

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision-3348-2012

Date of Decision: February 6th , 2019

C. Satnam Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Mandeep Kaushik, Advocate, for the petitioner.

Mr. H.S. Sullar, DAG, Punjab.

Harnaresh Singh Gill, J.

The petitioner is aggrieved against the judgment dated 11.10.2012 passed by the learned Additional Sessions Judge, Amritsar, upholding the judgment and order dated 8.8.2011 passed by the learned Judicial Magistrate, Ist Class, Amritsar, whereby the petitioner was convicted under Section 223 IPC and sentenced to undergo imprisonment for one year and to a fine of Rs.100/- and in default of payment thereof to further undergo imprisonment for a period of one month.

The brief facts of the case are that FIR in the instant case had been registered on the statement of Head Constable Sukhjit Singh to the effect that on 19.05.2005 he along with Constable Sucha Singh, Constable Harpal Singh, Constable Satnam Singh, Constable Dharam Singh, Constable Hardeep Singh, Constable Nand Lal and lady Head Constable Vijay Bala, was on duty for production of 14 prisoners/convicts alongwith Satnam Singh @ Satta, before the Judicial Magistrate, Ist Class,

Baba Bakala. The learned Judicial Magistrate was on leave on that day. Therefore, the accused persons had been brought from Central Jail, Amritsar to the District Courts, Amritsar for their production before the Duty Magistrate, Amritsar. Complainant-H.C. Sukhjit Singh had handed over the custody of the accused persons with their handcuffs to the various police officials, who had come along with him and also gave them proper instructions. One of the accused, namely Satnam Singh @ Satta was to be produced in case bearing FIR No. 76, dated 30.05.2004 under Section 302 read with Section 34 IPC, at Police Station Beas alongwith another accused, named, Gurdeep Singh son of Batna Singh, who was to be produced in another case registered under Section 306 IPC at Police Station Beas, Amritsar. While the complainant went inside the court room to deliver the warrants, during that period the custody of both the accused was handed over to Constable Satnam Singh along with the handcuffs. However, when the complainant came back from the court room, he was informed that Satnam Singh @ Satta had escaped from the custody of the accused-petitioner. Thus, the petitioner/accused had, while performing his duty, acted negligently.

Satnam Singh @ Satta, who had escaped from the custody, could not be arrested and was later on declared as a proclaimed offender by the learned Judicial Magistrate, Amritsar on 15.09.2006.

After completion of the investigation of the present case, the challan against the accused Constable Satnam Singh

was presented in the Court. Finding a prima facie case against the accused-petitioner, charge was framed for the offence under Section 223 IPC, to which he pleaded not guilty and claimed trial.

As noticed above, the learned trial Court convicted the accused-petitioner under Section 223 IPC and sentenced him to undergo imprisonment for a period of one year and to pay a fine of Rs.100/- and in default thereof, to further undergo imprisonment for one month. The appeal preferred by the petitioner-accused was dismissed by the learned Additional Sessions Judge, Amritsar on 11.10.2012.

I have heard learned counsel for the petitioner-accused as also the learned State counsel and with their able assistance have gone through the record of the case.

Learned counsel for the petitioner has argued that the prosecution has failed to prove on record the fact that on the relevant date i.e. 19.05.2005, the learned Judicial Magistrate, Baba Bakala, before whom accused Satnam Singh @ Satta was to be produced, had been on leave, inasmuch as, no documentary evidence i.e. the register of the Court concerned was produced in evidence. Still further, no evidence had been produced on record that when accused Satnam Singh @ Satta had escaped, his custody was handed over to the petitioner. Learned counsel for the petitioner has further drawn the attention of this Court towards the testimony of complainant-HC Sukhjit Singh, examined as PW-2, wherein he has stated that custody of Satnam Singh @ Satta and one other accused namely

Gurdeep Singh, had been handed over to the petitioner and Constable Sucha Singh. However, no record had been produced from the jail authorities, which may corroborate the same. It is further argued that whereas no action had been taken against Constable Sucha Singh, the petitioner has been made a scapegoat.

Learned counsel for the petitioner has further argued that in the present case, the Investigating Officer had not been examined. It is further argued that for producing 14 accused, 8 police officials, including the complainant, had been deputed, yet except the complainant no other police official had been examined.

On the other hand, the learned State counsel has vehemently opposed the arguments advanced by the learned counsel for the petitioner. He has stated that the prosecution has been able to prove its case against the accused beyond the reasonable doubt. All the witnesses produced before the Court had duly supported the prosecution version. The petitioner being the police official, cannot be expected to be negligent in performance of his official duties that too when the issue related to the accused fleeing from the police custody. Thus, a prayer has been made for dismissal of the revision petition.

After hearing the learned counsel for the parties and having gone through the record, this Court is of the opinion that though the prosecution failed to produce the record from the Jail Authorities as regards the handing over the custody of Satnam Singh @ Satta to the petitioner and further no Court Register

had been produced on record showing therein that the learned Judicial Magistrate, Baba Bakala was on leave on the relevant date, yet the fact remains that Satnam Singh @ Satta had escaped from the police custody and he could not be arrested later on, which resulted into his being declared as proclaimed offender. Even as per the testimony of PW2-H.C. Sukhjit Singh, custody of Satnam Singh @ Satta was handed over to the petitioner and Constable Sucha Singh. But no action has been taken against Constable Sucha Singh. It is also admitted by the complainant-Constable Sukhjit Singh that he was the overall incharge of the police squad. Yet further, in the revisional jurisdiction, this Court is not to re-appreciate the evidence and such jurisdiction being limited one, the concurrent finding of guilt recorded by the Courts below does not call for any interference.

The offence for which the present petitioner has been convicted is punishable with maximum simple imprisonment for two years or with fine or with both. In the instant case, the FIR had been registered on 19.05.2005. The petitioner has already undergone a total sentence of 1 month, 26 days. The petitioner has been facing the agony of trial for the last 15 years. Besides, the petitioner is not a previous convict.

Thus, no useful purpose will be served by sending the petitioner behind the bars once again. It is a fit case, where the petitioner, who is otherwise not reflected to be a previous offender, can be released on probation. In my view, Sections 360 and 361 of the Code of Criminal Procedure would mandate a

Court to consider the release of an accused on probation. The Hon'ble Supreme Court in Chandreshwar Sharma Vs. State of Bihar, (2000)9 SCC 245, while considering such mandate, has held to the following effect:-

“3. The appellant herein was convicted under Sections 379 and 411 Indian Penal Code and was sentenced to rigorous imprisonment for one year as 3.5 kg of non-ferrous metal was recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the Tiffin carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been negated and rightly so. When the matter was listed before this Court, a limited notice was issued as to why the provisions of Section 360 of the Criminal Procedure Code should not be made applicable. Pursuance to the said notice, Mr. Singh, the learned standing counsel for the State of Bihar has entered appearance. *From the perusal of the judgment of the learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forum below had considered the question of applicability of Section 360 of the Criminal Procedure Code. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then shall record in its judgment the specific reasons for not having done so. (Emphasis Supplied).* This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the Criminal Procedure Code. As such, the mandatory duty cast on the Magistrate has not been performed.....”

Similar is the view taken by this Court in Akhtar and another vs. State of Haryana, 2013(8) RCR (Criminal) 2992.

This Court in Om Pal Wander Vs. State of Haryana, 2004(4) AICLR 681 and Gopal Singh Vs. State of Punjab, 2012(14) RCR (Criminal) 945, while considering an identical issue as regards the offence under 223 IPC, has granted benefit to the accused (a police official) therein under the Probation of the Offenders Act, 1860. The issue in the present case is squarely covered by the ratio of the said judgments.

Resultantly, while upholding the conviction of the petitioner under Section 223 IPC, his substantive sentence of imprisonment is set aside. Instead, he is ordered to be released on probation for a period of one year subject to his executing bonds to the satisfaction of the Chief Judicial Magistrate, Amritsar, undertaking to keep peace and be of good behaviour for the said period and to appear and receive the sentence as and when called upon to do so in case of violation of any of the conditions of the bonds.

Revision petition stands disposed of in the above terms.

February 6th, 2019
ds

(HARNARESH SINGH GILL)
JUDGE

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No