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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-103-MA-2013

Decided on : July 18, 2017

STATE OF HARYANA

....PETITIONER

VERSUS

ISHWAR AND ANOTHER

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Surender Singh, AAG, Haryana.
Mr. Sandeep Verma, Advocate for the respondents.

RAMENDRA JAIN, J (ORAL)

The State by way of instant application under Section 378(3) has sought leave to file the accompanying appeal against the judgment of acquittal dated 01.08.2012 passed by the First Appellate Court, Ambala.

The respondents were booked and tried. On 16.06.2009, the respondents were assigned the duty to guard the prisoner, namely Gurcharan Singh admitted in Civil Hospital, Ambala from where he was referred to GMCH, Sector 32, Chandigarh, was escaped from their custody.

FIR No.122 dated 17.06.2009 under Sections 223 and 224 of the Indian Penal Code was registered in Police Station Baldev Nagar, Ambala, against the respondents on the allegations that on 16.06.2009, they did not discharged their official duties properly while guarding a prisoner, namely, Gurcharan Singh admitted in Civil Hospital, Ambala from where he was referred to GMCH, Sector 32, Chandigarh on account

of which accused Gurcharan Singh escaped from their custody. The trial Court vide impugned judgment of conviction dated 18.08.2010 and order of sentence dated 19.08.2010 convicted both the respondents and sentenced them to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.200/- each under Section 223 of the IPC. In default of payment of fine, they were ordered to further undergo rigorous imprisonment for two months.

Being aggrieved, the respondents preferred an appeal. The same was accepted by the First Appellate Court vide judgment dated 01.08.2012, whereby judgment of the conviction and order of sentence were set aside and the respondents were acquitted of the charge. Being dissatisfied, the State has come up before this Court with an application under Section 378(3).

Learned State counsel contends that learned Appellate Court failed to appreciate that the prisoner-Gurcharan Singh had escaped from the custody of the respondents while discharging their duties in official capacity, which amounts to their gross misconduct and negligence as the respondents belongs to a disciplined force .

Learned counsel for the respondents vehemently opposed the arguments of learned State counsel and prayed for dismissal of the appeal.

After giving a thoughtful consideration to the submissions made by both the counsel, this Court is of the opinion that the application deserves dismissal for the reasons to follow:-

- i) the prosecution did not examine the Investigating Officer before the trial Court whose examination was very necessary so as to know whether prisoner-

Gurcharan Singh had escaped on account of the negligence of the respondents or for some other reason as he was the only person to throw light upon this aspect of the case being an investigating officer.

- ii) No independent witness was examined by the prosecution to show that the respondents were negligent in discharging their duties in official capacity and for that reason prisoner-Gurcharan Singh escaped.
- iii) the trial Court had based conviction of the respondents on the sole testimony of (PW-1) Om Parkash who, undisputedly, was not present at the time of escaping of prisoner-Gurcharan Singh from the hospital as according to him, he had gone to the Central Jail, Ambala to fetch money for the treatment of the prisoner. All other witnesses, except (PW-1) Om Parkash examined by the prosecution were formal in nature and there was no other evidence on the record to base of the conviction of the respondents.

I have gone through the impugned judgment and find no reason to differ with the same.

In view of discussion above, the application fails and thus is dismissed.

July 18, 2017

Rajneesh

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No