

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

CWP No.15082 of 1997(O&M)

Date of decision:4.8.2016

Balwan Singh

... Petitioner

Versus

Transport Commissioner & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. RS Tacoria, Advocate, and
Mr. CP Tiwana, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. Heard the learned counsel for the parties at length.
2. In reply to the charge-sheet the petitioner's defence was that the right front tyre of the Roadways bus he was the driver of was worn out and had to be replaced in the Depot Workshop by the Tyreman on duty before journeying out to destination point. The tyre was changed with substandard replacement. During the journey the tyre burst which caused the accident and resulting injuries to passengers and damage to the Bus. The photograph of the stationary bus taken at the time and place of accident is on record as Annex. P-1 which affirms that the tyre was on the front right hand side which made the vehicle veer off the berm and ploughed into agricultural fields alongside the highway.
3. The Tyreman deputed to change the bad tyre in the workshop was not produced as a witness by the prosecution in the enquiry

proceedings. The best witness was withheld by the respondents and therefore, the enquiry officer was wrong in assuming that a sharp edged material had caused the tyre to burst during the trip. The testimony of the Head Tyreman Kalu Ram was recorded in the enquiry, speaking from the record which is not sufficient direct evidence against the petitioner, since he was not on the spot when the tyre was changed. The enquiry officer has falsified the version of the petitioner on the basis of statement of Kalu Ram, Head Tyreman who had no personal knowledge as to who changed the tyre before the journey began. At least this much is not in doubt that the front right tyre was changed on June 25, 1991, the day of the accident while passing by at a place near Gumthala. In these circumstances, the enquiry officer erred in accepting the version of Head Tyreman Kalu Ram that the accident was caused due to the negligence of the petitioner and not due to the uneven tyre that is said to have caused the mishap.

4. It is not disputed that it is the duty of the Tyreman to ensure the tyres of buses are road worthy and shoulder an obligation not to fit defective tyres and imperil the lives of the travellers. Neither was the identity of the Tyreman established nor was there any investigation done of his role in the incident. If loss was caused to the bus due to the accident it was not a deliberate act of the petitioner. It was an inevitable accident due to poor quality of the tyre for which the driver was not responsible and must have himself been taken by surprise. It may be noticed that in the FIR registered against the driver led to a criminal trial, in which the petitioner was found innocent and was thus acquitted of charge which the prosecution could not bring home. The criminal Court

held that the prosecution had failed to prove that the driver of the bus drove it rashly and negligently on the fateful day.

5. A perusal of the trial court judgment reveals that there was evidence to show that the bus was at the time of the accident being driven at the speed of 60/70 k.m. per hour which is not an usual speed on the State highway.

6. The prosecution led evidence by way of testimony of Mana Ram (PW-1) and Gian Chand (PW-3) one of who was an eye witness (Mana Ram) who had deposed that the accused driver was not driving the bus rashly and negligently. A finding has also come in the shape of the Mechanical Report submitted before the Criminal Court with respect to the bus in question, from which the trial Court concluded that the tyre from the driver side was found broken. This led the trial Court to take an overview that accident could have been a case of mere error of judgment and therefore, the criminal charge could not be proved beyond the shadow of doubt.

7. In the face of positive evidence noticed in the judgment of the trial Court if it correctly reflects the testimony of the witnesses then even in a case of no evidence, the trial Court did not do well by giving the benefit of doubt in a casual manner since it was a case of insufficient evidence on which conviction could not be based. The principle of benefit of doubt cannot be loosely applied by the trial Courts which might inadvertently affect service careers of delinquents and disputes on the service law side.

8. Every acquittal in criminal law is honourable and the

declaration that follows is that accused is innocent of the crime when the prosecution fails to bring home the charge. See, Jagmohan Lal v. State of Punjab, AIR 1967 Punjab and Haryana 422 (SB) and Bhag Singh v. Punjab and Sind Bank Ltd., 2006(1) SCT 175 (DB).

9. I would, in the entirety of facts, not blindly apply negativity of benefit of doubt against the petitioner to support the finding in the enquiry report and the major punishment inflicted, withholding two increments with cumulative effect. Not only is the punishment harsh but it is unjustified. The petitioner could not have been held guilty for causing the accident with *mens rea* by reason of a tyre burst which was beyond the control of the petitioner and if at all to visit him to defray cost of loss caused unintentionally to Government property.

10. For the foregoing reasons, the petition is allowed. A writ of certiorari is issued quashing the charge-sheet, the enquiry report, the impugned order of punishment and the orders passed in appeal upholding the order of punishment as unwarranted, oppressive, unfair, unjust and arbitrary, and therefore resulting in right to restitution of all consequential benefits flowing therefrom.

11. Mr. Tacoria submits that justice demands that in the event of writ petition being allowed and monetary benefits becoming due then some reasonable interest deserves to be paid on restitution of money which his client has been deprived use of for the wrong reasons and without justification. I would not say that request of Mr. Tacoria for the petitioner is wholly unjustified. Equity demands just as much as justice does that not only would the petitioner be given his consequential

benefits, both pecuniary and non-pecuniary, but also the monetary value of loss of money would carry simple interest @6% per annum, which is the minimum rate prescribed in Section 35 of the Code of Civil Procedure,1908.

(RAJIV NARAIN RAINA)
JUDGE

4.8.2016
monika

Whether speaking/reasoned

Yes / No

Whether Reportable:

Yes / No