

(2017) 06 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : 1309 of 2012

Alam son of Harun

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 08-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 397](#),
[Section 342](#), [Section 412](#) Se

Citation : (2017) 06 P&H CK 0008

Hon'ble Judges : Tejinder Singh Dhindsa

Bench : SINGLE BENCH

Advocate : Tapan Kumar Yadav, Satish Saini

Final Decision : Allowed

Judgement

1. In terms of judgment dated 1.10.2011 and order of sentence dated 5.10.2011 passed by the Judicial Magistrate Ist Class, Faridabad, petitioner stands convicted for commission of offence punishable under Section 223 of the Indian Penal Code and has been sentenced to undergo simple imprisonment for a period of two years.
2. Appeal having been preferred, the judgment of conviction as also order of sentence passed by the trial Court has been affirmed by the learned Additional Sessions Judge, Faridabad vide decision dated 6.4.2012.
3. The instant revision petition, as such, is directed

against the concurrent conviction of the petitioner under Section 223 of the Indian Penal Code.

4. Briefly noticed, that the process of law was set in motion on the statement of complainant Narain Singh, SI on the allegations that on 16.11.2002, he along with Constable Krishan Kumar, Constable Ashok Kumar, Constable Mohd. Alam (present petitioner), Murli Krishan, Zonal Manager of XPS Company, Mahilpur, Delhi and Partap Chand Jha, Area Manager as also accused Tahir, who was in police custody in case FIR No.427 dated 28.10.2002, under Sections 395, 397, 364, 342, 506 and 412 of the Indian Penal Code as also Section 25 of the Arms Act, were going to Delhi for search of co-accused Jamil. When they reached Badarpur Border, accused Tahir desired to attend the call of nature. Accordingly, vehicle was stopped and accused Tahir was permitted to attend the call of nature in the custody of present petitioner, but he succeeded in escaping from police custody due to negligence of the petitioner. On the basis of such complaint, FIR was registered. After completion of investigation, challan was presented. Accused/petitioner was charge sheeted under Section 223 of the Indian Penal Code, to which he pleaded not guilty and claimed trial.

5. Prosecution, to prove its case, examined five witnesses i.e. PW1 ACP Naveen Kumar, Investigating Officer, PW2 Narain Singh (retired SI), PW3 Raghubir Singh, Inspector, PW4 Ashok Kumar, EHC and PW5 Inspector Rishi Pal. Entire evidence produced by the prosecution was put to the accused at the stage of recording his statement under Section 313 of the Code of Criminal Procedure. Accused/petitioner pleaded innocence. He, however, did not lead any evidence in his defence. Trial has culminated in the conviction of the petitioner and order of

sentence as noticed hereinabove.

6. Learned counsel appearing for the petitioner would argue that the prosecution has failed to prove the genesis of the allegations as regards an undertrial, namely, Tahir having escaped from police custody on account of negligence of the petitioner who was a serving Constable. Further argued that no evidence had been led even as regards negligence on the part of the petitioner so as to constitute an offence under Section 223 of the Indian Penal Code. Further argued that the Courts below have erred in convicting the petitioner only on the basis of suspicion and by putting the entire burden on the accused/petitioner for proving his innocence. It is contended that it was not open for the Courts to have merely placed reliance upon one part of the statement of the accused/petitioner recorded under Section 313 of the Code of Criminal Procedure. Argued that onus of proof in criminal law is entirely on the prosecution and it was obligatory for cogent and conclusive evidence to be led so as to prove and substantiate the allegations against the accused persons. In the present case, the trial Court has shifted the burden of proof upon the accused/ petitioner for proving the fact that he was not accompanying the complainant-SI Narain Singh on the alleged day of occurrence and that Tahir had not escaped from his lawful custody. Such course of action is contended to be unsustainable in the eyes of law.

7. Per contra, learned State counsel would submit that the judgment of conviction recorded by the trial Court and affirmed by the Appellate Court is based on cogent and valid reasons and would not call for any interference in the exercise of the revisional jurisdiction by this Court.

8. Records of the case, that were duly requisitioned, have been perused.

9. Having heard learned counsel for the parties at length and having perused the records, this Court is of the considered view that the present revision petition merits acceptance.

10. Section 223 of the Indian Penal Code reads as under:

"223 223. Escape from confinement or custody 223 negligently suffered by public servant - Whoever,

being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence (or lawfully committed to custody), negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

11. A bare reading of the provision would make it clear that for an accused to be held guilty for an offence punishable under Section 223 of the Indian Penal Code, two ingredients would have to be established and proved i.e. i) that the accused in the capacity of a public servant was legally bound to keep in confinement any person charged with or convicted of any offence, ii) such accused has negligently suffered such person to escape from confinement.

12. The entire case of the prosecution is that an accused in FIR No.427 of 2002, namely, Tahir has escaped from police custody and on account of the negligence of the present petitioner.

13. Records of the case would reveal that no evidence has been led regarding registration of FIR No.427 of 2002. Arrest of Tahir in FIR No.427 dated 28.10.2002 has also not been proved on record. As per prosecution version, Tahir had escaped from police custody while being taken to Delhi to search for co-accused

Jamil. However, the disclosure statement of Tahir in which the name of Jamir has cropped up, is also not on Court file.

14. The deposition of complainant Narain Singh, PW2 creates a serious dent in the prosecution version. PW2 has stated that although Tahir was arrested on 16.11.2002, but he was not produced before the Court. PW2 has also stated that he had not recorded in the Rapat Roznamcha that he was taking accused Tahir to Delhi.

15. This Court would be constrained to observe that the prosecution has failed to adduce any credible and conclusive evidence to prove beyond any shadow of doubt that Tahir had been kept in confinement in the capacity of an accused and consequentially, the present petitioner was under a legally bounden duty to keep him secure in confinement. The essential ingredient for commission of offence under Section 223 of the Indian Penal Code, as such, has not been established.

16. Furthermore, trial Court has also committed a patent illegality and infirmity in recording that the accused had not led any evidence in defence to show that he was not present along with complainant SI Narain Singh when Tahir had escaped. It was for the prosecution to have brought home the guilt of the accused. The onus could not have been shifted upon the petitioner. Conviction of the petitioner has been recorded by merely taking note of one part of the statement recorded of the accused under Section 313 of the Code of Criminal Procedure wherein he had stated that Tahir had not run away on account of his negligence but had escaped from the custody of complainant SI Narain Singh. Such part of the statement recorded under Section 313 of the Code of Criminal Procedure, in itself, would not be sufficient to establish and prove the ingredients for

commission of offence under Section 223 of the Indian Penal Code. Even if the statement of the accused/petitioner under Section 313 of the Code of Criminal Procedure was to be taken as conclusive towards confinement of Tahir as an accused in FIR No.427 dated 28.10.2002, still no evidence whatsoever has been adduced towards proving the negligence of the present petitioner as regards escape of Tahir.

17. For the reasons recorded above, conviction of the petitioner under Section 223 of the Indian Penal Code cannot sustain.

18. Accordingly, the instant revision petition is allowed. Conviction of the petitioner for offence punishable under Section 223 of the Indian Penal Code as also order of sentence is set aside.

19. This Court had extended in favour of the petitioner the concession of suspension of sentence during pendency of the revision petition vide order dated 20.7.2012. The conviction of the petitioner itself having been set aside, the petitioner shall stand discharged from the liability of the bail bonds that he had furnished.

20. Revision petition allowed.