



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.543/2011

The State of Maharashtra,  
through Police Station Officer,  
Police Station Pursad City,  
Dist. Yavatmal.

...APPELLANT

VERSUS

Azhar @ Annu s/o Irfan @ Bhika Fakirawale,  
Aged about 30 yrs., Occ. Labourer,  
R/o. Kolambi, Tq. Mangrulpir, Dist. Washim.

...RESPONDENT

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Mr. Bhagwan M. Lonare, APP for appellant.  
Mr. R.D. Bhuibhar, Advocate for respondent.  
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CORAM : M. M. NERLIKAR, J.

DATE : 17.12.2025

ORAL JUDGMENT :

Heard the learned Additional Public Prosecutor for  
appellant and learned counsel for respondent.

2. The present appeal is preferred by the State against the  
judgment and order passed by the learned Assistant Sessions  
Judge, Pusad dated 26.07.2011, wherein the accused was ac-

quitted for the offence punishable under Section 224 of the Indian Penal Code (“IPC”) thereby setting aside the judgment and order of conviction and sentence passed by the Trial Court in Summary Criminal Case No. 916/2000.

3. The learned APP submits that the accused on 11.05.2000 at about 02.30 p.m. was apprehended by the Police on an allegation that he was suspected to commit an offence. Therefore Istegasha No.8/2000 was registered under Section 41(2) of the Code of Criminal Procedure. He submits that the Appellate Court has erred in giving the finding that the accused was not in a lawful custody. The prosecution in order to bring home the guilt of the accused, has examined two witnesses i.e. PW-1 Manoharsingh Vitthalsingh Chunade who lodged the report and PW-2 Jagdeo Mahadeo, Police Inspector who had registered an offence against the accused under Section 224 of the IPC.

4. The Trial Court has convicted the accused after considering the evidence on record, by concluding that the

prosecution has proved the case beyond reasonable doubt, as the witnesses stood firm in their version and nothing was brought on record in cross-examination to shatter their testimony, therefore, according to him, the Appellate Court committed gross error in acquitting the accused, only on the ground that he has not escaped from the lawful custody and the custody was illegal. Lastly, he prayed to reverse the findings of the Appellate Court.

5. On the other hand, the learned counsel for respondent/accused submitted that the prosecution has miserably failed to consider the scope of Section 224 of the IPC. The Trial Court wrongly considered the purport of Section 224 that the accused escaped from the lawful custody. Further, there are several lacunae in the case of the prosecution, therefore, the story put forth by the prosecution cannot be believed. It is alleged that the accused was taken into custody by the Police by invoking Section 41(2) of the Code of Criminal Procedure (“Code”), however no arrest panchanama was effected. Not only that, there is no Istegasha presented before the Trial Court, which is

a part and parcel of the charge-sheet, merely placing on record the extract of station diary would by itself does not lead to the conclusion that the accused has committed an offence. In-fact, Section 41(2) of the Code does not come under the category of the offence, as the purpose of Section 41(2) of the Code is altogether different. If at all the accused was taken into custody, he ought to have been interrogated and if no offence was made out, he ought to have been released on the very day, however he further submits that the prosecution has failed to register the offence, therefore, it cannot be said to be a lawful custody as per Section 224 of IPC. The Appellate Court has rightly considered the entire material on record as well as the evidence adduced by the parties and upon re-appreciating the evidence, the Appellate Court has acquitted the accused by setting aside the order of conviction.

6. Upon hearing the learned APP as well as learned counsel for respondent, it appears that the prosecution has examined two witnesses i.e. PW-1 Manoharsingh Vitthalsingh Chunade and PW-2 Jagdeo Mahadeo, Police Inspector. So far as

the PW-1 is concerned, he has deposed that he knows the accused. On 11.05.2000, the accused was arrested by D.B. Squad, Pusad under Section 41(2) of the Code. After arrest, he was kept in the lockup of City Police Station, Pusad. On 12.05.2000 in the morning at about 07.00 a.m, he took the accused/respondent for latrine in sub-jail situated in Tahsil Premises, Pusad. It has further come on record that Head Constable Dhavale as well as PW-1 also took another accused Mohd. Irfan for latrine in sub-jail along with accused. They were at sub-jail for two hours i.e. between 07.00 a.m. to 09.00 a.m. When PW-1 was hand-cuffing another accused Mohd. Mahamood, the respondent/accused took advantage of the same and fled, even though PW-1 chased him, but he ran away. Accordingly, the report was lodged against the present accused at Exh.13.

7. PW-2 Police Inspector who registered the offence, has specifically deposed that he has registered FIR alleging that the accused escaped from the lawful custody of PW-1. He conducted spot panchanama, recorded the statement, arrested

the accused and after concluding the investigation, he has filed the charge-sheet.

8. In order to consider the scope of Section 224 of the IPC, it would be necessary to show that the escape or attempt to escape by a person from lawful custody for the offence with which he is charged or of which he has been convicted. It appears from the record that the accused was taken into the custody and arrested under Section 41(2) of the Code, as it appears from Exh.15 is the station diary entry. Further, evidence of PW-1 also shows that the accused was arrested under Section 41(2) of the Code. The important question would be whether there is sufficient and cogent evidence against accused in order to convict for offence under Section 224 of the IPC. So far as the evidence led by the prosecution is concerned, it nowhere specifically states that any offence under the provisions of the IPC or any other Act was registered against the accused. As Section 41(2) of the Code by itself is not an offence. Section 41(2) of the Code specifically states that if the officer or the complainant is having any credible information or

having information that the accused has committed a non-cognizable offence or has received any such information or reasonable suspicion exists he shall be arrested except under a warrant or order of a Magistrate, meaning thereby, if the officer is having some credible information or reasonable suspicion, under such circumstances, the concerned person can be arrested, however the said section was enacted with an objective to prevent the concerned person from committing cognizable offence or from attempting to commit an offence. If after arrest under Section 41(2) of the Code, it is found that he has not committed any offence, then under such circumstances after interrogation or inquiry, the accused can be released or otherwise is revealed, then FIR is required to be registered, however so far as the present case is concerned, even accepting the prosecution story though the accused was shown to be arrested on 11.05.2000 at about 02.30 p.m., he was kept in lock up till he escaped on 12.05.2000 in the morning. Under such circumstances, it cannot be said that the custody of the accused is a lawful custody for the reason that no offence was

registered against the accused, even after the arrest of the accused, nor was he convicted for any offence, so as to satisfy the ingredients of Section 224 of the IPC. Moreover, it is necessary to mention at this juncture that there is no documentary evidence to show that there was arrest of the accused as the prosecution has failed to place on record the sufficient documentary evidence. The only version which goes to show that the accused was arrested is the testimony of PW-1 and in absence of any further documentary evidence the said fact of arrest cannot be believed. Even Exh.15 is the station diary entry which only shows that the accused was arrested that by itself is not sufficient to show that accused was arrested. As was observed that though the accused was shown as arrested under Section 41(2) of the Code, in absence of further registration of the offence and further proof, it cannot be said that the ingredients of Section 224 of the IPC are made out.

9. Further, it could be gathered that in the evidence of PW-1, it has come on record that Head Constable Dhavale was with the PW-1, however, when the accused fled from the spot, no

further role of Dhavale was shown, then the question remains as to what was Head Constable Dhavale doing at the relevant time. As could be gathered from the evidence that, it was PW-1 who has only chased the accused, though the accused ran away. There is also no explanation as regards to why the accused and PW-1 was at the Sub-jail for two hours. Therefore, the evidence of PW-1 creates doubt, so also the conduct of PW-1 is unnatural. Even the evidence of PW-2 is not helpful for the reason that he has only registered the FIR and after completing the investigation, he has filed the charge-sheet.

10. It is further to be noted that the person who has arrested the accused, has not been examined by the prosecution for the reasons best known to the prosecution. Admittedly, there is no evidence in so far as the fact as to who has arrested the respondent. Under such circumstances, it creates doubt about arrest of the respondent and if the arrest itself is doubtful, under such circumstances, Section 224 of the IPC cannot be invoked.

11. It is further to be noted that nothing was placed on record since from the time of arrest of the petitioner i.e. arrest panchanama or any other documentary evidence except the station diary entry. Had it been a case that arrest panchanama or arrest memo was placed on record, the same would bear the signature of the respondent. However, nothing was placed on record to believe the story of the prosecution. Further, it is important to note that the prosecution has failed to place on record the log-book, wherein the entry of putting the respondent in lock up could have been very well placed before the Court. Further, even the movement register was not placed on record in order to show that the respondent was taken for nature's call in the morning to Sub-jail. It is further to be noted that no documentary evidence placed on record from the Sub-jail in order to show that the respondent/accused was taken by PW-1 and Head Constable Dhavale for nature's call. In-fact, all these documents could be easily available. However, it appears that Investigating Officer has not collected these important documents and therefore, the only conclusion that can be

drawn that, there is no sufficient/cogent evidence brought on record by the prosecution in order to show that respondent/accused was arrested and he escaped from lawful custody. Therefore, it is necessary to draw adverse inference that the story of the prosecution is imaginary and concocted. In this context, the observations of this Court in Syed Aref s/o Syed Omar Versus State of Maharashtra, 1995 (3) Bom CR 630, are relevant where it is held that 'escape' must be from the custody in which the person escaping has been detained legally for conviction under Section 224 IPC.

12. Therefore, I am of the opinion that the Assistant Sessions Judge has not committed any error. On the contrary by a reasoned judgment, the accused has been acquitted.

13. In view of above facts and circumstances of the case, there is no merit in the appeal and accordingly, the appeal is dismissed.

**( M. M. NERLIKAR, J. )**