

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

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Criminal Revision No.4053 of 2017 (O&M)
Date of Decision: March 1st, 2018

Jas Karan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. K.B. Raheja, Advocate
for the petitioner.

Mr. Kuldeep Sharma, Deputy Advocate General, Haryana.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner, who is driver of a bus, while approaching the level crossing, which was kept open by the Gateman, entered the same and in the meanwhile the train came and dashed against the bus, resulting in death of two passengers.

Counsel for the petitioner contends that the petitioner cannot be held liable for criminal negligence and the offences for which he has been convicted along with Gateman namely Sube Singh cannot sustain in the light of the judgment of the Supreme Court in *S.N. Hussain Versus State of A.P. 1972 AIR (SC) 685*. He on the basis of the said judgment contends that the conviction and sentence of the petitioner deserves to be set aside.

Counsel for the State submits that had the petitioner been vigilant enough even if the gate was open, he should have stopped at the level crossing and after finding himself that there was no train approaching, he should have crossed the said level crossing. He, therefore, submits that the petitioner has rightly been convicted and sentenced by the Courts below.

Having considered the submissions made by counsel for the

parties, the contention as raised by the counsel for the petitioner, appears to be correct. As per the facts of the present case, petitioner was driving a bus bearing No.RJ-13PA-0052. When he approached the level crossing of Bahadurgarh Railway Station, he found the said railway crossing open because of which he proceeded to cross the same and in the meantime, Avadh Express Train No.5610 came and collided with the bus, in which two persons Rajender Kumar and Satish Kumar were injured, who subsequently died because of the injuries which they have received in the accident. Petitioner along with Railway Guard Sube Singh were tried and convicted and sentenced by learned Judicial Magistrate Ist Class, Bahadurgarh, by order dated 03.02.2016, against which an appeal preferred by the petitioner stands dismissed by the learned Additional Sessions Judge, Jhajjar, by judgment dated 23.10.2017.

Counsel for the petitioner has relied upon the judgment of the Supreme Court in *S.N. Hussain's case (supra)*, where in para 9 of the said judgment, the Hon'ble Supreme Court on the question of criminal negligence dealing with the similar facts as in the present case, has held as follows:-

“As regards criminal negligence the High Court has blamed the appellant for not taking note of the road signals It is stated that on either side of the railway track, some distance away, there were road signals which required a vehicle to stop, and the High Court finds fault with the driver for not stopping the vehicle. According to the High Court the appellant should have first come to a dead stop at the road signal and made sure that there was no train on the railway line. In our opinion, so much precaution was not necessary to be observed in the present case. Where a level crossing is unmanned, it may be right to insist that the driver of the

vehicle should stop the vehicle, look both ways to see if a train is approaching and thereafter only drive his vehicle after satisfying himself that there was no danger in crossing the railway track. But where a level crossing is protected by a gate-man and the gateman opens out the gate inviting the vehicles to pass, it will be too much to expect of any reasonable and prudent driver to stop his vehicle and look out for any approaching train. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Where the gate is open and there is no train scheduled to pass at the time, the driver would be justified in driving his vehicle through the level crossing. Passenger trains have a time schedule and if a train is expected to come at about the time the appellant reached the level crossing, a regular driver of motor vehicles on that route may, perhaps, be found negligent in crossing the railway track, if any mischance, the gate was open. But the train in the present case was not a passenger train but a Goods train and it is not shown that the Goods train was scheduled to pass the level crossing just at about the time the bus reached the spot. The appellant may not even know that a Goods train would be coming at that moment. We do not, therefore, think that the appellant was guilty of criminal negligence merely because he did not stop when the road signal wanted him to stop. This was clear case of unavoidable accident because of the negligence of the gateman in keeping the gate open and inviting the vehicles to pass.”

In the light of the above observations of the Hon'ble Supreme Court, it cannot be said that the petitioner is guilty of criminal negligence and, therefore, the conviction and sentence of the petitioner cannot sustain.

The present revision petition is allowed.

The impugned judgments of conviction and order of sentence

Petitioner is acquitted of the charges framed against him.

Petitioner be released from custody forthwith, if not required in any other case.

In the light of the decision of the main petition, CRM No.35327 of 2017 stands disposed of as infructuous.

Copy of this order be given ***dasti*** to the counsel for the petitioner under signatures of Bench Secretary of this Court.

March 1st, 2018
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No