

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 2295 of 2016 (O/M)
Date of decision : 21.11.2017

HC Harpal Singh and others

..... Revisionists

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Karanvir Singh Khehar, Advocate, for revisionists.

Ms. Monika Jalota, DAG Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

Present revision has been filed against the judgment dated 3.6.2016, passed by the learned Additional Sessions Judge, Sangrur, affirming the judgment of conviction and order of sentence dated 15.3.2016, passed by the learned Judicial Magistrate 1st Class, Sangrur, vide which present revisionists were convicted under Section 223 of the Indian Penal Code and were sentenced to undergo simple imprisonment for one year each and to pay fine of Rs. 1,000/- each, in default of payment of fine, to undergo further simple imprisonment for 7 days each.

The prosecution story is that present revisionists were working as Head Constables at Sangrur. One under trial, namely, Harnam Singh son of Jagdish Singh was confined in District Jail, Sangrur. He was transferred from Central Jail, Patiala. He was to be produced before the Special Court, Hanumangarh (Rajasthan) in case pertaining to FIR No. 158/08, registered under Section 15 of the NDPS Act at Police Station Bhawani Sajskat.

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On 6.7.2011, the custody of said Harnam Singh was handed over to present revisionists, namely, HC Harpal Singh, HC Darshan Singh and HC Jagmail Singh, for taking him to Special Court, Hanumangarh (Rajasthan). On 8.7.2011, they intimated the Superintendent, District Jail, Sangrur, that under trial Harnam Singh escaped from their custody on 7.7.2011 from Railway Station, Hanumangarh (Rajasthan). SI Sukhchain Singh being the Line Officer made a statement to ASI Mukand Singh, which forms the basis of FIR. According to the police investigation, he (IO) went to Railway Police Station, Hanumangarh and Police Station, Hanumangarh, and from both the SHOs, he came to know that all the said police officials i.e. present revisionists had come to said police stations for getting FIR registered against under trial Harnam Singh, but they were repeatedly changing their stand.

During investigation, police came to the conclusion that under trial Harnam Singh escaped from the custody of said police officials in the area of City Sangrur only and that the said police officials in order to save their skin are trying to initiate proceedings against said Harnam Singh. The investigating officer has concluded that infact on 6.7.2011 at about 6:00 PM, revisionists-accused negligently suffered under trial Harnam Singh to escape from their custody in the area of City Sangrur, and present FIR No. 269, dated 11.7.2011, under Sections 223, 224 IPC was registered.

After the trial, statements of revisionists-accused under Section 313 Cr.P.C. were recorded, in which they denied evidence led against them and did not lead any evidence in defence.

The learned Judicial Magistrate 1st Class, Sangrur, vide impugned order, convicted and sentenced the revisionists, as aforesaid.

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The order was upheld in appeal by the learned Additional Sessions Judge, Sangrur.

I have heard the learned counsel for revisionists, the learned State counsel and have also carefully gone through the file and lower Court file as well.

First of all, it is to be determined whether revisionists were negligent, as a result of which, under trial Harnam Singh (accused) escaped from their custody ?

It is proved from the statement of Gurmail Singh (PW6), Warrant Officer, District Jail, Sangrur, that on 6.7.2011, custody of said under trial Harnam Singh son of Jagdish Singh was handed over to present revisionists for producing him in Special Court at Hanumangarh (Rajasthan) on 7.7.2011. All accused came back on 8.7.2011 and informed that Harnam Singh had escaped from their custody at Hanumangarh Railway Station. Mukand Singh, who recorded the statement of SI Sukhchain Singh, stated that during investigation, no incriminating circumstances surfaced against any of accused. Infact, Mukand Singh did not record any case diary and did not conduct any investigation.

In this case, sanction (Ex.PG) of Senior Superintendent of Police, Sangrur, was taken before presenting challan. Crucial in this case is statement of SI Sukhchain Singh, who has maintained that after his investigation, he has come to conclusion that Harnam Singh was not taken by bus or rail to Hanumangarh and that Harnam Singh had escaped from the custody of present revisionists in the area of City Sangrur only, due to negligence of present revisionists. In cross examination, he had admitted that he had gone to Hanumangarh and also contacted the SHOs of GRP as

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well as Police Station Hanumangarh. The said SHOs did not make any statement in writing that present revisionists were repeatedly changing their stand, nor they gave anything in writing. They have merely expressed their suspicion. He admitted that it is possible that the said SHOs in order to escape their responsibility, might have made such statements. However, it is proved that present revisionists did approach the SHOs at Hanumangarh, for making complaint that Harnam Singh has escaped from their custody. It goes to show that all revisionists had in fact gone to Hanumangarh (Rajasthan).

Regarding the conclusion of police that Harnam Singh escaped from the custody of present revisionists in the area of City Sangrur only, SI Sukhchain Singh has stated that there is no proof that Harnam Singh had escaped from the custody of revisionists in the area of City Sangrur. He further admitted during cross examination that he was informed by both the SHOs at Hanumangarh that on receiving the information regarding escape of accused, they had gone to the area of bus stand and had also conducted nakabandi and that they had also conducted secret and open investigation, in which some people were saying that one person had escaped from the custody of police, but both SHOs refused to give in writing. Thereafter, he came back from Hanumangarh. He further admitted that he had taken all revisionists-accused to Hanumangarh and that they had identified the place from where Harnam Singh had escaped from their custody. He admitted it as correct that some people present there were also stating regarding escape of Harnam Singh from custody of police, but nobody was willing to give in writing. Thereafter, he came back from Hanumangarh to Sangrur. All these facts go to show that said Harnam Singh escaped from the custody of

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revisionists at Hanumangarh bus stand and that accused had even approached the SHOs of Hanumangarh to record their statements, but they did not record the same, though, they did visit the spot and conducted the nakabandi to apprehend Harnam Singh.

The learned counsel for revisionists has raised the question regarding jurisdiction of Sangrur Court to try the offence.

Section 183 Cr.P.C. provides where the offence is committed on journey or voyage. It provides as under :-

“S. 183. Offence committed on journey or voyage.- When an offence is committed, whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.”

The perusal of said section lays down that in such a case, the offence can be inquired or tried by the Court from whose local jurisdiction that person or thing passed in the course of the journey or voyage. In the present case, the journey started from Sangrur. Therefore, the Sangrur court had the jurisdiction to try the case.

The learned counsel for revisionists has further argued that under Rule 16.38 of the Punjab Police Rules, Volume II, the sanction of District Magistrate was required.

The matter was discussed and both the Courts below have found that as per the requirement of Rule 16.38 of the Punjab Police Rules, Volume II, sanction of District Magistrate is required only when criminal offence is committed in connection with official relations with public. Here, there was no such eventuality. Therefore, both the Courts below

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correctly held that there was no need to get sanction of District Magistrate.

The fact remains that custody of said Harnam Singh was handed over to present revisionists and it was for them to explain as to how accused escaped from their custody. No explanation is coming forth, nor accused led any evidence in defence. All the circumstances of escape of under trial Harnam Singh from the custody of revisionists were within their special means of knowledge and it was for them to explain the circumstances which they have not done. As such, I do not find any illegality or infirmity in the judgments of both the Courts.

Faced with this situation, the learned counsel for revisionists has prayed that revisionists are the police officials. There was no intention on the part of revisionists to commit the offence. It was due to slip that accused was able to free himself and escape from their custody at a public place. It is further contended that as per the directions of the Hon'ble Supreme Court of India, said accused could not be handcuffed. Therefore, he took advantage and slipped away. Therefore, prayer is made for taking a lenient view in the matter.

After considering that revisionists are the police officials and there are no allegations that previously they had committed any such act of negligence during their service and that accused probably took opportunity to escape from the custody of revisionists to their utter surprise, it is a fit case where revisionists should be given a chance to improve their conduct. Therefore, considering the entirety of circumstances and the service record of revisionists, while maintaining the conviction of present revisionists under Section 223 IPC, the sentence passed upon them is hereby set aside and they are ordered to be released on probation under Section 5 (1) of the

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Probation of Offenders Act, 1958, on their executing probation bonds in the sum of Rs. 25,000/- each with one surety each of the like amount, for a period of one year, to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Sangrur, with an undertaking not to repeat such conduct in future and in case, they do so, the sentence passed upon them shall revive and they will surrender before the Court to undergo the remaining part of sentence. It is further directed that as per Section 12 of the Probation of Offenders Act, 1958, said conviction shall not be treated as disqualification for any purpose.

Accordingly, revision is allowed partly.

(KULDIP SINGH)
JUDGE

21.11.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes