

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

CRR No.4238 of 2014 (O&M)
Date of decision: 26.05.2015

Jaswinder Singh

----Petitioner (s)

V/s

State of Punjab

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. G.S. Hayer, Advocate for the petitioner(s).

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA, J. (Oral)

Petitioner has filed the present revision petition challenging judgment dated 25.11.2014, whereby the appeal preferred by the petitioner against the judgment dated 19.11.2012 passed by Additional Chief Judicial Magistrate, Faridkot, convicting the petitioner for the commission of offence under Sections 279, 304A and 427 IPC, has been dismissed.

The trial Court, vide judgment dated 19.11.2012, has sentenced the petitioner as under:-

“.....the convict/accused Jaswinder Singh is
sentenced as under:-

“Under Sections	Sentenced	Fine
279 IPC	<i>R.I. for 6 months</i>	<i>to pay a fine of Rs.1000/- In default of payment of fine to further undergo S.I. for 1 month.</i>
304A IPC	<i>R.I. for one year</i>	<i>to pay a fine of Rs.1000/- In default of payment of fine to further undergo S.I. for 1 month.</i>
427 IPC	<i>R.I. for six months</i>	<i>NIL</i>

However, all the above sentences shall run concurrently.”

Against the judgment dated 19.11.2012 passed by the trial Court, the petitioner preferred an appeal which was dismissed by learned Sessions Judge, Faridkot vide judgment dated 25.11.2014 and the petitioner, who was otherwise on bail, was taken in custody and sent to jail. Vide order dated 7.1.2015 passed by this Court, the petitioner was ordered to be released subject to deposit of Rs.30,000/- before the trial Court towards compensation. Petitioner has deposited the said amount on 12.1.2015 and was accordingly released on bail.

Learned counsel for the petitioner has challenged the judgments of both the Courts below by raising various grounds, including that the prosecution has failed to prove that the petitioner was driving the bus in a rash and negligent manner. The prosecution has examined only one witness namely Hans Raj

as PW1. He is an interested witness being the real brother of the deceased. The prosecution has not examined any other independent witness. Even PW-1 Hans Raj, in his statement, has nowhere stated that the driver of the bus was driving the bus in a rash and negligent manner at the time of alleged accident. He has only stated that the bus was being driven at a fast speed at the time of accident. Thus, it cannot be termed that in case the vehicle was on fast speed, it is rash and negligent driving of the driver. In support of his aforesaid contentions, he has relied upon a judgment of Hon'ble the Apex Court in the case of **Mohanta Lal Saha v. State of West Bengal** 1968 ACJ 124 to state that:-

“mere statement of witness that vehicle was running at a high speed does not justify the conclusion of rash and negligent driving. – To one man a speed of 10 to 20 miles may appear high, while to other, even 30 miles may appear reasonable”.

Similarly, he relied upon a judgment of this Court in the case of **Union Territory of Chandigarh v. Geja Singh** 2006(1) RCR (Criminal) 980 to state that:-

“High speed on a empty road would obviously not be rash and negligent – fast speed is not the sole deciding factor in inferring negligence.”

Thus, it is pleaded that the prosecution has failed to prove that there is any negligence or rash act on the part of the petitioner while driving the bus at the time of alleged accident and

the Courts below have wrongly held that the petitioner was driving the bus in a rash and negligent manner at a high speed which caused the accident. He further submitted that no offence under Sections 279, 304A and 427 IPC is made out, as the prosecution has failed to prove the identity of the petitioner. Furthermore, even PW-1 Hans Raj, who is the complainant in the case, has stated in his cross-examination that he did not know the accused and that he has named the petitioner as accused, because he was told by the people. In this manner, the petitioner cannot be said to have committed the alleged accident and deserves acquittal of the charges framed against him by extending him the benefit of doubt. But instead of acquitting the petitioner, the trial Court has wrongly convicted the petitioner and in the similar manner, the appeal has also been dismissed in a mechanical manner.

Apart from the arguments on merits, learned counsel for the petitioner submits that the petitioner is facing the agony of trial since the registration of the FIR No.130 dated 14.5.2009 under Sections 304A/427 IPC. The petitioner is a poor person and sole bread-earner of the family. He is the first offender and prays for taking a lenient view by considering the long pendency of the criminal proceedings.

Learned counsel for the petitioner further states that as directed by this Court, vide order dated 7.1.2015, the petitioner has already deposited an amount of Rs.30,000/- towards compensation to the complainant vide receipt dated 12.1.2015.

Learned counsel for the petitioner contends that the petitioner has undergone 1 month and 18 days of actual custody. He relies upon a judgment of this Court in the case of **Rajeev Kanojia v. State of UT** 2014(5) Law Herald 4632 to contend that as the petitioner has already compensated the aggrieved party and is a first offender and no other criminal case is pending against him, it would be in the interest of justice to reduce his sentence to the period already undergone.

Considering the fact that the petitioner is suffering the agony of criminal trial since the year 2009 and as against the total sentence of one year, he has remained in custody for a period 1 month and 18 days and there is no other case pending against him, the conviction of the petitioner is upheld, however, the sentence is reduced to the period already undergone by him.

With the aforesaid modification, the present revision petition is disposed of.

May 26, 2015
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(HARI PAL VERMA)
JUDGE