

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 355 of 2014**

- Om Prakash Dwivedi S/o Shri Ramlal Dwivedi (Constable No. 2765); aged about 26 years, R/o village – Mehanda, Police Station – Pamgarh, District (Revenue & Civil) – Janjgir Champa (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : District Magistrate Raipur, District (Revenue & Civil) Raipur (C.G.)

---- Respondent**And****CRR No. 359 of 2014**

- Yaneshwar Singh Paikra S/o Late Shri Sonu Ram paikra, aged about 29 years, R/o village Malda, P.S. Kasdol, District Baloda Bazar – Bhatapara (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : Police Station – Government Railway Police, Raipur (C.G.)

---- Respondent

For Applicant in : Shri Rajeev Shrivastava. Advocate
CRR No.355/2014

For Applicant in : Shri H.B. Agrawal, Sr. Advocate
CRR No.359/2014 with Ms. Deepa Dubey, Adv.

For Respondent/State : Shri Rahul Mishra, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey**ORDER****15/07/2019**

01. Since the aforesaid two revisions arise out of the common order dated 28.04.2014, they are being disposed of together by this common order.

02. Being aggrieved by the order dated 28.04.2014 passed by the Special/Additional Sessions Judge, Raipur, District Raipur, in Criminal Appeal Nos.53/2014 and 54/2014 confirming the judgment and order dated 17.02.2014 passed by Special Railway Magistrate, Raipur, in Criminal Case No.5008/2012 convicting the accused/applicants under Section 225 (Part-I) IPC and sentencing them to undergo R.I. for one year each.

03. The prosecution case, in brief, is that on 25.10.2012 at about 11.10 PM, when the accused/applicants who were posted as constable, returning after attending the Court of Railway Magistrate, Bilaspur along with one accused Ajay Rai @ Pappu Bangali, the said accused Ajay Rai escaped from the police custody. An FIR was lodged against both the applicants. After usual investigation, charge sheet was filed against the accused/applicants and charge was framed under Section 225 (1) IPC against them by the trial Court.

04. So as to hold the accused persons guilty, the prosecution examined as many as 06 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and

false implication.

05. Vide judgment and order dated 17.02.2014 the trial Magistrate has convicted the applicants under Section 225 (1) IPC. The judgment of the trial Court has been confirmed by the appellate Court vide impugned judgment dated 28.04.2014, hence this revision.

06. Learned counsel for the applicant in CRR No.355/2014 submits that the applicant has been falsely implicated in the crime in question and the impugned judgment passed by the appellate Court being contrary to the law is not sustainable. He further submits that the learned appellate Court did not enter into the aspect of this case that the escaping accused had been caught with key of hand-cuff, which shows no dereliction on the part of applicant Om Prakash. There is no evidence on record against applicant Om Prakash that he was deliberately avoiding his duty. He also submits that escaping accused Ajay Rai fled away from the custody of present applicant within a spur of moment which he could not foresee and immediately he reported the matter to his seniors. The prosecution has failed to prove its case beyond reasonable doubt and the conviction and order of sentence of this applicant is liable to be set aside.

07. Learned counsel for the applicant in CRR No.359/2014 submits that the applicant has been falsely implicated in the crime in question. The prosecution has failed to establish guilt of the present applicant Yaneshwar Singh as well as any

assistance provided by the applicant in absconding from the police custody. He further submits that both the Courts below have not appreciated the statement of the witnesses and erred in law by convicting the applicant without there being any evidence of facilitating Ajay Rai @ Pappu Bangali in absconding from the custody. He also submits that the prosecution has failed to produce any evidence which could indicate that the applicant was negligence in performing his duty.

08. On the other hand, learned counsel for the State supporting the judgment of conviction and order of sentence submits that the conviction of the applicants is in accordance with law and there is no infirmity in the same warranting interference by this Court.

09. I have heard learned counsel for the parties and perused the material on record.

10. As regard conviction of the accused/applicants under Section 225 IPC is concerned, it is essential to prove ingredients therein, which reads thus:

“225-A. Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise, provided for. -Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in Section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be

punished -

- (a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and*
- (b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

11. A bare perusal of the evidence of prosecution witnesses goes to show that none of the witnesses have stated specifically as to what was the role of the applicants in escaping the accused Ajay Rai @ Pappu Bangali, nor any conspiracy is seen in the present case on the part of the applicants. Pooja Rai (PW/2), who is the wife of escaping accused Ajay Rai, has stated that her husband had come to her house for changing clothes, but at that time he was hand-cuffed. Rajeshwar Mohanti (PW/2), brother-in-law (Jija), has stated that the escaping accused had made a call to him stating that he was taking lunch in hotel and some amount is required, to which this witness denied to give. Apart from this evidence, there is nothing specific against the applicants which could prove their involvement in the crime in question beyond reasonable doubt. Though, both the Courts below have recorded finding that the applicants were negligent while performing their duties, but to prove any offence/criminal act there must be any criminal intention or criminal overt act on the part of the accused, which is completely missing in this case and both the Courts below did not consider this legal

aspect of the matter.

12. To sum up, this Court is of the considered opinion that the prosecution has not led enough evidence to prove the complicity of the accused/applicants in the crime in question beyond reasonable doubt. The trial Court while convicting and sentencing the accused/applicants has not considered the evidence of the prosecution in its true perspective and thereby committed error in convicting them.

13. In view of what has been discussed above, the findings recorded by the Courts below cannot be sustained in the eye of law and are liable to be set aside. The aforesaid revisions are thus allowed, judgment impugned is set aside and the accused/applicants stand acquitted of the charge levelled against them. The accused/applicants are on bail, their bail bonds shall stand discharged.

14. Revisions are thus allowed.

Sd/-

(Rajani Dubey)
JUDGE