

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18042 of 2010

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1. Meena Devi wife of Surendra Kumar Verma
 2. Abhisek Kumar
 3. Abhinav Kumar
 Both sons of Surendra Kumar Verma
 4. Kanchan Kumari
 5. Amar Jyoti
 Both daughters of Surendra Kumar Verma
 All the residents of Village, P.O. and P.S. Daniyawan, District
 Patna

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department
 of Home, Government of Bihar, Old Secretariat, Patna
 2. The Director General of Police, Bihar, Old Secretariat, Patna
 3. The Deputy Inspector General of Police, Magadh Range, Gaya
 4. The Superintendent of Police, Gaya
 5. The Conducting Officer of D.P. No.198/06 Sri Arunesh
 Kumar Sharma, Inspector of Police, Sherghati Circle, Gaya

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh
 For the Respondent/s : Mr. Anjani Kumar, AAG10

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CORAM: HONOURABLE MR. JUSTICE
SAMARENDRA PRATAP SINGH
CAV ORDER

9 01-03-2017 The original petitioner, namely, Surendra Kumar Verma,
 has challenged the impugned order of punishment with all
 consequential reliefs. During the pendency of the writ application,
 he died and he has been substituted by his wife and other legal
 heirs, who are now pursuing the writ application.

2. The original petitioner vide charge memo, dated
 19.12.2006, was departmentally proceeded for the charge of aiding



and helping one Rajendra Yadav, Former MLA, to escape from the court premises, on 04.12.2006. On conclusion of the inquiry, the Inquiring Officer recorded finding of guilt and submitted his report to the Disciplinary Authority. On receipt of the inquiry report, the Disciplinary Authority sought original petitioner's response to the adverse findings recorded in the inquiry report, to which he duly replied. On consideration of the show cause reply, the Disciplinary Authority vide order, dated 15.05.2010, dismissed him from service. An appeal preferred before the D.I.G., Magadh Range, too was rejected on 11.09.2010.

3. Before, I consider the submissions of the parties, it would be relevant to notice the facts of the case in brief.

4. The original petitioner was appointed as Constable on 1.2.1982. In the month of December, 2006, he was posted as Reserve Constable in Central Jail, Gaya. On 4.12.2006, on the direction of the Jail Superintendent, he along with two other Constables, namely, Constable No.1193, Ashok Singh; and Constable No.452, Shyam Kumar, were deployed for escorting five special accused including one Rajendra Yadav, a Former MLA from Antri Constituency in the District of Gaya, to the Court.

5. All the three Constables brought the five accused, who



were all categorized as special accused, to the Gaya Court. Out of the five accused, four of them were to be produced before a Magistrate, who was holding his court on first floor of the Court's building. The fifth accused, Rajendra Yadav, was to be produced before the F.T.C. No.2 and 3, which was on the ground floor. The original petitioner was escorting Rajendra Yadav. After producing him in the Court, the petitioner was carrying Rajendra Yadav to the Jail Van for being taken back to the jail. The Van was standing in the court premises near the C.J.M.'s Court. In the meantime, Rajendra Yadav, made a request to permit him to answer call of nature. It is the case of the petitioner that in the meantime someone hit him from behind on account of which the handcuff of the accused which he was holding slipped and his carbine also slipped from his hand. One of the miscreants kicked his carbine by foot. Taking advantage of the moment, the associates of Rajendra Yadav succeeded in making good his escape on a Jeep, which was waiting outside the court premises. A police case was registered on 4.12.2006 being Gaya (Civil Lines) P.S. Case No.308 of 2006 against the petitioner and others under Sections 324, 225(A), 120B, 253/34 of I.P.C. A departmental proceeding too was started simultaneously.

6. The original petitioner has assailed the impugned order



of punishment on more than one ground. He submits that the proceeding was not conducted in accordance with law. No sufficient opportunity was provided to him to defend his case. The witnesses were not examined in his presence; he was not granted opportunity to cross-examine the witnesses. The respondents have relied upon extraneous materials, which were not exhibited or produced in course of proceeding. The prosecution has miserably failed to produce any cogent material in support of its case that the delinquent was in league with Ex-MLA Rajendra Yadav and aided his escape from the Court premises. The respondents ought to have exhibited the original of the F.I.R. or at least its certified copy. However, for the reasons best known to them, they chose to exhibit photo copy of the same which would not amount to strict proof of documents. In support of his submission, learned counsel appearing for the petitioners have relied upon decisions in the case of *Roop Singh Negi Vs. Punjab National Bank & Ors, reported in (2009) 2 SCC 570* as well as *order, dated 09.10.2014* of this Court in *C.W.J.C. No.10227 of 2013 (Tej Narayan Singh vs. State of Bihar & Ors)*.

7. Lastly it was submitted that in any view of the matter the punishment awarded is disproportionate to the offence as one Vijay Kumar for more or less similar charge was handed a lesser



punishment of withholding of increment for six months vide Departmental Proceeding No.61 of 2009 vide memo No.478, dated 2.2.2010 which has been annexed as Annexure-9.

8. Mr. Anjani Kumar, learned Additional Advocate General, has justified the impugned actions of the respondents. He submits that the petitioner was granted reasonable opportunity to place his case before the Inquiring Officer as well as before the Disciplinary Authority. It was for the petitioner to have cross-examined the official witnesses and if the petitioner did not choose to examine them, he has to blame himself for the same. He submits that as many as three witnesses were examined besides one Md. Mushtaque. A copy of the F.I.R. of Gaya (Civil Lines) P.S. Case No.308 of 2006 besides some other documents were exhibited and placed on the record, Learned counsel next submits that the submission of the petitioner that the Enquiry Officer and the Disciplinary Authority have relied upon extraneous materials while coming to their conclusions, is false and has no legs to stand.

9. I have heard learned counsel for the parties and perused the materials on record. The petitioner was departmentally proceeded for aiding and helping a prisoner Rajendra Yadav, former MLA, in escaping from the Court premises on 4.12.2006 at



about 2.30 p.m. just after his production before F.T.C. II & III. The petitioner had denied the charges. The case of the petitioner is that he was posted as a Reserve Guard in Central Jail, Gaya. On 4.12.2006 at about 11 AM by order of the Jail Superintendent, Gaya he along with two other Constables, namely, Constable No.1193, Ashok Singh; and Constable No.452, Shyam Kumar, were authorized to produce five special accused under custody, before different Courts in Gaya Civil Court. Out of these five accused, one was Rajendra Yadav, former MLA and husband of present MLA Kanti Devi. Two of the Constables, namely, Ashok Singh and Shyam Kumar were to produce four of the accused before a Magistrate who was holding Court on first floor, whereas the petitioner was to produce Rajendra Yadav, before F.T.C. No. 2 and 3 on the ground floor. The petitioners have argued that as per rule 558 of the Bihar Police Manual, more constables ought to have been deputed to escort them to the Court considering their category of being special prisoners, which was not done. Had more constables been deputed, the accused Rajendra Yadav, could not have escaped.

10. On the other hand, the State had argued that the delinquent had earlier worked as a security guard to the Rajendra Yadav and he aided his escape by concocting a story of escape of



Rajendra Yadav.

11. As per the own case of the original petitioner, Rajendra Yadav escaped around 2.30 pm from the Court's premises after his production in the Courts. However, he did not raise hulla nor he informed the nearby police about the incident. Only after 25 minutes of the occurrence, he informed Senior Superintendent of Police about the escape, thus, affording sufficient time to make good his escape.

12. I find that at least there was negligence on the part of the original petitioner in not informing the police immediately though the same was located near the Court premises which may not completely rule out the case of connivance with the accused.

13. The petitioners next argued that the witnesses were not examined in presence of the delinquent and photo copy of the F.I.R. was exhibited, which would not be strict proof of the document. I find that one Laxmi Narayan Jaiswal, who instituted the F.I.R., was examined as P.W. 1 being Gaya Civil Lines P.S. Case No.308 of 2006. It is relevant to state herein that strict rule of evidence would not be applicable in a departmental proceeding and a reference can be made to a decision reported in **(2003) 3 SCC 583**. Further more, the author of the F.I.R. himself was



examined and as such the ratio laid down in the case of ***Roop Singh Negi (supra)*** would not be applicable in the facts of the case. In the aforesaid case, F.I.R. and charge sheet were not exhibited either by the Police Officer or someone who was conversant with the handwriting of the author of the documents, which is not the situation in the instant case. The other plea of the petitioners that the witnesses were examined in absence of the delinquent and he was not provided sufficient opportunity to cross-examine the witnesses, are bereft of merit and fit to be rejected. It was for the petitioner to take steps to ensure that the witnesses were examined in his presence or in presence of his representative. As such, he would not be entitled to take benefit of his own laches.

14. The petitioners submit that in more or less in similar case where the prisoner escaped from the custody of a Constable Vijay Yadav, a differential treatment was provided, inasmuch as a punishment of withholding of increments was awarded. However, in his case, he has been dismissed from service.

15. I find that there is no past black mark against the original petitioner and his claim of unblemished career is not controverted by the respondents. The respondents cannot be said to be not negligent in authorizing only three constables to escort



five special accused to the court, particularly, when they were to be presented before different Courts.

16. In such circumstances, in my considered view, the matter is remitted to the Appellate Authority (Respondent No.3) to reconsider the quantum of punishment and pass a fresh order within a period of three months from the date of receipt/production of a copy of this order. Let a copy of this order be forwarded to the D.I.G. Magadh Range, Gaya as well as Superintendent of Police, Gaya.

17. With the aforesaid observations, this writ application stands disposed of.

(Samarendra Pratap Singh, J)

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