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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRR No.500 of 2011 (O&M)**

**Date of decision: December 09, 2015**

Surinder Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE SABINA**

**Present:** Mr. A.K. Walia, Advocate  
for the petitioner.

Mr. J.S. Sekhon, AAG Punjab.

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**SABINA, J**

Petitioners had faced trial in FIR No.231 dated 30.08.2003, under Sections 223 of Indian Penal Code, 1860 ('IPC' for short), registered at Police Station City Rajpura.

Trial Court vide judgment/order dated 28.04.2009 ordered the conviction and sentence of the petitioners qua commission of offence punishable under Section 223 IPC. In an appeal filed by the petitioners, their conviction and sentence as ordered by the trial Court were upheld by the Appellate Court vide order dated 19.01.2011. Hence, the present petition by the petitioners.

Prosecution story, in brief, is that on 30.08.2003 at about 7:15 PM, in the area of Bus-Stand Rajpura, accused Ashok Kumar managed to escape from the lawful custody of the petitioners. On 27.08.2003, petitioners were directed to

take accused Ashok Kumar to Jabalpur from Central Jail, Patiala. On 28.08.2003, petitioners produced accused Ashok Kumar before the Courts at Jabalpur. Accused Ashok Kumar was again produced before the Courts at Jabalpur on 29.08.2003. Thereafter, petitioners reached Rajpura from Jabalpur along with co-accused Ashok Kumar by train and were to board a bus for Patiala from Bus-Stand, Rajpura but accused Ashok Kumar managed to escape.

Learned counsel for the petitioners has submitted that in departmental proceedings, petitioners were exonerated. In departmental proceedings as well as criminal trial, petitioners had faced the same charge.

Learned State counsel, on the other hand has opposed the petition but has admitted the factum of exoneration of the petitioners in departmental proceedings.

In the present case, petitioners were convicted and sentenced by the Courts below qua commission of offence punishable under Section 223 IPC.

Section 223 IPC reads as under:-

*“223. Escape from confinement or custody negligently suffered by public servant.—Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence [or lawfully committed to custody], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a*

*term which may extend to two years, or with fine, or with both."*

Thus, where a public servant is negligent in performing his legal duties and allows any person to escape from confinement or custody, he is liable for punishment.

PW1 Assistant Sub Inspector Sukhdev Singh had investigated the case. A perusal of his statement also does not lead inference that he had collected any material to satisfy himself that the petitioners had been negligent in performing their duties. Rather in his cross-examination, he had stated that he could not said as to whether any person was negligent or not in this connection.

There is also no other evidence on record to suggest that the petitioners had been negligent in performing their duties.

Petitioners were also proceeded departmentally. In the departmental proceedings, the case of the petitioners was that due to sudden rush at the Bus-Stand, Rajpura, Ashok Kumar taking benefit of the situation, had managed to escape. It was further the case of the petitioners that they were not negligent in performing their duties. In the departmental proceedings, petitioners were exonerated of the charge framed against them and it was held that they had not been negligent in performing their duties.

The relevant paragraph of Annexure R-1/P-6 reads

as under:-

*“From every evidence come on the file of departmental enquiry and conclusion report of Enquiry Officer, from the thorough perusal of written reply of the employees, it has been found that the allegation which has been levelled against these employees, that has been stated to be coincidental incident by Enquiry Officer and they have been exonerated from the charge as they were not negligent. Therefore, by concurring with the conclusion report of enquiry officer, due to non-proving of allegation against these employees, the order is passed to consign the departmental enquiry into office. Copies of this order be provided to the employees.”*

Thus, in the present case, prosecution had failed to prove its case and the Courts below had erred in ordering the conviction and sentence of the petitioners. Moreover, petitioners have been exonerated in the departmental proceedings.

Accordingly, this petition is allowed. Conviction and sentence of the petitioners as ordered by the Courts below under Section 223 IPC is set aside. Consequently, petitioners are acquitted of the charge framed against them.

**(SABINA)  
JUDGE**

**December 09, 2015**  
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