

(2007) 02 JH CK 0066

In the Jharkhand High Court

Case No : Letters Patent Appeal No's. 456 and 674 of 2004 (Against the orders Dated 29th April, 2004 and 16th July, 2004 Passed by the learned Single Judge in W.P.S. No. 6666 of 2002, 3607 of 2003 and LPA No. 456 of 2004)

Umeshwar Upadhyay

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 224, 225

Citation : (2007) 2 BLJR 1093 : (2007) 2 JCR 221

Hon'ble Judges : M. Karpaga Vinayagam, C.J.;Permod Kohli, J

Bench : Division Bench

Advocate : R.C.P. Sinha and Rakesh Kr. Sinha, in LPA No. 456 of 2004 and J.N. Pandey, JC to AG in LPA No. 614 of 2004, for the Appellant; J.N. Pandey, JC to AG in LPA No. 456 of 2004, for the Respondent

Judgement

LPA No.456 of 2004

1. The appellant in this appeal is a Constable, who has joined the service in the year 1980. On 18.1.2002 he was entrusted with the work of escorting three under trial prisoners from court Hazat to produce them before the respective courts. After production these three persons with the handcuff and also tied with rope were being brought back to the court Hazat. At about 3.30 p.m., while they were coming back, one person, namely, Akhilesh Singh, managed to remove the handcuff as well as the rope tied with hands and escaped. The delinquent-appellant was not able to chase him because he was having the ropes tied with the hands of the other persons. Therefore, he immediately took both of them to court Hazat and handed over them to the custody of Havildar Laldeo Singh . Immediately information was given to the Jail Superintendent. On the basis of that information given by Havildar Laldeo Singh, a case was registered against the said accused, Akilesh Singh, for the offence u/s 224 of the Indian Penal Code . Thereafter, within two days of the incidence, the Investigating Officer in

the case filed requisition before the court concerned, requesting to add two more accused, namely, the delinquent as well as Havildar Laldeo Singh, as co-accused and also prayed for converting the case into a case for the offence u/s 225 read with Section 120B of the Indian Penal Code. Thereafter the investigation continued. In the meantime, the petitioner/appellant was suspended on 20th January, 2002 and served the chargesheet, asking him to show cause. In pursuance of the said chargesheet, the appellant filed his reply to the show cause on 4.2.2002. Three witnesses were examined on behalf of the Department. Ultimately, the Inquiry Officer concluded the enquiry and submitted the report on 11.4.2002, holding the charges proved. In pursuance of the report of the Inquiry Officer, the Superintendent of Police, Jamshedpur, Singhbhum East, issued second show cause on the same day to the delinquent, the appellant. The appellant sent a reply on 19.4.2002. Having not satisfied with the reply, the disciplinary authority passed an order of dismissal on 21.6.2002. Aggrieved with the dismissal order, the delinquent-appellant filed an appeal before the Deputy Inspector General of Police, South Chotanagpur at Ranchi and the same was dismissed on 5.11.2002.

3. Assailing the said order, the petitioner/appellant (delinquent) filed a writ petition before the Single Judge in W.P.(S) No. 6666 of 2002 and the same was dismissed on 29.4.2004, which is the subject matter of challenge in this Letters Patent Appeal.

4. Heard learned counsel for the delinquent-appellant as well as the respondents.

The main point urged by the counsel for the appellant-delinquent is that the Inquiry Officer as well as the Disciplinary authority without application of mind would hurriedly come to the conclusion that the charge is proved, even though there is lack of evidence with reference to the negligence or dereliction of duty on the part of the delinquent. There is no dispute in the fact that even the learned Single Judge would refer to the evidence of Witness nos.2 and 3 that they are irrelevant witnesses, because one witness speaks about the typing of the suspension order and another speaks about signature appended by the Superintendent of Police on the suspension order. Only evidence which has been relied upon by the learned Single Judge, in the light of the Inquiry Report is the evidence of Witness no.1, who is Dy.S.P., who was investigating the case, which was registered u/s 225 IPC, which refers to the negligence on the part of the delinquent.

5. We have gone through the inquiry report. We have also asked counsel for the State to point out the portion from inquiry report as to where the Inquiry Officer has discussed with the evidence with respect to the negligence or dereliction of the duty on the part of the delinquent.

6. Admittedly, the Dy. S.P., the Witness no.1, is a mere officer, who supervised the investigation of the criminal case which was registered for the offence u/s 224 by the Investigating Officer and on his requisition before the court

concerned, it was converted into a case for the offence Section 225 and 120B of the Indian Penal Code as against the delinquent and another. He merely stated about the investigation particulars with reference to the criminal case in the capacity of a senior police officer supervising over the investigation. Admittedly, he was not present at the spot and there is no witness, who speaks about the involvement of the delinquent-appellant in allowing one of the persons to escape from custody so as to prove the charge against the delinquent of being negligent. As a matter of fact, as indicated above, the Investigating Officer in that case had earlier filed a requisition before the court concerned, requesting the court to convert the case into a case for the offence u/s 225 and 120B of the Indian Penal Code as against delinquent and one another Havildar, Laldeo Singh. Such being the case, there is no reason as to why prosecution agency has not examined that Investigating Officer nor allowed the Investigating agency to produce any material on the basis of which said requisition was filed for converting the case . As a matter of fact, the Supervising Officer, the Witness no.1, has not referred to any of the materials with reference to the involvement of the delinquent in the act of allowing the person to escape from the custody. The Inquiry Officer as well as the learned Single Judge merely on the basis of conjectures, surmises and also on the hearsay evidence adduced by Dy.S.P.(Witness no.1) has come to the conclusion that the appellant-delinquent has involved himself in the act of negligence. In our view, without any evidence whatsoever, the Inquiry Officer has come to the hasty conclusion that the charge has proved. The direct charge is that the delinquent has allowed one of the person to escape from custody by being negligent. Admittedly, no material has been placed nor pointed out by the learned counsel for the State. It is also noticed that nothing has been referred to by the Officer about the direct evidence. In other words, no substantive evidence brought on record by any witness to bring home the charge to the effect that the appellant allowed one of the person to escape from custody negligently.

7. At this juncture, it would be relevant to point out that the departmental enquiry has been conducted even without resorting to the final outcome of the prosecution as against the delinquent. It is also pointed out that the person, who escaped from custody, has subsequently been arrested and put in custody. Further, the departmental enquiry has been initiated not only against the delinquent employee-appellant but also against Laldeo Singh. Both of them were suspended, pending departmental enquiry, and both of them were dismissed by the Superintendent of Police by passing separate orders. It is curious to note that the dismissal order passed as against Laldeo Singh has been challenged in the appeal, which has been dismissed. Subsequently, he filed an application being WPS No. 3607 of 2003 before the learned Single Judge. The learned Single Judge considered the matter and vide order dated 16.7.2004 quashed the dismissal order holding that there is no material to establish the negligence. There is no dispute of the fact that similar charge as against the delinquent in this case has also been framed against the said Laldeo Singh. There is no reason to differentiate the case of the delinquent from that of Laldeo Singh, whose

dismissal order has been quashed by the learned Single Judge.

8. In view of the fact that the learned Single Judge referred to various facts, which is not available in the evidence and also in the light of the fact that Inquiry Officer had simply relied upon the evidence of the Dy. S.P., witness no.1, who merely stated about the hearsay statement, we are of the view that the conclusion which has been arrived at by the Inquiry Officer as well as the learned Single Judge on the basis of the evidence which is not available on record, is without any basis. Consequently, we are constrained to hold that the conclusion arrived at by the Inquiry Officer, Disciplinary authority and the learned Single Judge is perverse and the same is liable to be set aside.

9. In the result, the order dated 29.4.2004 is, hereby, set aside and the Letters Patent Appeal No. 456 of 2004 is allowed. It is made clear that the appellant/delinquent is entitled to all the consequential benefits.

LPA No. 614 of 2004

We have gone through the order passed by the learned Single Judge dated 16.7.2004 passed in WPS No. 3607 of 2003. In view of the reasoning given in the earlier order, which would apply in this case also, we do not find any merit in this Letters Patent Appeal. The Letters Patent Appeal No.614 of 2004 is, accordingly, dismissed.