servant i.e. the CW.1, Pushpa Kamble. As discussed above there is nothing on record to show that the CW.1, had given reasonable directions to the accused to stop his two wheeler. Therefore, I answer this point in the negative.

Statement under section 313(1)(b) of the Cr. P. C., 1973

40. On perusal of statement of accused recorded under section 313(1)(b) of the Cr. P. C., 1973 (Exh. 38) it appears that the accused specifically denied the case of complainant. He further given explanation for his signature on confessional statement in question no.27. The accused has given explanation for his signature on confessional statement that the inquiry officer asked him his signature is required for bail. The I. O. had taken his signature on blank paper.

41. The accused further given explanation regarding his accusation in question no.31 that the accused had made complaints against the CW.1, Pushpa Kamble, that she had not opened the gate booms on time after passing of railways. Therefore, she had filed complaint against him and deposed against him.

42. The accused further given explanation to the question no.34 that

to avoid the explanation of CW.1 and CW.2 regarding detention of train, the CW.4, to protect the CW.1 and CW.2, filed false inquiry report against him.

43. In the last question i.e. in question no.36 the accused had given explanation that he had made often complaints against the CW.1, therefore, only to harass him as well as to avoid to give explanation for detention of train this false complaint has been registered against him.

Conclusion

44. On perusal of evidence and documents on record it appears that the CW.1, Pushpa Kamble, has given major admissions during her cross-examination. Her sole admission that the goods train was departed from Solapur Railways Station before 20 to 25 minutes of the time of incident and it would cross gate No.61 of Tilathi Railway Station within ten minutes. This admission, only, create doubt in the mind that the train was passed gate No.61 before the incident. Therefore, her sole evidence is not sufficient to prove the case of the complainant. The defence succeed to shake her credit. Therefore, I do not found her sole testimony is trustworthy to convict the accused.

45. The CW.02, Narendra Babu, CW.03, Navnath Gaikwad and CW 04, Anuj Patel, were not the eye witness to the incident. They performed their procedural part. As per the complaint the incident took place at 11.10 a.m. During cross-examination the CW.4, Anuj Patel, who is the inquiry officer admitted that he went at the spot at about 03.00 to 03.30 p.m. The CW.1, Pushpa Kamble, already written her complaint and she had given that complaint to him. He further admitted that the complaint has not written before him. The admission by the I.O. fatal the case of the

complainant.

46. Therefore, the evidence of complainant falls short to prove its case beyond reasonable doubt. On the other hand, the defence succeed to create doubt in the mind regarding happening of incident and involvement of accused. As per Criminal Jurisprudence the benefit of doubt always goes in favour of accused person. Therefore, in the case in hand, the accused is entitled for benefit of doubt as the complainant failed to prove its case beyond reasonable doubt.

47. Apart from this the Divisional Railway Manager, Solapur (for short “the DRM Solapur”) is head of the Solapur Division of Railways. The copy of judgment needs to forward him to issue appropriate guidelines to the RPF as well as gate man working under the Division. The RPF as well as the gate man required to know what are the basic requirement for initiation of proceeding and what are the vital ingredients and basic requirements to prove any offence.

AS TO POINT NO. 03 :

48. As the complainant failed to prove the charges against accused person, I proceed to pass following order :

ORDER

01. Accused, Vinaykumar Sidramappa Katare, is acquitted under section 248(1) of Cr.P.C. for the offence punishable under section 174(c) and section 159 of the Railways Act, 1989.
02. The bail bond of accused stand cancelled.
03. Accused shall furnish bail of Rs. 15,000/- to appear before next

appellate Court under section 437-A of Cr. P. C..

04. The interim custody of seized Hero Honda Splendor bearing registration no. MH-13-CY-0655 is confirmed with the accused.
05. The copy of judgment be forward to Divisional Railway Manager, Solapur to issue appropriate guidelines to the concern officials.

(Dictated and pronounced in open Court).

Sd/-

(Govind S. Varpe)

Judicial Magistrate First Class,
Railway Court, Daund.

Place : Daund.

Date : 25.01.2022

:: CERTIFICATE ::

I affirm that the contents of this P. D. F. file of Judgment are word to word, as per original Judgment.

Name of Stenographer	:	Sanjay S.Bhalerao
Name of Court	:	Govind S. Varpe, J.M.F.C., Railway Court, Daund.
Decided on	:	25.01.2022
Signed on	:	25.01.2022
Uploaded on	:	25.01.2022