

RSA No. 1116 of 1991

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1116 of 1991

Date of Decision: 31.01.2017

The State of Punjab

...Appellant

Vs.

Kulwant Singh

...Respondent

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

Present: Mr. Rahul Verma, AAG Punjab.

None for the respondent.

RAJIV NARAIN RAINA, J. (Oral)

No ground for interference is made out in the judgement and decree of the learned Additional District Judge, Jalandhar dated 01.12.1990 reversing the order of the trial court. The plaintiff/respondent was a conductor in Punjab Roadways travelling on duty between Jalandhar to Simla in a bus he was deputed. A checking party intercepted the bus in the course of travel and found that 21 passengers on board were without tickets and the plaintiff had not issued passenger tickets to five passengers but had instead accepted fare in cash and, therefore, had embezzled money. He was be charge sheeted for major misconduct to face departmental proceedings. The management produced the sole testimony of Dhani Ram, Inspector as a witness for the prosecution against the plaintiff. The learned Additional District Judge, Jalandhar relied on the cross-examination of the Inspector and found that he had categorically admitted in his deposition that he did not count the cash with the Conductor during the surprise check, for the

reason that the Conductor's cash-in-hand/bag was not sealed. During the course of further cross-examination when he was asked whether he had recorded any statement of the passengers, he replied that since the Conductor had admitted and confessed to his guilt there was no necessity of recording the statement of any passenger.

Having appreciated the evidence on record, the Lower appellate court reached the conclusion that neither the cash of the plaintiff was checked nor the statement of any of the passengers was recorded and, therefore, the inquiry proceedings were rendered vitiated. Even if we accept that it was not necessary to record the statement of any passenger even then perusal of the enquiry proceedings, the fact remains, *prima facie*, that the cash with the Conductor was not counted which the appellate court rightly though would be fatal to the prosecution story.

For these reasons, the learned lower appellate court accepted the appeal and decreed the suit by setting aside the judgment and decree of the learned trial court. It may be noted that the enquiry led to infliction of punishment at the hands of disciplinary authority withholding five increments with permanent effect. For the suspension period it was ordered that nothing shall be paid beyond the subsistence allowance already paid because the plaintiff was re-instated to service. Respondent's guilt has not been established on probative evidence even by applying standards of preponderance of probabilities. It is well settled that suspicion however strong cannot take the place of proof. The findings of the lower appellate court are accordingly upheld.

For these reasons the State appeal fails and is ordered to stand dismissed with costs.

(RAJIV NARAIN RAINA)
JUDGE

31.01.2017
neeraj

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>