

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

(1)

CRR No.129 of 2016 (O&M)

C. Som Nath

...Petitioner

VERSUS

State of Punjab

...Respondent

(2)

CRR No.402 of 2016 (O&M)

Constable Sukhdev Raj

...Petitioner

VERSUS

State of Punjab

...Respondent

Date of Decision: August 29, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Senior Advocate with
Mr.J.S.Santwal, Advocate
for the petitioners.

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned two connected revisions as the point for determination in both the revisions is the same.

The above-mentioned revision petitions have been filed by petitioners against respondent State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 01.12.2014 passed by learned Judicial Magistrate Ist Class, Moga, vide which the petitioners

along with co-accused Daljit Singh (non-petitioner) were convicted under Sections 223, 465, 466, 471 and 120-B IPC and sentenced to undergo rigorous imprisonment for a maximum period of three years each under Section 466 IPC along with fine and also challenging the judgment dated 15.12.2015 passed by learned Addl. Sessions Judge, Moga, vide which appeal filed by petitioners was dismissed.

Notice of motion was issued and learned State counsel appeared and contested both the petitions.

From the record, I find that challan was presented against accused Daljit Singh, Constable Sukhdev Raj and Constable Som Nath in case FIR No.5 dated 05.01.2006. The brief facts of the case as noted down in the judgment passed by learned JMIC, Moga, are as under:-

“2. Briefly, the facts of the prosecution story are that a news item was published in daily 'Amar Ujjala' dated 23.11.2005. Such news item was sent by SSP Moga to DSP City Moga for making an inquiry who submitted his inquiry report and found that accused Daljit Singh @ Bhola was admitted in Civil Hospital, from 09.06.2005 to 05.07.2005. From period 18.06.2005 to 11.07.2005 guards namely HC Resham Singh, HC Hakam Singh and C Sukhdev Raj were deployed at Civil Hospital, Moga. On 25.06.2005 C. Sukhdev Raj had taken him away at 9:00 a.m. by writing on his bed-head ticket that Daljit Singh was being taken to attend the peshi in Sessions Court. He remained away from Civil Hospital, Moga upto 4:00 p.m and made entry on his return. But as per report of Superintendent SubJail, there was no peshi of Daljit Singh in any Court on 25.06.2005. Daljit Singh got discharged from hospital and he was again got admitted in Sub-Jail, Moga through C. Sukhdev Raj on 05.07.2005. From 25.08.2005 to 20.09.2005 again Daljit Singh @ Bhola remained admitted in Civil Hospital, Moga. On 02.09.2005 C. Som Nath deployed as guard had him taken away from Civil Hospital, Moga, after making entry in his bed-head ticket that he was being taken to Ferozepur for attending a peshi. He came back at 4:25 p.m. with Daljit Singh @ Bhola and made entry to that effect. But as per report of Superintendent of Sub-Jail, Moga there was no case of Daljit Singh fixed for 02.09.2005. In inquiry HC Hakam Singh, HC Resham Singh, C. Som Nath, C. Balwinder Singh and C. Sukhdev Raj were found colluding with Daljit

Singh @ Bhola. On the basis of such report of DSP City Moga FIR was lodged and investigation was started. Accused were arrested. After completion of investigation, the challan against accused present in Court under Section 173 Cr.P.C. was presented in the Court, for trial.”

Learned JMIC, Moga, after appreciating the evidence, convicted and sentenced the petitioners along with co-accused Daljit Singh as stated above. An appeal filed by the petitioners and the same was dismissed by learned Addl. Sessions Judge, Moga, vide judgment dated 15.12.2015.

Aggrieved from the above-said judgments, the present revision petitions have been filed.

From the record, I find that the star witness examined by the prosecution to prove the guilt of the accused is PW-3 Sadhu Ram Mittal, SMO, Civil Hospital, Moga. In his examination-in-chief, he proved the bed head tickets Ex.PW3/A and PW3/B. In his statement, he deposed that Constable Sukhdev Raj made entry in the bed head ticket and he took accused Daljit Singh on 25.06.2005 along with him for attendance in the Court. This statement of PW-3 Sadhu Ram Mittal, SMO, is duly supported and corroborated by the bed head tickets. As per statements of other PWs, the facts regarding admission of under trial Daljit Singh in the hospital, appointment of Constable Sukhdev Raj and Constable Som Nath in the hospital, discharge of the accused, again admission and again discharge of the accused from the hospital, have been duly proved. It is also duly proved by the PWs that there was no case pending in any Court against accused Daljit Singh, therefore, he was wrongly taken away by Constable Sukhdev Raj by making false entry in the record.

Learned counsel for the revision petitioner Constable Sukhdev Raj argued that there is no direct evidence that anybody has seen Constable Sukhdev Raj outside the hospital on that day. It is settled law that prosecution can prove the case by leading direct evidence or by leading circumstantial evidence. When the PW has proved the bed head ticket and also deposed that accused was taken away by Constable Sukhdev Raj by making entry in the bed head ticket and furthermore, there is no noting or entry in the bed head ticket by the doctor during that period, itself shows that accused Daljit Singh was taken by Constable Sukhdev Raj on 25.06.2005 by making false entry. No reasonable explanation has been given by Constable Sukhdev Raj as to why he has taken away accused Daljit Singh on the pretext of appearance before the Court. The prosecution has duly proved its case beyond reasonable doubt qua petitioner Constable Sukhdev Raj. Constable Sukhdev Raj conspired with accused Daljit Singh and he was taken away from the hospital by preparing false documents and by making forged entry in the bed head ticket.

At the time of arguments, in the alternative, learned counsel for petitioner Constable Sukhdev Raj, prayed for taking lenient view and reduction of the sentence.

From the record, I find that both the Courts below have given concurrent findings regarding the conviction of Constable Sukhdev Raj. There is nothing on the record to show that findings given by the Courts below are against the evidence or perverse nor there is anything on the record to show that these findings are illegal. Nothing has been pointed out as to which material evidence has been misread or which material evidence

has not been considered by the Courts below. Therefore, the judgments of

conviction qua petitioner Constable Sukhdev Raj are correct, as per law and the same are upheld.

Petitioner Constable Sukhdev Raj is suffering from the long protracted criminal proceedings for the last more than 10 years and has already lost his job etc. Keeping in view the above facts and in view of the fact that he has already undergone more than 10 months out of the total sentence, the sentence is reduced to the sentence already undergone by him. However, the sentence of fine and in default thereof, shall remain the same.

As regarding Constable Som Nath, firstly, I find that PW-3 Sadhu Ram Mittal, SMO, who is the main witness, has not deposed anything in his statement that Constable Som Nath has also taken accused Daljit Singh outside the hospital by making false entry. Even in the bed head tickets Ex.PW3/A and PW3/B, I do not find any entry made by Constable Som Nath. There is no other witness, who has deposed that Constable Som Nath made entry in the bed head ticket and took away accused Daljit Singh from the hospital illegally. There is no cogent evidence on the record against Constable Som Nath and a reasonable doubt exists qua him. The prosecution has failed to prove the guilt by leading cogent evidence beyond reasonable doubt qua Constable Som Nath and the evidence has been misread by the Courts below.

In view of the above discussion, the impugned judgments of conviction and orders of sentence passed by both the Courts below are set aside qua petitioner Constable Som Nath. Accordingly, he is acquitted of the charges framed against him.

Resultantly, the revision petition filed by Constable Som Nath

stands allowed and the revision petition filed by Constable Sukhdev Raj

stands partly allowed.

Petitioners Constable Som Nath and Constable Sukhdev Raj, who are in custody, be set at liberty forthwith, if their custody is not required in connection with any other case and petitioner Constable Sukhdev Raj be released, subject to payment of fine, if already not paid.

August 29, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No